

Winter 2020

## Please, Hear My Cry: Judicial Interpretation of Children's Human Rights under the Jurisprudence of the Inter-American Court of Human Rights

Áquila Mazzinghy

Follow this and additional works at: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/hastings_international_comparative_law_review)



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Áquila Mazzinghy, *Please, Hear My Cry: Judicial Interpretation of Children's Human Rights under the Jurisprudence of the Inter-American Court of Human Rights*, 43 HASTINGS INT'L & COMP. L. Rev. 35 (2020). Available at: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol43/iss1/4](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol43/iss1/4)

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings International and Comparative Law Review by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact [wangangela@uchastings.edu](mailto:wangangela@uchastings.edu).

---

---

# **Please, Hear My Cry: Judicial Interpretation of Children’s Human Rights under the Jurisprudence of the Inter-American Court of Human Rights**

ÁQUILA MAZZINGHY<sup>1</sup>

## **Abstract**

This research analyzed human rights violations against the children of the American continent over the past four decades, with a focus on the Latin American states. The research concentrated on the following crimes committed against children: extra-judicial killing, torture, sexual molestation, rape and forced disappearance. It analyzed, compared and organized over 60 judicial cases from the Inter-American Court of Human Rights. The overall research objective was to scrutinize the Court’s judicial interpretation of children’s human rights through direct consideration of the sentences’ text. To perform this objective, this research identified patterns of conduct in state violations of children’s human rights, through direct acts or tolerance. It vertically compared singular Court decisions and state conduct.

**KEY WORDS:** Judicial interpretation of children’s human rights; Children’s human rights; Inter-American Court of Human Rights

---

1. Áquila Mazzinghy. PhD Candidate in International Criminal Law, Koç University, Istanbul, Turkey, 2016-2020; LL.M. in Human Rights and Humanitarian Law, Washington College of Law, Washington-DC, US, 2009; LL.B/Juris Doctor (U.S.), Federal University of Viçosa, Viçosa, Brazil, 2008. The author would like to thank distinguished Professor Dr. Bertil Emrah Oder, from Koç University for her insightful supervision, compassion and patience during the drafting of this paper. This paper is dedicated to Doctor Antônio Augusto Cançado Trindade, brilliant scholar, outstanding Professor, dedicated and exceptional Judge, indefatigable defender of human rights, for the significant impact and legacy of his separate, dissenting, and concurring *opinions* while a former Judge at the Inter-American Court of Human Rights, and for inspiring generations of human rights lawyers to fight against human rights abuses against children in the American Continent.

## TABLE OF CONTENTS

<b>1. Introduction</b> .....	38
<b>2. A generalized pattern of violence against children in the Latin America</b> .....	39
<b>3. Please, hear my cry: Selected stories of children from the Latin America</b> .....	40
<b>3.1. Extra-judicial killing, torture and children's human rights violations during internal armed conflict</b> .....	40
<b>3.2. Gender-based violence against girls</b> .....	46
<b>3.3. Forced disappearance of children</b> .....	48
<b>3.4. Street children</b> .....	50
<b>3.5. Next of kin victims of human rights violations</b> .....	52
<b>4. Children's "autonomous right" to the "very realization of justice"</b> .....	54
<b>4.1. The comprehensive international <i>corpus juris</i> for the protection of children</b> .....	56
<b>4.2. Comprehensive commands and principles of public international law as a supplementary tool for the judicial interpretation of children's rights</b> .....	59
<b>5. The principle of the best interests of the child as an autonomous international instrument protecting children's rights</b> .....	63
<b>5.1. The best interest of children: Procedural protection of judicial cases involving minors</b> .....	65
<b>6. Judicial interpretation of children's human rights under the Inter-American Court of Human Rights jurisprudence</b> .....	72
<b>6.1 Judicial interpretation of children's human right to prompt and effective justice</b> .....	72
<b>6.2. Judicial interpretation of children's human right to life</b> .....	78
<b>6.3. Judicial interpretation of children's human right to a family: The crime of forced disappearance and the issue of separation of children by state agents</b> .....	84
<b>6.3.1. The dictatorial military regimes in Latin American States: A pattern of family separation through torture, extra-judicial killings and child recruitment</b> .....	87
<b>6.4. Procedural protection in judicial cases involving child</b>	

<b>victims of rape</b> .....	94
<b>6.5. Judicial interpretation of a girl’s human right to     freedom from violence</b> .....	97
<b>7. Conclusion</b> .....	99
<b>7. References</b> .....	101
<b>7.1. Inter-American Court of Human Rights – Case Law     and Advisory Opinions</b> .....	101
<b>7.2 Treaty law</b> .....	104

## 1. Introduction

. . . *the bodies of all children who were killed were piled up in several homes, which were then set on fire by the soldiers. Similarly, they set fire to the church, where there were injured children who were still alive, because screams and cries could be heard.*

Inter-American Court of Human Rights.  
Case of the *Massacres of El Mozote and Nearby Places v. El Salvador*<sup>2</sup>

Children are holders of substantive and procedural rights, possessing juridical capacity before the state and before the law. As such, states have both positive and negative obligations as the guarantor of children's human rights. Tragically, given their level of defenselessness and particular condition of vulnerability, children are often victims of human rights violations.

This research identified violations of children's human rights by Latin American states, members of the Organization of American States, through acts and/or connivance of state agents. Several decisions, over the past four decades, of the Inter-American Court of Human Rights (the Court) were vertically compared to states' conduct. The main research focus was to scrutinize the Court's judicial interpretation of children's human rights through direct consideration of the sentences' texts regarding Latin American states. The material object concerned the crimes of extra-judicial killing, torture, sexual molestation, rape and forced disappearance, when committed against children.

To scrutinize the Court's judicial interpretation of children's human rights, this research analyzed the comprehensive international *corpus juris* for the protection of children as well as the commands and principles of public international law and public international human rights law, such as the principle of *pacta sunt servanda*, the principle of *jus cogens* and the principle of the best interests of the child.

This work focused on the judicial interpretation of children's human rights to prompt and effective justice, procedural protection, life, and family and girl's human right to freedom from violence. The ultimate objective of scrutinizing four decades of the Court's judicial interpretation of children's human rights in the Latin America was to identify the best practices sufficient to prevent situations that foster a climate of impunity, re-victimization and chronic repetition of such violations.

---

2. *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 95 (Oct. 25, 2012).

---

---

## 2. A generalized pattern of violence against children in the Latin America<sup>3</sup>

Children of the Latin America have long been suffering from immeasurable evil. Over the past four decades, the history of most of the members of the Organization of American States has been marked by a generalized pattern of violence against minors by state agents, either through the direct perpetration of violent acts or through their tolerance and omission. Children have been inhumanely treated, extra-judicially executed, tortured, sexually molested, raped, mutilated, disappeared and discriminated against. Historically, the collusion and/or connivance of public officials has been a *conditio sine qua non* for the perpetration of such acts. An operational system of children's rights violations has been fueled by the low risk of punishment and deficient legal system of accountability for the perpetrators. Unscrupulous practices have been corrupting those whose mandate is to protect vulnerable/defenseless children. In these cases, the law-keeper becomes the lawbreaker.

The American Convention on Human Rights (generally known as the American Convention or Pact of San Jose) is the main document protecting children's human rights in the Americas.<sup>4</sup> It serves as the substantial instrument for the prevention and punishment of violence against children. It was adopted at the Inter-American Specialized Conference on Human Rights in San José, Costa Rica, on November 22, 1969. The Convention establishes the main norms relative to OAS bodies: the Inter-American Commission on Human Rights, Chapter VII (the Commission), and the Inter-American Court of Human Rights, Chapter VIII (the Court). These bodies are tasked with the protection of children's rights arising from the American Convention, through recommendations, coercive measures or binding mechanisms against states.

The Commission represents all member states of the Organization of American States. It must appear in all cases before the Court.<sup>5</sup> The Commission is a *quasi-judicial* body whose main mandate is to "promote

---

3. For the purposes of this paper, the definition used for the term "child" will be found in Article 1 of the Convention on the Rights of the Child. United Nations Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sep. 2, 1990) ("child [is] every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."); *see, e.g.*, Juridical Condition and Human Rights of the Child arts. 8, 19, 25, 64(1) American Convention on Human Rights, Advisory Opinion OC-17/2002, Inter-Am. Ct. H.R. (ser. A) No. 17, ¶ 38 (Aug. 28, 2002).

4. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. at 123.

5. *Id.* arts. 35, 57.

respect for and defense of human rights” in the Americas.<sup>6</sup> If there is no one with *jus standi* before the Court, it is up to the Commission and state members to make petitions on behalf of individuals before the Court.<sup>7</sup>

The Court has full binding powers over states that have voluntarily deposited their instrument of ratification of the American Convention or adhered to it. Subsequent recognitions also have *ipso facto* binding powers. Such instruments of deposit or adherence must be made unconditionally in relation to the powers granted to the Court. The Court rules on judicial matters of violations of human rights, issuing decisions that seek to make states accountable for being unwilling to prevent, investigate, prosecute, punish and/or redress violations of human rights.<sup>8</sup> In urgent matters, the Court is vested with the power to adopt pertinent provisional measures “when necessary to avoid irreparable damage to persons” involved in matters under its consideration.<sup>9</sup>

Within its jurisprudence, the Court has ruled on issues such as children’s special material and procedural rights, the dignity and vulnerability of children, the best interest of the child, states’ positive and negative obligations towards children, and states as guarantors of children’s rights. In vast decisions, the Court has also ruled on gross violations of children’s human rights. Some of the children’s stories behind these violations are detailed in the following section.

### **3. Please, hear my cry: Selected stories of children from the Latin America**

#### *3.1. Extra-judicial killing, torture and children’s human rights violations during internal armed conflict*

*Río Negro Massacres v. Guatemala; “Las Dos Erres” Massacre v. Guatemala; Massacres of El Mozote and Nearby Places v. El Salvador; Santo Domingo Massacre v. Colombia; Las Palmeras v. Colombia; Sawhoyamaxa Indigenous Community v. Paraguay*

Guatemala was immersed in an internal armed conflict from 1962 to 1996. Under the National Security Doctrine, which gave rise to the Internal Enemy Doctrine, more than 200,000 people were reported dead or disappeared in acts of extreme cruelty committed by state agents.<sup>10,11,12,13</sup>

---

6. *Id.* art. 41.

7. *Id.* arts. 41(f), 48 ¶ 1, 61 ¶ 1.

8. *Id.* arts. 62.1, 62.2.

9. *Id.* art. 63 ¶ 2.

10. *Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 56 (Sep. 4, 2012).

11. *Id.* ¶ 57.

During these repressive times, hundreds of children were illegally jailed, tortured and raped by state agents. The indigenous Mayan people, for example, were deemed “internal enemies” and/or “subversive influences” by the Guatemalan Army.<sup>14,15</sup> This was because the Maya had refused to leave their ancestral land and allow Guatemala to “construct the ‘Pueblo Viejo-Quixal’ hydroelectric dam, in the Chixoy river basin” in the early 1980s.<sup>16</sup> Despite the Maya’s refusal, the state ordered the closing of the reservoir, allowing the dam to fill.<sup>17</sup> As a direct consequence, the Maya land was mostly flooded.<sup>18</sup>

After the Maya refused to leave their homes, government-created Civil Defense Patrols and Guatemalan soldiers began a brutal campaign of relocating and/or destroying the local population. In a number of incidents that took place between 1980 and 1982 collectively termed *The Rio Negro Massacres*, women and children in particular experienced extreme violations of human rights (as determined by the Court on September 4, 2012). Survivors of one massacre, for example, were tied by the neck or the hands and forced to walk without water and/or food towards a place known as Cerro Pacoxom.<sup>19</sup> During this forced relocation, pregnant women were persistently pushed and beaten with branches and clubs.<sup>20</sup> Those who fainted were killed.<sup>21</sup> Girl children were raped repeatedly.<sup>22,23</sup>

On reaching Cerro Pacoxom, the torture continued. A group of soldiers threw grenades at the civilians.<sup>24</sup> Children were assembled in small groups and shot.<sup>25,26</sup> Prior to death, many of them were tortured.<sup>27</sup> Several women were publicly raped, then strangled or hung.<sup>28,29</sup> Pregnant women

---

12. *Id.* ¶ 58.

13. Gudiel Álvarez et al. v. Guatemala, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H. R. (ser. C) No. 253, ¶ 54 (Nov. 20, 2012).

14. Río Negro Massacres, Inter-Am. Ct. H. R. (ser. C) No. 250, ¶ 58.

15. *Id.* ¶ 66.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* ¶¶ 77, 79.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* ¶ 78.

26. *Id.* ¶ 60.

27. *Id.*

28. *Id.* ¶¶ 78, 80.

29. *Id.* ¶ 59.



were publicly executed.<sup>30</sup> Abortions were performed through extreme acts of torture.<sup>31</sup> Young women were forced to stand on a heated iron sheet until they died.<sup>32</sup>

Small children and babies were brutally dismembered with machetes or hit continuously against rocks until they died.<sup>33</sup> In this incident alone, at least 107 children were murdered.<sup>34</sup> The corpses of children were thrown into a mass grave dug by the patrollers and soldiers.<sup>35</sup> Many of the children who survived this attack died of hunger some time later.<sup>36</sup> These facts were ruled in *Río Negro Massacres v. Guatemala* case by the Inter-American Court of Human Rights on September 4, 2012.<sup>37</sup>

As is clear from the *Río Negro Massacres*, the military played a significant role in ongoing human rights violations during the internal armed conflict. The Guatemalan army's special forces — the Kaibiles — perpetrated another such tragic massacre.<sup>38</sup> It took place in the Las Dos Erres community between December 6 and 8, 1982.<sup>39,40</sup> The Kaibiles arrived at Las Dos Erres in the early morning and proceeded to remove children from their homes, locking them in a church.<sup>41</sup> Some died after being severely beaten, and several girls were reportedly raped by the Kaibiles.<sup>42,43</sup>

In the afternoon, men from the community were blindfolded and their hands tied.<sup>44</sup> Some of the men, women and children were forced to kneel in front of a well, at which point their heads were struck with an iron mallet and their corpses kicked inside the well.<sup>45</sup> In the evening, the surviving girls were repeatedly raped by Kaibiles military instructors.<sup>46</sup> On the following day, the Kaibiles soldiers raped two girls, slitting their throats

---

30. *Id.*

31. *Id.*

32. *Id.* ¶ 80.

33. *Id.* ¶ 78.

34. *Id.* ¶ 79.

35. *Id.* ¶¶ 78, 102.

36. *Id.* ¶ 82.

37. *Id.* ¶ 8.

38. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 2 (Nov. 24, 2009).

39. *Id.*

40. *Id.* ¶ 169.

41. *Id.* ¶ 78.

42. *Id.*

43. *Id.* ¶ 79.

44. *Id.*

45. *Id.*

46. *Id.* ¶ 80.

afterward.<sup>47</sup> Families that arrived afterwards were also executed.<sup>48</sup>

On the third and final day, the Kaibiles grouped all of the pregnant women together. In an act of extreme brutality, cruelty and violence, the soldiers caused abortions by cowardly beating the women or jumping on their abdomens until they miscarried.<sup>49</sup> After this barbaric act, the ground was full of blood, umbilical cords, and placentas.<sup>50</sup> Ramiro Osorio Cristales, a witness who was six years old at the time, lived in Las Dos Erres with his family.<sup>51</sup> He saw his mother and sister being executed<sup>52</sup> and said he could never forget the screams and cries of children and other members of the community when they were tortured and killed in agony.<sup>53</sup> A total of 216 people died, many of them children.<sup>54</sup> The community was entirely destroyed.<sup>55</sup> It is evident that the Kaibiles conduct in Las Dos Erres community was not an isolated fact, but part of the state's systematic practice of violating children's rights.<sup>56</sup>

Following a similar pattern, El Salvador went through a bloody internal armed conflict that lasted 11 years, from 1980 until 1991. Estimates show that more than 75,000 people were victims of this brutal Salvadoran regime.<sup>57</sup> Between December 11 and 13, 1981, in the context of a military operation, successive massacres were committed against the civilian population in the northern part of the Department of Morazán.<sup>58</sup> Approximately 1,000 people were killed in this incident alone, with 54% of them being children.<sup>59,60,61</sup> Of the children, roughly 74% were under 12 years of age.<sup>62</sup> In the village of El Mozote, for example, out of 143 individuals identified in exhumations, 136 were children with an average age of six years.<sup>63,64</sup>

---

47. *Id.*

48. *Id.*

49. *Id.* ¶ 81.

50. *Id.*

51. *Id.* ¶ 179.a.

52. *Id.* ¶ 179.b.

53. *Id.*

54. *Id.* ¶ 79.

55. *Id.* ¶ 221.

56. *Id.* ¶ 169.

57. *Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 95 (Oct. 25, 2012).*

58. *Id.* ¶¶ 2, 154.

59. *Id.* ¶ 2.

60. *Id.* ¶ 153.

61. *Id.* ¶ 152.

62. *Id.* ¶ 153.

63. *Id.*

64. *Id.* ¶ 94.

The soldiers arrived early in the morning. All the men were blindfolded and their feet and hands tied.<sup>65</sup> Their heads were cut off one by one and left in a pile.<sup>66</sup> Those who tried to escape were gunned down with machine guns.<sup>67</sup> By noon, the soldiers had concluded the mass execution of the men. Women and children were then separated and put into groups of 20 individuals. Mothers were forced to leave their children behind, even the newborns, who were then executed inside a church convent.<sup>68,69</sup> The children screamed, cried and begged for their mothers.<sup>70</sup> Some of the children, who somehow managed to survive, were burned alive. While the soldiers were setting fire to the church, screams of anguish and despair could be heard.<sup>71,72</sup> The charred corpses of the children were put outside to be dismembered by animals.<sup>73</sup>

Dispatched to 1,000 meters northeast of El Mozote, soldiers arrived in the village of Ranchería.<sup>74</sup> There, the killings were conducted by family group.<sup>75</sup> Crying children were killed by gunshot, mutilation or having their throats slit.<sup>76,77,78</sup> As the soldiers advanced to nearby villages, houses were reduced to ashes with children still inside.<sup>79</sup> Their screams of torment and intense suffering were heard without mercy.<sup>80</sup> Upon return, those who had managed to flee found the corpses of their loved ones blackened or devoured by birds of prey.<sup>81</sup> In *Massacres of El Mozote and Nearby Places*, from 2012, the Inter-American Court of Human Rights ruled on the merits, reparations and costs of litigation, finding against the state of El Salvador.<sup>82</sup>

Four other cases against Colombia, Venezuela and Argentina help to illustrate that the pattern of indiscriminate military violence and use of force against children are widespread throughout the Latin America<sup>83</sup>

---

65. *Id.* ¶ 159.

66. *Id.*

67. *Id.*

68. *Id.* ¶ 92.

69. *Id.* ¶ 94.

70. *Id.*

71. *Id.* ¶ 95.

72. *Id.* ¶ 94.

73. *Id.* ¶ 96.

74. *Id.* ¶ 106.

75. *Id.* ¶ 110.

76. *Id.* ¶ 108.

77. *Id.*

78. *Id.* ¶ 154.

79. *Id.* ¶¶ 115, 154.

80. *Id.* ¶¶ 115, 118.

81. *Id.* ¶ 118.

82. *Id.* ¶ 95.

83. Every relation between the State and the children in territory of its jurisdiction must

(*Santo Domingo Massacre v. Colombia*<sup>84</sup> and *Las Palmeras*<sup>85</sup> *v. Colombia, Barrios Family v. Venezuela*,<sup>86</sup> and *Bulacio v. Argentina*,<sup>87</sup> respectively). In December of 1998<sup>88</sup> and January of 1991,<sup>89</sup> aircraft of the Colombian Air Force overflew the cantons of Santo Domingo and Las Palmeras. Without due diligence and respect for the humanitarian principles of proportionality and distinction, Commanders of both operations ordered the aerial bombardment of these villages with cluster bombs.<sup>90,91</sup> Children were injured and/or died as a consequence of the attacks, including the death of Enio Quinayas Molina, then a little six-year-old boy on his way to school. The cries and groans of the children could be heard at a distance.<sup>92,93</sup>

In March 2004, in Venezuela, brothers Jorge Antonio Barrios Ortuño (aged 16) and Rigoberto Barrios (aged 15) were arbitrarily detained by Venezuelan police officers and taken to a site near the Guárico River.<sup>94</sup> Accused of being subversives, the minors were handcuffed and struck throughout their bodies.<sup>95</sup> In an attempt to further intimidate the brothers,

---

be governed by the Principle of the Child's Best Interest. Moreover, any use of force by State military: "(a) must be exceptional and must be planned, and limited proportionately by the authorities. In this regard, coercive measures or force can only be used once all other means of control have been exhausted and have failed; (b) as a general rule, the use of firearms and lethal force against the individual must be prohibited, and the exceptional use must be established by law and be interpreted restrictively, so that it is only that which is "absolutely necessary" in relation to the force or threat to be prevented; (c) it must be limited by the principles of proportionality, necessity and humanity. (d) domestic law must establish standards for the use of lethal force and firearms by State agents that are sufficiently clear, as well as to ensure independent control of its legality." (*Barrios Family v. Venezuela, Merits, Reparations, and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 49 (Nov. 24, 2011)*).

84. *Santo Domingo Massacre v. Colombia, Preliminary objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259 (Nov. 30, 2012)*.

85. *Las Palmeras v. Colombia, Judgment, Merits, Inter-Am. Ct. H.R. (ser. C) No. 90 (Dec. 6, 2001)*.

86. *Barrios Family, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 49 (Nov. 24, 2011)*.

87. *Bulacio v. Argentina, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. A) No. 100 (Sept. 18, 2003)*.

88. *Santo Domingo Massacre, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 3 (Nov. 30, 2012)*.

89. *Las Palmeras, Inter-Am. Ct. H.R. (ser. C) No. 90, ¶ 2 (Dec. 6, 2001)*.

90. *Santo Domingo Massacre, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 68 (Nov. 30, 2012)*.

91. *Las Palmeras, Inter-Am. Ct. H.R. (ser. C) No. 90, ¶ 2 (Dec. 6, 2001)*.

92. *Id.*

93. *Santo Domingo Massacre, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶¶ 3, 70 (Nov. 30, 2012)*.

94. *Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 73 (Nov. 24, 2011)*.

95. *Id.*

police officers fired weapons very close to the children's ears.<sup>96</sup> They were severely beaten and put in solitary confinement at the Barbacoas Police Station.<sup>97</sup> Sometime days later, Rigoberto Barrios was brought to the hospital with numerous wounds. He eventually suffered respiratory arrest and died between January 19 and 20, 2005.<sup>98</sup> The Inter-American Court of Human Rights ruled in favor of next of kin reparations in the case titled *Barrios Family v. Venezuela*, on November 24, 2011.<sup>99</sup>

In Argentina, on April 19, 1991, the very studious seventeen-year-old adolescent David Bulacio was detained as part of a mass arrest conducted by the Argentine Federal Police while he was exiting a rock music concert in the city of Buenos Aires. The police operation was allegedly to arrest subversives and enemies of the Argentinean government.<sup>100</sup> David Bulacio was tortured to the point of being diagnosed with "cranial trauma."<sup>101</sup> He died one week later due to the injuries inflicted by the Argentinean police.<sup>102</sup> On September 18, 2003, the Inter-American Court of Human Rights ruled in favor of next of kin reparations in *Bulacio v. Argentina*.<sup>103</sup>

### 3.2. Gender-based violence against girls

*González et al. ("Cotton Field") v. Mexico; Rosendo Cantú et al v. Mexico; Veliz Franco et al v. Guatemala*

In most member states of the Organization of American States, a strong patriarchal culture with significant gender-based discrimination is prevalent.<sup>104</sup> In Mexico, for example, the mistreatment of women is alarming.<sup>105</sup> In Mexican city of Ciudad Juárez alone, 400 women disappeared between 1993 and 2003.<sup>106,107</sup> Most of these women were young, aged 15 to 25 years.<sup>108</sup> The extreme levels of violence against women from poverty stricken backgrounds is terrifying, and the numbers are unfortunately on the rise as Mexico remains silent with regard to this

---

96. *Id.*

97. *Id.*

98. *Id.* ¶ 93.

99. *Barrios Family*, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 49 (Nov. 24, 2011).

100. *Bulacio v. Argentina*, Inter-Am. Ct. H.R. (ser. A) No. 100, ¶ 3.1 (Sept. 18, 2003).

101. *Id.* ¶ 3.2.

102. *Id.* ¶ 3.5.

103. *Bulacio v. Argentina*, Inter-Am. Ct. H.R. (ser. A) No. 100 (Sept. 18, 2003).

104. *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 129 (Nov. 16, 2009).

105. *Id.* ¶ 113.

106. *Id.* ¶ 119.

107. *Id.* ¶ 118.

108. *Id.* ¶ 122.

issue.<sup>109,110</sup>

Generally, the most common pattern is sexual violence followed by murder.<sup>111</sup> Reports from various domestic and international organizations have traced the common factors in several of the murders of women from the early 1980s to the beginning of the 2000s. Women are generally “abducted and kept in captivity; their next of kin report[s] their disappearance and, after days or months, their bodies [are] found on empty lots with signs of violence, rape and other types of sexual abuse, torture and mutilation”.<sup>112</sup>

Laura Berenice Ramos Monárrez and Esmeralda Herrera Monreal were victims of such violence. They were 17 and 15 years old, respectively, at the time. They were regular high school students. Laura disappeared on Tuesday, September 25, 2001, without any notice to her family or close friends.<sup>113</sup> Esmeralda, who was completing her third year of secondary school, disappeared on Monday, October 29, 2001, after leaving her work as a domestic employee.<sup>114</sup>

The bodies of both girls were found in a cotton field on November 6, 2001 with clear signs of rape, and severe physical and psychological suffering and abuse.<sup>115</sup> The violence they endured is difficult to relate. The skin of both Esmeralda's hands was removed prior to her death. Her entire right breast and the nipple of her left breast had also been removed. Beatings while she was alive removed flesh from her skull.<sup>116</sup> The back of Laura's skull had been removed while she was alive and her bone tissue was bruised, suggesting that she was horribly beaten before she died.<sup>117,118</sup> In spite of all the young women suffered, Mexico did not take positive steps to establish justice for the victims' next of kin nor to punish those who perpetrated such acts. Instead, the Inter-American Court of Human Rights was forced to rule against Mexico, ordering next of kin reparations in *González et al. (“Cotton Field”)*, on November 16, 2009.

On February 16, 2002, 17-year-old Rosendo Cantú was another victim of these rights violations in Mexico.<sup>119</sup> During this time, a heavy Mexican

---

109. *Id.* ¶ 114.

110. *Id.* ¶ 164.

111. *Id.* ¶ 124.

112. *Id.* ¶ 125.

113. *Id.* ¶ 165.

114. *Id.* ¶ 167.

115. *Id.* ¶¶ 210, 219.

116. *Id.* ¶ 212(a).

117. *Id.* ¶ 212(c).

118. *Id.* ¶ 215.

119. *Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216 (Aug. 31, 2010).*

military presence was installed in the State of Guerrero where she lived. Soldiers from the Mexican Army were ordered to suppress any unlawful activities by “enemies” of the state.<sup>120</sup> On one occasion, eight soldiers surrounded Ms. Cantú, violently struck her on the stomach and pushed her against the ground, causing her to lose consciousness. Then, she was seized by the hair and the soldiers removed her skirt and underpants. Ms. Cantú was sexually assaulted multiple soldiers while the others were mocking and laughing at her. Due to the constant scratches she received, her face did not stop bleeding.<sup>121</sup> The Inter-American Court ruled on the *Rosendo Cantú et al v. Mexico* case on August 31, 2010.<sup>122</sup>

On the morning of December 16, 2001, 15-year-old María Isabel Veliz Franco left her home in Guatemala, never to return.<sup>123</sup> Weeks later, her body was found with clear signs of mutilation and sexual abuse.<sup>125</sup> Her wounded head was covered by a plastic bag.<sup>126</sup> Her neck had obvious signs of strangulation.<sup>127</sup> Her ears and arms had numerous bite marks.<sup>128</sup> Her underpants and blouse were torn.<sup>129</sup> Her cry was not heard by the state, as the competent Guatemalan authorities made no effort to either prevent her from being raped or find and punish the perpetrators.<sup>130</sup> The investigation of María Isabel’s death was hampered by shortcomings and irregularities throughout.<sup>131</sup> Her next of kin reparations were awarded by the Inter-American Court of Human Rights in *Veliz Franco et al v. Guatemala*, on May 19, 2014.<sup>132</sup>

### 3.3. Forced disappearance of children

“*Las Dos Erres*” *Massacre v. Guatemala; Río Negro Massacres v. Guatemala; Contreras et al v. El Salvador; Chitay Nech et al. v. Guatemala*

Thousands of children have disappeared in the recent history of Latin America, particularly when military dictatorships were established

---

120. *Id.* ¶ 70.

121. *Id.* ¶¶ 73, 90.

122. *Rosendo Cantú et al. v. Mexico*, Inter-Am. Ct. H.R. (ser. C) No. 216 (Aug. 31, 2010).

123. *Véliz Franco et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 1 (May 19, 2014).

125. *Id.* ¶ 178.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* ¶ 1.

131. *Id.*

132. *See Véliz Franco*, Inter-Am. Ct. H.R. (ser. C) No. 227.

throughout the region. The pattern was consistently similar: soldiers, police personnel, or members of paramilitary groups tolerated by the state perpetrated mass executions, separating children from their families and communities.<sup>133</sup> Babies and young children were kidnapped,<sup>134,135</sup> sold<sup>136</sup> or fraudulently adopted, never to be seen again.<sup>137,138,139,140</sup> Such practices were considered fashionable among army officers.<sup>141</sup> Children were given a new name and false personal data through an irregular registration.<sup>142</sup> In many of these cases, the children were forced to live with the people who had murdered their parents and other relatives.<sup>143</sup> They were frequently humiliated, threatened and mistreated by the new family.<sup>145</sup>

In one decade of the El Salvadorian internal armed conflict alone, from 1980 to 1991, 881 children disappeared in a “context of indiscriminate attacks against the noncombatant civilian population.”<sup>146</sup> The Guatemalan military regime and internal armed conflict posed a similar situation.<sup>147</sup> In the early 1980s, various violent incidents had a

---

133. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 172 (Nov. 24, 2009); Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012).

134. “Las Dos Erres” Massacre v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 172 (Nov. 24, 2009); Río Negro Massacres v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012).

135. “Las Dos Erres” Massacre v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 172 (Nov. 24, 2009); Río Negro Massacres v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012).

136. “Las Dos Erres” Massacre v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 172 (Nov. 24, 2009); Río Negro Massacres v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012).

137. “Las Dos Erres” Massacre v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 172 (Nov. 24, 2009); Río Negro Massacres v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012).

138. “Las Dos Erres” Massacre v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 172 (Nov. 24, 2009).

139. Contreras et al. v. El Salvador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 60 (Aug. 31, 2011).

140. *Id.* ¶¶ 51, 74.

141. “Las Dos Erres” Massacre v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 173 (Nov. 24, 2009).

142. Río Negro Massacres v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 51 (Sept. 4, 2012).

143. *Id.* ¶ 79.

145. Río Negro Massacres v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 79 (Sept. 4, 2012).

146. Contreras et al. v. El Salvador, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶¶ 41-42, 52 (Aug. 31, 2011).

147. Río Negro Massacres v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 79 (Sept. 4, 2012).



serious impact on the indigenous Maya families.<sup>148</sup> Guatemalan army troops terrorized and displaced a significant number of families. A systematic pattern of kidnapping and separating children from their families was implemented.<sup>149</sup> Newborns, small children and adolescents were illegally detained for unlawful adoptions.<sup>150</sup> These practices have been documented in various international reports.<sup>151</sup> On May 25, 2010, the Inter-American Court of Human Rights ruled on reparations for the Maya families in the case of *Chitay Nech et al. v. Guatemala*.<sup>152</sup> *Contreras et al. v. El Salvador*, from 2011,<sup>153</sup> and *The Río Negro Massacres v. Guatemala*, from 2012,<sup>154</sup> however, show that even after almost 30 years, the facts pertaining to disappeared children remain unclear.<sup>155</sup> The whereabouts of most of the children remain unknown<sup>156</sup> and the majority of the perpetrators have neither been identified nor held liable.

### 3.4. Street children

#### *Villagran-Morales et al. v. Guatemala* (“Street Children” case)

The way that the state of Guatemala (un)protects its vulnerable children is illustrative in all senses. Defenseless street children, which are part of reality throughout Latin America, have been and continue to face extreme suffering and a lack of specifically designed or targeted positive state measures.<sup>157,158</sup> The Inter-American Court case *Villagran-Morales et al. v. Guatemala*,<sup>159</sup> from 1999, is just a single example of the greater pattern of state agents’ violence toward and mistreatment of children,

---

148. *Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 125 (May 25, 2010).

149. *Id.*

150. *Id.* ¶¶ 129-130.

151. *Id.* ¶¶ 123, 127-128.

152. *Chitay Nech et al. v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 125 (May 25, 2010).

153. *Contreras et al. v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 60 (Aug. 31, 2011).

154. *Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250 (Sept. 4, 2012).

155. *Contreras et al. v. El Salvador*, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 2 (Aug. 31, 2011).

156. Exceptionally, in 2006, the whereabouts of Gregoria Herminia Contreras were controversially established. The facts of her disappearance were discussed in *Contreras et al. v. El Salvador*, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 2 (Aug. 31, 2011).

157. *Villagrán -Morales et al. (“Street Children”) v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999).

158. *Id.* ¶ 4. [Necessary? Ad this info to FN 157?]

159. *Villagrán-Morales et al. (“Street Children”) v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999).

particularly street children.<sup>160</sup>

Street children Julio Roberto Caal Sandoval, Jovito Josué Juárez Cifuentes and Anstram Aman Villagrán Morales were 15, 17, and 17 years of age,<sup>161</sup> respectively, when Guatemalan police agents abducted, tortured and murdered them in the early 1990s.<sup>162</sup> After being killed, the youths' corpses were left in an abandoned locale,<sup>163</sup> "exposed to the inclemency of the weather and the action of animals."<sup>164</sup> Their bodies were found by chance, with signs of serious physical violence.<sup>165,166</sup>

Guatemalan authorities were unable to offer even a minimal explanation for why the adolescents were killed.<sup>167,168</sup> Forensic reports provided an explanation for the injuries of only one of the bodies.<sup>169</sup> The cause of the youth's death was noted as "penetrating wounds in the abdomen produced by a bullet from a firearm"<sup>170</sup> at very close range.<sup>171</sup> The youths' families, however, questioned the accuracy of the autopsy; all three bodies were found with multiple shots to the head.<sup>172</sup> This, according to experts, constitutes evidence that the homicides were premeditated.<sup>173</sup> Additionally, the adolescents were not killed in the same place where the bodies were found, constituting additional evidence of premeditation.<sup>174</sup> Given the signs of physical violence, the adolescents must have experienced "extreme psychological and moral suffering" during the hours prior to their deaths.<sup>175</sup> In "*Street Children*" (*Villagrán-Morales et al.*) v. *Guatemala*, from November 19, 1999, the Inter-American Court of Human Rights ruled on reparations for the victim's families.<sup>176</sup>

---

160. *Id.* ¶ 142.

161. *Id.* ¶ 77.

162. *Id.*

163. *Id.* ¶ 174.

164. *Id.*

165. *Id.*

166. *Id.* ¶ 158. [Double FN? Two ids?]

167. *Id.*

168. *Id.* ¶ 65.

169. *Id.* ¶ 158.

170. *Id.* ¶ 95.

171. *Id.* ¶ 65.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* ¶ 163.

176. *Villagrán-Morales et al. ("Street Children") v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999).*

### 3.5. Next of kin victims of human rights violations

*Vélez Restrepo and Family v. Colombia; Castillo González et al v. Venezuela; Gómez-Paquiyaui Brothers v. Peru*

Over the past 40 years, many children of the Latin America saw their parents and relatives persecuted, tortured, murdered or disappeared by state public officials. Religious leaders, human rights lawyers, children's rights advocates, leaders of grass-roots organizations and teachers were all under close surveillance and prone to persecution by state militaries. In these circumstances, children are not the immediate victims but incidental victims of human rights violations committed against their loved ones. In Colombia, for example, Mateo Vélez Román and Juliana Vélez Román were respectively only 4 years old and 18 months old when their father, a journalist, was violently persecuted by Colombian military and police personnel on August 29, 1996. They subsequently suffered numerous death threats.<sup>177,178,179</sup>

In Venezuela, on August 27, 2003, Jose Luis Castillo González was the general coordinator of the Office for Social Action and Human Rights of the Apostolic Vicariate of Machiques.<sup>180</sup> He provided legal counseling for indigenous people and "campesinos" in land-related recovery issues.<sup>181</sup> He also filed petitions to the Inter-American Commission for precautionary measures in favor of asylum seekers.<sup>182</sup> His wife, Yelitze Moreno, was the coordinator of the Department of Investigations, Communications and Promotion of Human Rights.<sup>183</sup> On August 27, 2003, Mr. Castillo was driving his car home with his wife and son, Luis César Castillo Moreno, who was only one and a half years old. Two unidentified men riding a motorcycle approached the car. They examined the occupants of the vehicle and began shooting at them.<sup>184</sup> Mr. and Mrs. Castillo were shot several times<sup>185</sup> and their son was seriously injured.<sup>186</sup> Luis César Castillo

---

177. *Vélez Restrepo and Family v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 226 (Sept. 3, 2012).

178. *Id.* ¶¶ 2, 77.

179. The Inter-American Court of Human Rights granted the victims reparations to be paid by the State, in the Case of *Vélez Restrepo and Family v. Colombia*, ruled on September 3, 2012. *See supra* note 177.

180. *Castillo González et al v. Venezuela*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 38 (Nov. 27, 2012).

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.* ¶¶ 1, 42.

185. *Id.* ¶ 42.

186. *Id.*

Moreno suffered severe and lasting psychological consequences from the incident.<sup>187</sup>

In Peru, several children suffered the violent loss of their loved ones during the widespread armed attacks that took place between 1984 and 1993.<sup>188</sup> An alarming number of civilians were tortured and extra-judicially executed by police and military forces.<sup>189</sup> Rosa Gómez Paquiyaui, a 15-year-old Peruvian girl, for example, suffered extreme pain and psychological anguish as she witnessed the violence perpetrated by soldiers against her brothers.<sup>190</sup> They were all students at the time.<sup>191</sup> In the morning of June 21, 1991, Rosa was having breakfast with her brothers Rafael and Emilio, aged 14 and 17 years, respectively, when a police patrol stopped in front of her house and began shooting.<sup>192</sup> Police officers then kicked her brothers and dragged them to the trunk of a police car; they never returned.<sup>193</sup> <sup>194</sup> Accused of terrorist charges, they were severely beaten.<sup>195</sup> Rafael and Emilio were cruelly murdered by gun shots to the head, chest, and elsewhere by the Peruvian National Police.<sup>196</sup> <sup>197</sup> Emilio's body was found smelling of urine and covered in dirt and blood. The tip of his thumb was missing <sup>198</sup> and both hands were full of holes.<sup>199</sup> Rafael's body had been stabbed several times by a bayonet and had additional gunshot wounds.<sup>200</sup> Rosa Gómez Paquiyaui's request for reparations against Peru was ruled on by the Inter-American Court of Human Rights on July 8, 2004.<sup>201</sup>

---

187. Luis César Castillo Moreno's complaint to the Inter-American System was ruled on November 27, 2012 by the Inter-American Court of Human Rights in the case of Castillo González et al. v. Venezuela. Castillo González et al. v. Venezuela Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256 (Nov. 27, 2012).

188. Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 67.a (July 8, 2004).

189. *Id.*

190. *Id.* ¶ 44.

191. *Id.* ¶ 49(b).

192. *Id.*

193. *Id.*

194. *Id.* ¶ 67(f).

195. *Id.* ¶¶ 49(d), 67 (c), 67(g), 67(i).

196. *Id.* ¶ 49(d).

197. *Id.* ¶ 67(g).

198. *Id.* ¶¶ 49(d), 49(i).

199. *Id.*

200. *Id.* ¶ 49(i).

201. Gómez-Paquiyaui Brothers v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 110 (July 8, 2004).

#### 4. Children's "autonomous right" to the "very realization of justice"

Children are inherently holders of substantive and procedural rights (*titulaire*).<sup>202,203,204</sup> This means that they are not mere objects under the protection of law.<sup>205</sup> As a direct consequence, they are endowed with juridical capacity,<sup>206</sup> and have the right to be recognized as a person before the law.<sup>207</sup> The rights of the child occupy a central position in international human rights law.<sup>208</sup> They are enshrined in numerous international, regional and domestic legal instruments.<sup>209 210</sup> In the Inter-American Human Rights System, in particular, children are entitled to the rights established in the American Convention.<sup>211,212</sup>

It is widely established, therefore, that children are subjects of international human rights law<sup>213</sup> and may be victims of human rights violations.<sup>214 215 216</sup> As victims, children possess the "autonomous right" to

---

202. *Juvenile Reeducation Institute v. Paraguay*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 11 (Sept. 2, 2004) (concurring opinion by Cançado Trindade, J.).

203. *Id.* ¶ 9.

204. *Id.* ¶ 5.

205. *Id.* ¶ 9.

206. *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/2002, Inter-Am. Ct. H.R. ¶ 57. (August 28, 2002).

207. *Girls Yean and Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 128 (Sept. 8, 2005).

208. *Servellón-García et al. v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 19 (Sept. 21, 2006) (concurring opinion by Cançado Trindade, J.).

209. *Expelled Dominicans and Haitians v. Dominican Republic*, Preliminary objections, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 269 (Aug. 28, 2014).

210. *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 150 (Oct. 25, 2012).

211. *Id.*

212. *American Convention on Human Rights*, *supra* note 4.

213. *Juvenile Reeducation Institute v. Paraguay*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 3 (Sept. 2, 2004) (concurring opinion by Cançado Trindade, J.).

214. *Expelled Dominicans and Haitians v. Dominican Republic*, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 209 (Aug. 28, 2014).

215. *Servellón-García et al. v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 19 (Sept. 21, 2006) (concurring opinion by Cançado Trindade, J.).

216. *Expelled Dominicans and Haitians v. Dominican Republic*, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 209 (Aug. 28, 2014); *Gómez-Paquiyaury Brothers v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 162 (July 8, 2004).

the “very realization of justice.”<sup>217</sup> Hence, states may be held internationally responsible when domestic violations of children's rights occur, by act or by omission in their duty to protect.<sup>218</sup> Such protection against human rights violations is governed by three assumptions: the dignity, vulnerability and inherent characteristics of a child as a human being.<sup>219,220</sup>

Children suffer disproportionate harm in cases of human rights violations.<sup>221</sup> Given their level of defenselessness<sup>222</sup> and particular condition of vulnerability,<sup>223</sup> violations of children's human rights are of a particularly grave nature.<sup>224,225,226</sup> This condition of vulnerability is even more evident in regard to indigenous children,<sup>227,228</sup> street children,<sup>229</sup> girl children,<sup>230</sup> children with disabilities,<sup>231</sup> and children in the context of non-international armed conflicts.<sup>232</sup> International human rights law assumes

---

217. *Juvenile Reeducation Institute v. Paraguay*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 3 (Sept. 2, 2004) (concurring opinion by Cançado Trindade, J.).

218. *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 54 (March 1, 2005).

219. *Pacheco Tineo Family v. Plurinational State of Bolivia*, Preliminary objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 272, ¶ 218 (Nov. 25, 2013).

220. *Barrios Family v. Venezuela*, Merits, Reparations, and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 55 (Nov. 24, 2011).

221. *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 246 (July 1, 2006).

222. *Id.* ¶ 258.

223. *Rosendo Cantú et al. v. Mexico*, Inter-Am. Ct. H.R. (ser. C) No. 216 (Aug. 31, 2010).

224. *Girls Yean and Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 134 (Sept. 8, 2005).

225. *Pacheco Tineo Family v. Plurinational State of Bolivia*, Preliminary objections, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 272, ¶227 (Nov. 25, 2013).

226. *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 150 (Oct. 25, 2012).

227. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 2 (Nov. 24, 2009).

228. *Rosendo Cantú et al. v. Mexico*, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 201 (Aug. 31, 2010);

229. *Villagran-Morales et al. ("Street Children") v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 195 (Nov. 19, 1999).

230. *Girls Yean and Bosico v. Dominican Republic*, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 134 (Sept. 8, 2005).

231. *Furlanand Family v. Argentina*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 124 (Aug.31, 2012).

232. *Santo Domingo Massacre v. Colombia*, Preliminary objections, Merits, and

that children are less prepared to respond to suffering themselves.<sup>233</sup> Consequentially, states have the duty to respect, promote, protect and fulfil children's human rights.<sup>234</sup> States have a special position of guarantor,<sup>235</sup> bearing duties of care and responsibility for minors,<sup>236</sup> acting with increased responsibility in circumstances that affect children under its jurisdiction.<sup>237</sup> When children are the alleged victims of state-sponsored human rights violations, this fact establishes the "aggravated international responsibility of the State."<sup>238,239</sup>

Due to this level of vulnerability and defenselessness, states are obligated to grant children a special status before the law and a superior judicial interpretation of their rights.<sup>240,241,242</sup> They must perform this obligation through the adoption of special measures of protection, both at the administrative level as well as in judicial/procedural mechanisms.<sup>243</sup> In the Inter-American System of Human Rights, as detailed in the next session, this special judicial interpretation of children's rights is based upon three main pillars: 1) the comprehensive international *corpus juris* for the protection of children; 2) the general principles of public international law; and 3) the principle of the best interests of the child.

#### 4.1. *The comprehensive international corpus juris for the protection of children*

The American Convention is the foundational and ultimate material

---

Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 238 (Nov. 30, 2012).

233. *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am.Ct. H.R. (ser. C) No. 148, ¶ 246 (July 1, 2006).

234. *Vélez Restrepo and Family v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 226 (Sept. 3, 2012).

235. *Rosendo Cantú et al v. Mexico*, *supra* note 119, ¶ 201.

236. *Vélez Restrepo and Family v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 226 (Sept. 3, 2012).

237. *Gómez-Paquiyaui Brothers v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 162 (July 8, 2004).

238. *Id.* ¶ 39 (July 8, 2004).

239. *Gómez-Paquiyaui Brothers v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 76 (July 8, 2004).

240. "Las Dos Erres" Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 184 (Nov. 24, 2009).

241. *Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 120 (Sept. 4, 2012).

242. *Vélez Restrepo and Family v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 226 (Sept. 3, 2012).

243. *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 85 (Nov. 24, 2011).

source of law in the Inter-American System of Human Rights.<sup>244</sup> It is the very source of Court jurisdiction over member states. In the Inter-American System, this means that the definitive basis of whether a state is internationally responsible for a human rights violation is enshrined in Articles 1(1) and 2 of the Convention.<sup>245</sup> In addition, throughout its jurisprudence, the Court has also interpreted the American Convention in light of other *external* instruments — outside the regional protection system (extraneous instruments) — provided that such *external* instrument “[is] directly related to the protection of human rights in a Member State of the Inter-American system.”<sup>246</sup>

Such interpretation is grounded in the doctrine of the *corpus juris*, which is founded in a three-fold argument. First, states have a duty to recognize the existence and implement certain rights of children enshrined in applicable international instruments, extraneous to the Inter-American System.<sup>247,248</sup> Second, the provisions of these applicable international instruments may establish the content and scope of the state's obligations in relation to the American Convention. Thus, the *corpus juris* must guide the interpretation of states' domestic law in light of external treaties.<sup>249,250,251,252</sup> Finally, states are entitled to make effective use of these external instruments of protection of children's rights.

Throughout its jurisprudence, the Inter-American Court on Human Rights has recognized that the provisions of both the Convention on the Rights of the Child (UN System) and the provisions of the Vienna Convention on the Law of Treaties (UN System) are part of the *corpus*

---

244. Santo Domingo Massacre v. Colombia, Preliminary objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 23 (Nov. 30, 2012).

245. *Id.*

246. Advisory Opinion OC-17/2002, *supra* note 3, ¶ 22; Santo Domingo Massacre v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 24 (Nov. 30, 2012).

247. Rights and Guarantees of children in the context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. ¶ 69 (August 19, 2014).

248. Pacheco Tineo Family v. Plurinational State of Bolivia, Preliminary objections, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 272, ¶ 219 (Nov. 25, 2013).

249. Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 125 (Aug. 31, 2012).

250. Afro-Descendant Communities Displaced From The Cacarica River Basin (Operation Genesis) v. Colombia, Judgment, Preliminary objections, merits, reparations and costs, Inter-Am. Ct. H.R. (ser. C) No.270, ¶ 327 (Nov. 20, 2013).

251. Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 167-168 (July 8, 2004).

252. Santo Domingo Massacre v. Colombia, Preliminary objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 24 (Nov. 30, 2012).



*juris* of children's rights.<sup>253</sup> While the Vienna Convention on the Law of Treaties establishes the main tenets that guide the Court's interpretation of international provisions that do not appear in the American Convention,<sup>254</sup> the principles of the Convention on the Rights of the Child constitute comprehensive guidelines for interpreting Article 19 of the American Convention, protecting children's rights under the jurisdiction of Inter-American Court.<sup>255</sup> The rationale for this application is based on the fact that the Convention on the Rights of the Child has been ratified almost universally,<sup>256,257</sup> including by almost all member states of the Organization of American States.<sup>258</sup> This broad international consensus establishes the *opinio iuris communis* of the measures for the protection of children.<sup>259,260</sup>

In addition, when interpreting children's rights in the context of armed conflict and possible breaches of states' duties arising from the American Convention, the Court is authorized to resort to the commands and principles of international humanitarian law as a supplementary interpretative tool.<sup>261</sup> The Court must dismiss any state's preliminary objection filed to escape the responsibilities enshrined in this source of law, such as the 1949 Geneva Conventions, particularly their Common Article 3.<sup>262,263</sup> The aim of the Court is not to hierarchically overlap the American Convention but to scrutinize violations of the American Convention

---

253. Expelled Dominicans and Haitians v. Dominican Republic, Preliminary objections, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 415 (Aug. 28, 2014).

254. Advisory Opinion OC-17/2002, *supra* note 3, ¶ 21.

255. Advisory Opinion OC-21/14, *supra* note 247, ¶ 69; Advisory Opinion OC-17/2002, *supra* note 3, ¶ 22.

256. García and Family Members v. Guatemala, Judgment, Merits, Reparations and costs, Inter-Am. Ct. H.R. (ser. C) No.258, ¶ 184 (Nov. 29, 2012).

257. Gómez-Paquiyaury Brothers v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 167 (July 8, 2004).

258. Advisory Opinion OC-17/2002, *supra* note 3, ¶ 29.

259. *Id.*

260. Girls Yean and Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 127 (Sept. 8, 2005).

261. Santo Domingo Massacre v. Colombia, Preliminary objections, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶¶ 24-25 (Nov. 30, 2012).

262. "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria." (Convention (III) relative to the Treatment of Prisoners of War. Geneva, Art. 3.1, August 12, 1949.); Santo Domingo Massacre v. Colombia *supra* note 84 ¶¶ 23; 26.

263. Santo Domingo Massacre v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 23-26 (Nov. 30, 2012).

through the lenses of “specificity” and “relevance” of international humanitarian law.<sup>264</sup>

4.2. *Comprehensive commands and principles of public international law as a supplementary tool for the judicial interpretation of children's rights*

The bedrock of the validity, legitimacy and effective protection of the children's *corpus juris* resides in two core principles of public international law that are fully supported by international jurisprudence:<sup>265</sup> the principle of *pacta sunt servanda* and the principle of *jus cogens*.<sup>266</sup> Said principles turn human rights violations into a “matter of international public order that transcends the will of the parties.”<sup>267</sup>

The principle of *pacta sunt servanda* is informed by Article 27 of the 1969 Vienna Convention on the Law of Treaties,<sup>268</sup> which requires that states' treaty-based obligations must be performed in good faith.<sup>269,270,271</sup> This means that existing domestic law provisions cannot be justified grounds for the lack of compliance with international human rights norms.<sup>272</sup> In a similar way, the absence of domestic laws at the time of the violation of international human rights law cannot be used to excuse a lack of due diligence. The principle of the *pacta sunt servanda* requires that states make the necessary amendments to their domestic laws in order to comply with the obligations they have assumed in ratifying human rights treaties.<sup>273</sup>

In addition, the principle of *pacta sunt servanda* has direct effects on two state domestic doctrines that are commonly used in procedural attempts to escape international responsibility: 1) the *statute of limitations* and 2) *amnesty laws*. The statute of limitations is a doctrine through which

---

264. *Id.* ¶ 24.

265. Vélez Restrepo and Family v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 180 (Sept. 3, 2012).

266. Gómez-Paquiyaury Brothers v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 151 (July 8, 2004).

267. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 20 (Aug. 2, 2004) at note 331.

268. United Nations, Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

269. *Id.* arts. 26, 31.1, 46.2.

270. Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 180 (May 19, 2014).

271. “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Vienna Convention on the Law of Treaties, *supra* note 268, art. 27.

272. Véliz Franco et al v. Guatemala, *supra* note 123, ¶ 180.

273. Juvenile Reeducation Institute v. Paraguay, *infra* note 304, ¶ 205.

states argue the procedural *prescription* of pending cases under domestic jurisdiction. According to this doctrine, the passage of sufficient amounts of time could be argued to be a mechanism that has the power to “waive their obligation to investigate and prosecute those responsible [for human rights violations].”<sup>274</sup> The use of amnesty laws, or *extinguishment*, on the other hand, seek to evade compliance with international human rights law through the promulgation of *retroactive* domestic laws intended to exclude those accused of having committed grave violations of human rights from liability.<sup>275</sup> Their *ratio legis* is “to leave unpunished serious violations committed in international law.”<sup>276</sup>

The grave nature of acts committed by state agents against children nullifies both doctrines.<sup>277</sup> On numerous occasions, the Inter-American Court has ruled on the noncompatibility/illegality of amnesties for serious human rights violations.<sup>278 279</sup> According to the Court’s rationale, said measures do not have the power to discharge the states’ obligations or “obstruct application of international provisions,”<sup>280</sup> “mak[ing] disappear the international responsibility already incurred by the State.”<sup>281,282</sup> The reasoning for such rationale is grounded in the Court’s consideration of amnesty as a matter of *material* law, as opposed to the *procedural* aspect of the law,<sup>283</sup> when interpreting the right to a fair trial (Article 8, AC) and the right to judicial protection (Article 25, AC) in relation to states’ obligation to respect, promote, protect and fulfil human rights domestically (Articles 1 and 2, AC).<sup>284,285</sup>

In addition to said doctrines, states also resort to the temporal jurisdiction of the Court as a procedural mechanism to escape liability. The

---

274. Río Negro Massacres v. Guatemala, *supra* note 10, ¶¶ 149; 150.

275. *Id.* ¶¶ 151; 257(a).

276. Gelman v. Uruguay, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 229 (Feb. 24, 2011).

277. Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 257(a) (Sept. 4, 2012).

278. Gelman v. Uruguay, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 196 (Feb. 24, 2011).

279. *Id.* ¶ 212.

280. Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 25 (July 8, 2004).

281. *Id.* ¶ 21.

282. *Id.*

283. Gelman v. Uruguay, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 229 (Feb. 24, 2011).

284. *Id.*

285. “Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.” American Convention, *supra* note 2, art. 2.

Inter-American Court has the judicial power to hear possible violations arising from facts that occur after the state has granted jurisdiction to the Court.<sup>286</sup> In other words, the Court has no jurisdiction to rule on violations prior to the state's grant.<sup>287</sup> In this particular, the crime of the forced disappearance of children represents a highly contentious issue. During recent decades, several military juntas in Latin American states have been involved in a systematic pattern of child disappearance.<sup>288,289</sup> The majority of the Court's judges argued that the Court cannot exercise its jurisdiction over disappearances that happened prior to said states' recognition of the Court's competence.<sup>290,291,292</sup> Nevertheless, dissenting opinions from various judges have argued that such an understanding thwarts the protection of children's rights.<sup>293</sup>

The central point of discord is in the very nature of the crime of disappearance of children and the moment that it is committed. The Court's majority rationale is that the temporal jurisdiction must consider the initial momentum when the crime was committed. Dissenting opinions, on the other hand, argue that the forced disappearance of people is a crime of a permanent/continuing nature, which is to say that it only ceases to exist as of the date the disappeared person or his/her mortal remains are found.<sup>294,295,296</sup> The disappearance is deemed "concluded" only after the "fate or whereabouts of the victim has not been determined."<sup>297,298</sup> Thus,

---

286. Please refer to Jurisdiction and Functions section (Section 2) of the American Convention on Human Rights. American Convention on Human Rights, *supra* note 4, at 4.

287. *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶¶ 55; 125 (March 1, 2005).

288. *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 26 (March 1, 2005) (dissenting opinion by Cançado Trindade, J.).

289. For further comments on child disappearance, refer to section 6.3.

290. "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 45; *Serrano-Cruz Sisters*, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶¶ 55; 125.

291. For further comments on child disappearance, refer to section 6.3.

292. *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237 ¶ 90 (Nov. 24, 2011).

293. *Serrano-Cruz Sisters*, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 11 (March 1, 2005) (dissenting opinion by Cançado Trindade, J.).

294. *Id.* ¶¶ 8; 29.

295. *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 113 and 114 (Sept. 4, 2012).

296. *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 114 and 118; *Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 81 (May 25, 2010).

297. *Id.* ¶ 84.

298. For comments on the temporal jurisdiction of the Inter-American Court of Human Rights, refer to section 4.2.

according to such rationale, any attempt by a state to limit the Inter-American Court's *ratione temporis* jurisdiction abridges children's *corpus juris* and represents an obstruction "to the progress of international law — human rights law" in cases of child disappearance.<sup>299,300,301</sup>

The children's *corpus juris* is also supported by the international principle of *jus cogens*. The principle of *jus cogens* is informed by Article 53 of the 1969 Vienna Convention on the Law of Treaties.<sup>302</sup> This Article stipulates that a broad international consensus can consolidate, with the passing of time, some peremptory norms of international law. Such crystallization produces two effects: non-revocability and *erga omnes*.<sup>303</sup> Thus, international treaties do not have the power to revoke *jus cogens* norms and neither do domestic norms. Consequentially, international or domestic legal instruments that conflict with such norms are void.

International consensus has established that some states' violations of human rights belong to the domain of *jus cogens*. Therefore, any of the following conducts are peremptorily forbidden under international human rights law: attempts to violate the right to humane treatment<sup>304</sup> and to the right of life.<sup>305,306,307,308</sup> Extra-legal execution,<sup>309</sup> any form of torture (both

---

299. *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 74 (March 1, 2005).

300. *See also* *Chitay Nech*, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 81.

301. *See also* *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 112.

302. "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." United Nations, Vienna Convention on the Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331.

303. *Servellón-García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 44 (Sept. 21, 2006) (concurring opinion by Cançado Trindade, J.).

304. *Juvenile Reeducation Institute v. Paraguay*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112 (Sept. 2, 2004). ¶ 157.

305. *Gómez -Paquiyaui Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 39 (July 8, 2004) (separate opinion by Cançado Trindade, J.); *Villagrán-Morales, et al. v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 ¶ 139 (Nov. 19, 1999).

306. *Villagrán-Morales et al. v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 ¶ 2 (Nov. 19, 1999) (joint concurring opinion by Trindade and Abreu-Burelli, JJ.).

307. *Id.* ¶ 36.

308. "Las Dos Erres" Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 141 (Nov. 24, 2009); *Servellón-García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-

physical and psychological),<sup>310,311,312,313</sup> sexual violence and rape,<sup>314</sup> enforced disappearance,<sup>315</sup> and any violation of the “effective protection of the law and non-discrimination”<sup>316</sup> are peremptorily forbidden.

### **5. The principle of the best interests of the child as an autonomous international instrument protecting children's rights**

The principle of the best interest of the child has been well established and consolidated throughout the Inter-American Court's jurisprudence.<sup>317</sup>

---

Am. Ct. H.R. (ser. C) No. 152, ¶ 44 (Sept. 21, 2006) (concurring opinion by Cançado Trindade, J.).

309. *Gómez-Paquiyaui Brothers*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 76.

310. *Gómez -Paquiyaui Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 39 (July 8, 2004) (separate opinion by Cançado Trindade, J.); *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 147 (Oct. 25, 2012); *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237 ¶ 51 (Nov. 24, 2011); “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶¶ 140; 141.

311. *Maritza Urrutia v. Guatemala*, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. A) No. 103, ¶ 1 (Nov. 27, 2003) (concurring opinion by Cançado Trindade, J.).

312. *Servellón-García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 44 (Sept. 21, 2006) (concurring opinion by Cançado Trindade, J.).

313. “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 140.

314. *Id.*

315. *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 114 (Sept. 4, 2012); *Torres Millacura et al. v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 229, ¶ 96 (Aug. 26, 2011); *Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 86 (May 25, 2010); *Gudiel Álvarez et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶¶ 192, 232 (Nov. 20, 2012); *Contreras et al. v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 83 (Aug. 31, 2011); *Gelman v. Uruguay*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 183 (Feb. 24, 2011).

316. *Expelled Dominicans and Haitians v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 264 (Aug. 28, 2014).

317. *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 120 and 142; *Expelled Dominicans and Haitians*, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶¶ 269; 357; *Afro-Descendant Communities Displaced from the Cacarica River Basin v. Colombia*, Preliminary objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 328 (Nov. 20, 2013); *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237 ¶ 55 (Nov. 24, 2011); *Vélez Restrepo and Family v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment,

The primacy of the best interest of the child has to be understood both as a positive and a negative duty.<sup>318</sup> The Court conceives the positive duty as the binding obligation of a state to observe and satisfy all the rights of children<sup>319</sup> by rigorously adapting its relevant domestic legal provisions<sup>320</sup> and judicial interpretation according to the regulations of both the Convention on the Rights of the and American Convention.<sup>321,322,323</sup>

The state's positive obligation also entails the design of public policies and the drafting of laws and regulations concerning the protection of childhood and the implementation of such laws in all spheres related to the life and wellbeing of the child.<sup>324</sup> The aim of the child's best interest principle is to acknowledge their intrinsic characteristics,<sup>325</sup> protect the dignity of the child as a human being<sup>326</sup> and "foster their development, making full use of their potential."<sup>327,328</sup>

The "negative" obligation resides in two specific prongs. First, the state has a duty to refrain "from inferring inadequately the rights guaranteed in the convention[s]."<sup>329</sup> Second, any state, society or family

Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 226 (Sept. 3, 2012); *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 201 (Aug. 31, 2010).

318. *Juvenile Reeducation Institute v. Paraguay*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 158 (Sept. 2, 2004).

319. *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 120; *Girls Yean and Bosico v. Dominican Republic*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 134 (Sept. 8, 2005).

320. *Expelled Dominicans and Haitians*, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 269.

321. *"Las Dos Erres" Massacre v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 184 (Nov. 24, 2009).

322. *Servellón-García et al. v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 108 (Sept. 21, 2006).

323. *Vélez Restrepo and Family v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 226 (Sept. 3, 2012); *"Las Dos Erres" Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 184.

324. *Advisory Opinion OC-21/14*, *supra* note 247, ¶ 70.

325. *Gómez -Paquiyauri Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 163 (July 8, 2004).

326. *Id.*

327. *Id.*

328. *Furlan and Family v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 126 (Aug. 31, 2012); *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 244 (July 1, 2006); *Pacheco Tineo Family v. Plurinational State of Bolivia*, Preliminary objections, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 272, ¶ 218 (Nov. 25, 2013).

329. *"Las Dos Erres" Massacre v. Guatemala*, *supra* note 38, ¶ 185.

limitation of the exercise of any right of the child in the Inter-American System on Human Rights must be strictly and rigorously governed by provisions of the Convention on the Rights of the Child and the provisions of the American Convention regarding this matter.<sup>330</sup>

The principle of the best interest of the child also guides state actions both collectively and individually. It is a collective interest in the sense that states must observe all the rights of all children in territories under their jurisdiction.<sup>331,332</sup> As an individual interest, it necessitates that states pay attention to the particular circumstances of each specific case “in which the child finds himself.”<sup>333</sup> States are required to recognize “the essential role of children in all decisions that affect their life.”<sup>334</sup> In doing so, states have to ensure that the specific characteristics of a child's situation<sup>335</sup> lead to an individualized decision.<sup>336</sup>

### *5.1. The best interest of children: Procedural protection of judicial cases involving minors*

The principle of the best interest of the child represents a procedural protection in judicial cases involving minors.<sup>337</sup> The Inter-American Court's rationale is based upon the following assumptions: 1) children hold the same rights as all human beings;<sup>338</sup> 2) children are particularly vulnerable to human rights violations, as compared to adults;<sup>339</sup> 3) because of children's increased vulnerability, states are obligated to grant them additional rights and “special attention,”<sup>340</sup> derived from the children's

---

330. Furlan and Family v. Argentina, *supra* note 231, ¶ 126; Pacheco Tineo Family v. Plurinational State of Bolivia, *supra* note 219, ¶ 218.

331. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214 (Aug. 24, 2010) ¶ 257.

332. González et al. v. Mexico, *supra* note 104, ¶ 408.

333. Afro-Descendant Communities Displaced From The Cacarica River Basin v. Colombia, *supra* note 250, ¶ 328.

334. Pacheco Tineo Family v. Plurinational State of Bolivia, *supra* note 219, ¶ 220.

335. Furlan and Family v. Argentina, *supra* note 231, ¶ 126.

336. Expelled Dominicans and Haitians v. Dominican Republic, *supra* note 209, ¶ 357; Massacres of El Mozote and Nearby Places v. El Salvador, *supra* note 2, ¶ 150; Expelled Dominicans and Haitians v. Dominican Republic, *supra* note 209, ¶ 269; Pacheco Tineo Family v. Plurinational State of Bolivia, *supra* note 219, ¶¶ 217; 218.

337. Barrios Family v. Venezuela, *supra* note 83, ¶ 55.

338. Xákmok Kásek Indigenous Community v. Paraguay, *supra* note 331, ¶ 257.

339. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 184 (Nov. 24, 2009).

340. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 257 (Aug. 2, 2004).



condition/needs,<sup>341 342</sup> and 4) because children possess special *material* rights, states are required to grant them complementary *procedural* measures of protection in order “to guarantee the enjoyment and exercise of [these *material*] rights.”<sup>343</sup> The content and scope of these special procedural safeguards is very well developed in the jurisprudence of the Inter-American Court.<sup>344</sup> Drawing from sessions of the Committee on the Rights of the Child, the Court has noted that these safeguards may imply, *inter alia*, the following: i) providing information and implementing the appropriate procedural measures, adapting these to each child’s particular needs and guaranteeing that children have legal and other assistance at all times ( . . . ) ii) in cases where children have been victims of crimes such as sexual abuse or other forms of mistreatment, guaranteeing their right to be heard, ensuring their full protection, ensuring that personnel are trained to work with children and that the interview rooms are safe and not intimidating, hostile, insensitive or inappropriate ( . . . ) and iii) to the extent possible, ensuring that children are not questioned more often than necessary in order to avoid re-victimization or a traumatic impact on the child.<sup>345</sup>

In practice, the principle of children’s best interest in judicial or administrative proceedings has to “entail a more rigorous protection”<sup>346</sup> in decisions taken on a child’s rights.<sup>347 348</sup> The main practical consequence of these assumptions resides in the necessary procedural requirements to determine whether any of the child’s rights have been violated.<sup>349</sup> More protection, in this case, means there is international judicial recognition that, due to the extreme vulnerability of the presumed child victims, they are in a difficult position with regard to filing complaints and obtaining evidence.<sup>350,351</sup> Additionally, in an international human rights court, the

---

341. *Id.*

342. “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 184.

343. *Id.* ¶¶ 184, 186; Pacheco Tineo Family v. Plurinational State of Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 272, ¶¶ 217, 218 (Nov. 25, 2013); Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 126 (Aug. 31, 2012).

344. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 201 (Aug. 31, 2010).

345. *Id.*

346. Pacheco Tineo Family, Inter-Am. Ct. H.R. (ser. C) No 272, ¶ 220.

347. *Id.*

348. *Id.* ¶ 228.

349. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 197 (Nov. 24, 2009).

350. Expelled Dominicans and Haitians v. Dominican Republic, Preliminary Objections,

“conviction about the truth of the alleged facts”<sup>352</sup> as well as the “criteria for assessment of evidence are less formal than under domestic [criminal] legal systems.”<sup>353,354</sup> In other words, this means that the “international protection of human rights [of children] should not be confused with criminal justice.”<sup>355</sup> This further implies that an “international human rights tribunal cannot get lost in technicalities belonging in domestic tribunals (especially in criminal matters).”<sup>356</sup> This is because, most of the time, the lack of absolute procedural certainty is a consequence of the state's conduct in failing to exhaustively perform domestic investigation of rights violations.<sup>357</sup> Consequently, fewer procedural technicalities do not breach the right to a fair trial.<sup>358</sup>

Another procedural implication related to the principle of the best interest of children refers to the determination as to whether the state has failed to comply with the rights set forth in the Child's and American Conventions. This means that a breach of the rights prescribed in these Conventions is heavily based upon the state's obligation itself<sup>359</sup> and not “the guilt of the perpetrators or their premeditation,” as in domestic criminal law.<sup>360</sup> Once it has been demonstrated that any state's act or omission,<sup>361</sup> by acquiescence, support or tolerance,<sup>362</sup> has violated any of these rights, the state is internationally liable, even in the absence of intent.<sup>363</sup>

---

Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 197 (Aug. 28, 2014).

351. *Id.* ¶ 194.

352. Véliz Franco et al. v. Guatemala, *supra* note 123, ¶ 179.

353. *Ibid.*

354. Rosendo Cantú et al. v. Mexico, *supra* note 119, ¶ 105.

355. *Ibid.*

356. Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 71 (March 29, 2006) (separate opinion by Cançado Trindade, J.).

357. Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 178 (May 19, 2014).

358. Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 335.6 (Aug. 31, 2012).

359. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 197 (Nov. 24, 2009).

360. *Id.*

361. Castillo González et al. v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 110 (Nov. 27, 2012).

362. Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 2, 44 (July 1, 2006) (separate opinion by Cançado Trindade, J.).

363. Servellón-García et al. v. Honduras, Merits, Reparations, and Costs, Judgment,

Demonstrating state violation of rights means that, in order to establish international responsibility, it is not necessary to individually identify the state agents “to whom the violations are attributable.”<sup>364</sup> Under such an understanding, even human rights violations committed by individuals or third parties may be internationally attributed to the state in circumstances where the state remained absent, having the power to do it otherwise.<sup>365,366</sup> Related to this, an important caveat must be made. Violations of rights by private persons cannot be automatically attributed to the state; limits do apply.<sup>367</sup> That is to say, “a State cannot be responsible for every human rights violation committed among private persons.”<sup>368</sup> In such cases, what is taken into consideration by the Court are, on one hand, the singular circumstances of the case<sup>369</sup> and, on the other hand, the state’s international duties “to adopt measures of prevention and protection for individuals in their interrelations.”<sup>370</sup>

This more rigorous process of protecting children’s human rights stems from the fact that in real cases of human rights violations, “it would be disproportionate to place on the [child] victims the burden of proving positively [that the violations occurred]”.<sup>371</sup> This is because there is a general understanding that children are less able to present evidence before domestic criminal courts,<sup>372</sup> particularly due to the fact that the state itself “controls the means” to obtain “documentary or other types of proof” to “clarify the occurrence of events that have occurred within

---

Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 107 (Sept. 21, 2006).

364. “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 197; Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 142, 143, 169, 170 (Nov. 19, 1999); Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 24 (July 1, 2006) (separate opinion by Cançado Trindade, J.); Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 193 (Nov. 30, 2012); Castillo González et al. v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 112 (Nov. 27, 2012).

365. *Id.* ¶ 111.

366. Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 137 (May 19, 2014).

367. *Id.*

368. *Id.*

369. *Id.*

370. *Id.*

371. Expelled Dominicans and Haitians v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 196 (Aug. 28, 2014).

372. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 102 (Aug. 31, 2010).

[their] territory.”<sup>373</sup> <sup>374</sup> In circumstances where the state itself failed to complete a domestic investigation,<sup>375</sup> the lack of absolute certainty in relation to the evidence <sup>376</sup> cannot prevent its international responsibility.<sup>377</sup> When this evidence is consistent with the facts, these facts are presumed to be true.<sup>378,379</sup>

As a direct consequence of such rigorous protection procedures, the Inter-American System permits the Court to reverse the burden of proof in cases where children are subjected to a “pattern of systematic human rights violations contrary to the international standards for their protection.”<sup>380</sup> The rationale for this reversal of power stems from three assumptions. First, it is assumed that the state, which has the primary obligation of active protection, had the supremacy “to change the context of violence against children”<sup>381</sup> but did not act in accordance with this duty.<sup>382</sup> In such scenarios, the Court considers the state’s international responsibility is heightened.<sup>383</sup> The second foundational assumption is that the procedural human rights system is “a means to achieve justice,” and “justice cannot be sacrificed to propitiate mere formalities, as long as legal certainty and the procedural equality among the parties is not affected.”<sup>384</sup> Finally, in support of reversing the burden of proof, the Court assumes that to ostensibly place on the weaker party the burden of bringing to the process a higher standard of evidence would amount to “incurring in the unfortunate mistake of requiring a *probatio diabolica*.”<sup>385</sup>

---

373. *Id.*

374. Expelled Dominicans and Haitians, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 196.

375. Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 178 (May 19, 2014).

376. *Id.*

377. Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 ¶ 68 (Nov. 19, 1999).

378. *Id.*

379. *Id.*

380. Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 140(b) (Sept. 2, 2004).

381. Servellón-García et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 109 (Sept. 21, 2006).

382. Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 131 (July 1, 2006); Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 143 (Nov 30, 2012).

383. Servellón García, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 22.

384. Sawhoyamaya Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 20 (March 29, 2006) (concurring opinion by Cançado Trindade, J.).

385. The *probatio diabolica* “was so labeled in Roman law, precisely in the area

According to the reiterated jurisprudence of the Court, the procedural protection arising from the principle of the best interest of children also implies two additional safeguards in judicial cases involving minors. In such cases, the Court allows the possibility to allege new rights other than those invoked in the initial application, submitting new arguments throughout the proceeding before the Inter-American Court.<sup>386</sup> Additionally, these safeguards permit the possibility of child victims of rights violations to refuse a friendly settlement proposed by the state.

Concerning the first safeguard, it is important to note that the framework of alleged facts and rights claims, which drives proceedings before the Inter-American Court on Human Rights, is constituted at the moment of the initial application.<sup>387</sup> For this reason, the general procedural rule is that the allegation of new facts and/or rights distinct from those alleged in the initial application may not be invoked during the proceedings of a case.<sup>388</sup> Therefore, the Court cannot “rule on facts alleged by the representatives that are not contained in the application presented by the Commission.”<sup>389</sup>

Nevertheless, “international Courts have broader powers to consider and assess the evidence.”<sup>390</sup> Given such broad powers, two exceptions can be submitted before the Inter-American Court. The first is heavily intertwined with the fact that the alleged victims are “the bearers of all the rights” enshrined in the Convention on the Rights of the Child as well as in the American-Convention.<sup>391</sup> Therefore, as long as the new invoked rights are “relate[d] to facts already contained in the initial application,”<sup>392</sup> they might be adjured by the alleged victims, their next of kin or their representatives in a moment different from the initial application.<sup>393 394</sup>

---

concerning the evidence of possession (to obtain title), and owed its name of *probatio diabolica* to the high degree of difficulty with which the litigating party had to cope. Such undue burden of proof standard was invoked in the Middle Ages, and has even been objected in contemporary litigation among states. As I see it, *probatio diabolica* is entirely inadmissible in the area of International Human Rights Law.” *Id.* ¶¶ 20, 21.

386. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 167 (Nov. 24, 2009).

387. Torres Millacura et al. v. Argentina, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 229, ¶ 52 (Aug. 26, 2011).

388. *Id.* ¶ 52.

389. *Id.*

390. Castillo González et al. v. Venezuela, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 113 (Nov. 27, 2012).

391. Torres Millacura, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 52.

392. *Id.* ¶ 52.

393. *Id.*

394. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits,

According to the jurisprudence of the Inter-American Court, the allowance of newly invoked rights does not abridge, impair or breach the right of the states to defend themselves.<sup>395</sup> This is because, in all stages of the proceeding before the Court,<sup>396</sup> “states have the procedural opportunity to respond to the [new] allegations of [rights] of the [victims] and/or their representatives.”<sup>397,398</sup> In addition to the allowance of newly claimed rights, the Court may also admit into any stage of the proceedings facts classified as supervening,<sup>399</sup> as long as they are presented “prior to the rendering of the judgment.”<sup>400</sup> Article 43 of the Rules of Procedure allows the Court to admit “the evidence submitted by the parties with respect to the supervening events that happened after the application was filed.”<sup>401</sup> An important caveat in these cases is that these new facts must be connected to the facts already presented in the initial claim.<sup>402,403</sup> In such scenario, it falls to the Court to safeguard the procedural balance as well as the “procedural equity of the parties” when analyzing the admissibility of claims of this nature.<sup>404</sup>

Another safeguard to children's procedural rights concerns the use of the friendly settlement proposed by a state. The Court's jurisdiction regards said dialogue as nonobligatory,<sup>405</sup> that is, it is based on the parties' willingness to accept it.<sup>406</sup> Therefore, when the conditions for arriving at a friendly settlement are not met, the victims are not obliged to accept the proposal formulated by the state.<sup>407</sup> Unwillingness to accept a friendly settlement, within the casuistic of the Court, is strongly related to the fact

---

Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 161 (Nov. 24, 2009).

395. Torres Millacura, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 52.

396. *Id.*

397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

401. *Bulacio v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 57 (Sept. 18, 2003).

402. Torres Millacura, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 52.

403. *Id.*

404. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 165 (Nov. 24, 2009); Torres Millacura, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 52.

405. *Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 39 (May 25, 2004).

406. *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 31 (Aug. 2, 2004).

407. *Las Palmeras v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 90, ¶¶ 10, 12 (Dec. 6, 2001); *Chitay Nech*, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 39.

that most of the states arrange such procedural recourse as a strategy to unnecessarily delay the Court's ruling on the merits of a case.<sup>408</sup> In most of the cases, states "fail to comply, even minimally, with what had been discussed."<sup>409</sup> The Court must consider inadmissible eventual preliminary objections offered by the state based on the victims' unwillingness to settle the dispute in a friendly way.<sup>410</sup> Consequently, it has a duty to continue analyzing the case, taking children's rights into the utmost consideration.<sup>411</sup>

## **6. Judicial interpretation of children's human rights under the Inter-American Court of Human Rights jurisprudence**

### *6.1 Judicial interpretation of children's human right to prompt and effective justice*

In a democratic society, founded on the rule of law and based on the "very realization of justice,"<sup>412</sup> there are certain reasonable expectations imposed on the state,<sup>413</sup> particularly with regard to the protection of vulnerable children. On the one hand, states must respect and safeguard the human rights — originating in international custom or treaties — of all of those who are under their jurisdiction, whether their own citizens or foreign aliens, documented or not.<sup>414</sup> On the other hand, when violations of rights occur,<sup>415</sup> states incur specific active international duties: 1) to fully uncover the truth of the facts domestically;<sup>416,417,418</sup> 2) to fight impunity; 3) to avoid repetition of the facts; 4) to impart justice for victims and their next of

---

408. Xákmok Kásek Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 28.

409. *Id.*

410. Chitay Nech, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 39.

411. Xákmok Kásek Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 31.

412. *Juvenile Reeducation Institute v. Paraguay*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 3 (Sept. 2, 2004) (concurring opinion by Cançado Trindade, J.).

413. *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 194 (Sept. 4, 2012).

414. *Servellón-García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 123 (Sept. 21, 2006).

415. "Las Dos Erres" Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 226 (Nov. 24, 2009).

416. *Villagrán-Morales et al. v. Guatemala*, Merits, Judgment Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 6 (May 26, 2001) (concurring opinion by Cançado Trindade, J.); *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 194.

417. *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 146 (Oct. 25, 2012).

418. "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 149.

kin;<sup>419</sup> 5) to remediate the pain;<sup>420</sup> 6) to compensate the victims, morally and materially, in conditions of equality; and 7) to “perform the public disclosure of the results of the criminal and investigation processes.”<sup>421,422</sup> Violations against children's rights are always of a grave nature, given their accentuated state of defenseless. In these cases, states are expected to mitigate conditions conducive to the arbitrary deprivation of rights.<sup>423</sup>

The protection of children's rights, and the consequent need to combat widespread impunity,<sup>424</sup> should involve not only legislators,<sup>425</sup> but every existing state mechanism and institution<sup>426</sup> involved in the administration of justice.<sup>427,428</sup> This encompasses the judiciary and executive branches, as well as state police and armed forces.<sup>429</sup> The ultimate objective of combating widespread impunity is to determine the truth<sup>430</sup> and prevent any situation that fosters a climate of impunity.<sup>431</sup> The Court's jurisprudence acknowledges that impunity creates a sense of despair in victims and their next of kin,<sup>432,433</sup> foments a system of re-victimization,<sup>434</sup> perpetuates violence<sup>435</sup> and encourages the chronic repetition of human rights

---

419. Villagrán-Morales et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 6 (May 26, 2001) (concurring opinion by Cançado Trindade, J.).

420. *Id.*

421. “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 149.

422. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 124 (Aug. 31, 2010); Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 194 (Sept. 4, 2012).

423. Servellón-García et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 108 (Sept. 21, 2006).

424. Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 39 (Nov. 24, 2011).

425. Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 146 (Oct. 25, 2012).

426. *Id.*

427. Barrios Family, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 39.

428. Massacres of El Mozote and Nearby Places, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 146.

429. *Id.*

430. Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183 (May 19, 2014).

431. Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 127 (July 8, 2004).

432. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 124 (Aug. 31, 2010).

433. González et al. (“Cotton Field”) v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 378 (Nov. 16, 2009).

434. Rosendo Cantú et al., Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 124.

435. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 164.



violations.<sup>436</sup>

Accordingly, when violations of children's rights occur, an "investigation should be conducted using all legal means available"<sup>437,438</sup> to "determine the identity of all the alleged masterminds,"<sup>439,440</sup> in order to prosecute and impose punishment on all those responsible for gross violations of these rights and provide adequate compensation for the victims.<sup>441,442,443,444</sup> In international law, the judgment "constitutes *per se* a form of reparation."<sup>445,446</sup> The state's obligation to investigate is an obligation of means and not of results.<sup>447</sup> This means that the state's obligation is not "a simple formality preordained to be ineffective."<sup>448</sup> It assumes that the crimes perpetrated against children are of such seriousness and nature to require specific positive actions from the state.<sup>449</sup>

States must investigate violations of children's human rights in an

---

436. Vélez Restrepo and Family v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 26 (Sept. 3, 2012); Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183 (May 19, 2014); González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 289, 378.

437. Vélez Restrepo and Family, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 26; Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183; González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 289, 378.

438. Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 127 (July 8, 2004).

439. Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 257(c) (Sept. 4, 2012).

440. Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 127 (July 8, 2004).

441. *Id.*

442. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 257(c).

443. Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 47 (Nov. 24, 2011); Bulacio v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 70 (Sept. 18, 2003).

444. Gómez-Paquiyaui Brothers, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 253.9.

445. Girls Yean and Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 260.5 (Sept. 8, 2005).

446. Vargas-Areco v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 155, ¶ 176.8 (Sept. 26, 2006).

447. Rosendo Cantú et al v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 175 (Aug. 31, 2010); Véliz Franco et al v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183 (May 19, 2014).

448. Véliz Franco et al., Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183; Gelman v. Uruguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 184 (Feb. 24, 2011); Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 192 (Sept. 4, 2012).

449. Gelman, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 183.

expeditious, serious, impartial, effective, *ex officio*, and comprehensive manner.<sup>450,451,452,453,454,455,456</sup> States must adopt all reasonable measures, within a reasonable period, to diligently and genuinely<sup>457</sup> investigate, search for, arrest, prosecute, and eventually punish all those responsible for such violations.<sup>458</sup> Human rights violations that are not investigated seriously compromise states' international responsibilities.<sup>459</sup> The Court also considers extremely dilatory procedures by state authorities to be inadmissible.<sup>460</sup> The Court deems such delays as a consented "inaction behavior" from.<sup>461</sup> For the Court, unreasonable delays constitute an explicit violation of the right to a fair trial.<sup>462,463</sup> In this matter, the Inter-American Court understands that

---

450. Véliz Franco et al., Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183; González et al. v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 283 (Nov. 16, 2009); Servellón-García et al. v. Honduras, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 119 (Sept. 21, 2006).

451. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 223.

452. Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 146 (Oct. 25, 2012).

453. Serrano-Cruz Sisters v. El Salvador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 75 (March 1, 2005).

454. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 181.

455. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 257(b).

456. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 119 (Aug. 31, 2010); "Las Dos Erres" Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 141 (Nov. 24, 2009); Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183 (May 19, 2014); Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 2; Massacres of El Mozote and Nearby Places, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 3.

457. Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 183; Serrano-Cruz Sisters, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 95; "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 2; Barrios Family v. Venezuela, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 260 (Nov. 24, 2011); González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 291.

458. "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 148; Servellón-García et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 119 (Sept. 21, 2006); González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 284.

459. Servellón-García, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 123.

460. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 151, 284; Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 223.

461. Serrano-Cruz Sisters, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 71.

462. *Id.* ¶ 69.

463. "This unreasonableness, however, may be invalidated by the State, if the latter explains and proves that the delay is directly related to the complexity of the case or to the conduct of the parties to the case." *Id.*

[victims] of prolonged impunity suffer different infringements in their search for justice, not only materially, but also other suffering and damages of a psychological and physical nature and in their life projects, as well as other potential alterations to their social relations and to the dynamics of their families and communities.<sup>464</sup>

The Inter-American Court of Human Rights has already discussed the scope of the principle of *reasonable time*, established in Article 8(1) of the American Convention. For the Court, the determination as to whether a proceeding was conducted within a reasonable time should consider: “1) the complexity of the case; 2) the procedural activity of the interested party; and 3) the conduct of the judicial authorities.”<sup>465,466</sup>

A prompt, serious, impartial and effective investigation of incidents involving children may be compromised by flawed state processes or procedures, as enumerated in various cases, including:

1) **In relation to the site of the facts:** failure to immediately inspect the site of the facts and to make photo registration of them;<sup>467</sup> lack of precision or rigor and/or omissions in the identification or reconstruction of the circumstances of the site of the facts;<sup>468</sup> and negligence in the preservation of the crime scene by authorities.<sup>469</sup>

2) **In relation to the evidence:** lack of due diligence in the investigation of evidence;<sup>470</sup> ineffectiveness, negligence and irregularities in gathering, collecting, or handling the evidence and conducting examinations;<sup>471,472</sup> failure in the preservation of the chain of custody of the

---

464. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 226 (Nov. 24, 2009).

465. Serrano-Cruz Sisters, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 67.

466. *Id.*

467. Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶¶ 234, 241 (Nov. 24, 2011); Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 49 (July 8, 2004).

468. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 151, 284; Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 306; Barrios Family, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 241; Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 198 (May 19, 2014).

469. *Id.*

470. Barrios Family, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 260.

471. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 150, 306; Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 198.

472. *Id.* ¶ 306.

evidence;<sup>473</sup> failure to promptly take statements from witnesses;<sup>474</sup> lack of identification of police or military personnel implicated in the facts of the case;<sup>475</sup> lack of examination in clothes, blood, hairs, fibers or fingerprints;<sup>476</sup> lack of clarification in disputes concerning DNA tests;<sup>477</sup> and lack of clarification regarding discrepant versions of the facts;<sup>478</sup>

3) **In relation to autopsies:** inadequate transport of corpses;<sup>479</sup> general irregularities in the performance of autopsies;<sup>480,481</sup> shortcomings in the preparation of the record of the recovery of corpses<sup>482</sup>; performing a forensic medical examination on only one of the victims, when there are multiple victims;<sup>483</sup> lack of rigor in filling protocols of autopsies without a full description of injuries, photo registration of the bodies or toxicological and/or biological examinations;<sup>484</sup> an advanced degree of decomposition of corpses that prevents a detailed scientific analysis of the cause of death;<sup>485</sup> deficient and/or contradictory identification and return of bodies,<sup>486</sup> and names and identities of bodies arbitrarily assigned by competent authorities.<sup>487,488</sup>

4) **In relation to the means used in the crime:** failure to collect fingerprints from weapons supposedly involved in the facts<sup>489</sup> with the consequence of indeterminate weapon ownership.<sup>490</sup>

---

473. Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 198; González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 306.

474. Barrios Family, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 241.

475. *Id.* ¶ 258.

476. Servellón-García et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 121 (Sept. 21, 2006).

477. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 333.

478. Barrios Family, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 241; Villagran-Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 66.

479. Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 198; González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 150, 306.

480. *Id.* ¶ 312.

481. Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 198.

482. *Id.*

483. Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237 ¶ 258 (Nov. 24, 2011).

484. Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 49 (I) (July 8, 2004); González et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 221, 306 (Nov. 16, 2009).

485. Gómez-Paquiyaui Brothers, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 211.

486. *Id.* ¶¶ 312 (c), 318, 324, 333.

487. *Id.* ¶¶ 312 (c)(1), 317.

488. *Id.* ¶ 49 (b).

489. Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237 ¶ 234 (Nov. 24, 2011).

490. *Id.* ¶ 49

5) **In relation to the administration of justice:** scarce or deficient state response to crimes committed against children;<sup>491,492,493</sup> general shortcomings or negligence in the investigation;<sup>494</sup> nonexhaustive investigation;<sup>495</sup> “unjustified and deliberate delay by the judicial authorities of a complete and thorough investigation of all of the facts;”<sup>496</sup> arbitrary and indulgent use of judicial remedies;<sup>497</sup> lack of state investigative personnel specially qualified or trained in the human rights of the child;<sup>498</sup> lack of a gender perspective in investigations of cases where acts of violence are committed against girl children;<sup>499</sup> poor enforcement of arrest warrants against state agents;<sup>500</sup> partiality of judges;<sup>501</sup> mishandling of judges;<sup>502,503</sup> a general state of impunity;<sup>504</sup> and a lack of efficiency in military criminal proceedings.<sup>505</sup>

## 6.2. *Judicial interpretation of children’s human right to life*

Every child has the right to life. In all circumstances, a child should not be deprived of his life.<sup>506</sup> It is broadly acknowledged that crimes against

---

491. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 114.

492. *Id.*

493. *Id.* ¶ 149.

494. Vélez Restrepo and Family v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 2 (Sept. 3, 2012); Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 ¶ 66 (Nov. 19, 1999).

495. Villagrán-Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 66; Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 191 (May 19, 2014).

496. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 153 (Nov. 24, 2009).

497. *Id.*

498. Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 211 (Sept. 2, 2004).

499. Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶¶ 185; 188.

500. Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 125(93) (July 1, 2006).

501. Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 ¶ 66 (Nov. 19, 1999).

502. *Id.*

503. *Id.*

504. Castillo González et al. v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 1 (Nov. 27, 2012).

505. Las Palmeras v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 90, ¶ 2 (Dec. 6, 2001).

506. American Convention on Human Rights “Pact of San Jose, Costa Rica,” *supra* note 4, art 1.

the life of a child are particularly grave and consequentially call for greater state protection given a child's vulnerability and defenselessness.<sup>507,508</sup> States are the active guarantor of the right to life of every child under their jurisdiction.<sup>509</sup> This means that not only legislators but all agents of state institutions, including members of the police or armed forces, must be responsible for the active protection of children's right to life.<sup>510 511</sup> Accordingly, state agents must adopt effective measures to prevent the intentional death of children.<sup>512</sup> These measures must comply with obligations that belong to two different domains: 1) those arising from *jus cogens*, which sets forth that the right to life is inalienable,<sup>513</sup> effective, *erga omnes* and non-derogable;<sup>514</sup> and 2) those set forth in international legal instruments.<sup>515</sup>

The right to life encompasses both negative and positive obligations for states.<sup>516</sup> The negative obligation requires states to respect the right to life by abstaining from acts that would violate it. The positive obligation is *action oriented*. It establishes the state's duty to adopt all necessary measures within its jurisdiction<sup>517</sup> to create an administrative, statutory, or practical framework to prevent and/or "discourage any threat or risk to the right to life."<sup>518</sup> Any negligent or omissive practice of state organs and its agents is deemed completely "incompatible with the obligations arising from the Convention."<sup>519</sup>

---

507. *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 35 (March 1, 2005) (dissenting opinion by Cançado Trindade, J.).

508. *Villagrán-Morales*, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 146.

509. *Castillo González*, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 122.

510. *Id.*

511. *Id.*

512. *Villagrán-Morales*, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 146.

513. *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 48 (Nov. 24, 2011); *Gómez-Paquiyaui Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 128 (July 8, 2004).

514. *Villagrán-Morales*, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 2 (joint concurring opinions by Cançado Trindade and Abreu-Burelli, JJ.).

515. *Castillo González*, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 122.

516. *Id.*

517. *Gómez-Paquiyaui Brothers*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 129.

518. *Sawhoyamaya Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 153; *id.* ¶ 178; *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 234 (Aug. 24, 2010); *González et al. ("Cotton Field") v. Mexico*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 403 (Nov. 16, 2009); *Villagrán-Morales*, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144.

519. *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am.

In the Inter-American System on Human Rights, states have a duty to guarantee additional protective measures for children, as referred to in Article 19 of the American Convention, which states that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”<sup>520</sup> Said Article gives rise to a three-fold obligation. Firstly, in cases related to children’s right to life, “the State must undertake more carefully and responsibly its special position as guarantor, and must adopt special measures based on the best interest of the child.”<sup>521</sup> Secondly, the state must take all necessary legislative, administrative, judicial and cultural measures<sup>522</sup> to ensure that the basic right to life is not violated by state agents or security forces under its jurisdiction.<sup>523</sup> Finally, if a child’s right to life is violated, the state has a positive obligation to take all appropriate measures to remove all obstacles to an effective and adequate investigation of the facts,<sup>524</sup> punish violators of the right to life and repair “any deprivation of life as a result of criminal acts.”<sup>525</sup>

The Court’s interpretation of the state’s duty to prevent violations to children’s right to life requires a far-reaching legal understanding, beyond the notion of arbitrarily deprivation of life. Such an understanding rests on three main pillars. Firstly, the right to life is part of the essential nucleus of

---

Ct. H.R. (ser. C) No. 237 ¶ 259 (Nov. 24, 2011); *Furlan and Family*, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 95.

520. American Convention, *supra* note 4, art 19.

521. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 177.

522. *Torres Millacura et al. v. Argentina*, Judgment, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 113/09, ¶ 52 (Aug. 26, 2011).

523. *Barrios Family*, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 49; *Gómez-Paquiyaury Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 128 (July 8, 2004); *Villagran-Morales*, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 2, 4 (joint concurring opinions of Cançado Trindade and Abreu-Burelli, JJ.).

524. “*Las Dos Erres*” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 240 (Nov. 24, 2009); *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 153; *Castillo González et al. v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 122 (Nov. 27, 2012).

525. *Castillo González*, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 122; *see also* *Expelled Dominicans and Haitians v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 415 (Aug. 28, 2014); *Vélez Restrepo and Family v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 226 (Sept. 3, 2012); *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 55 (Nov. 24, 2011); *Véliz Franco et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 183 (May 19, 2014); *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 153.

rights.<sup>526</sup> It cannot be suspended or derogated, even “in cases of war, public danger or any other threat to the independence or security of a State.”<sup>527</sup> Secondly, the right to life must be safeguarded because it is transcendent. Full enjoyment of the right to life is a prerequisite or precondition for the enjoyment of all other human rights.<sup>528</sup> This also means that restrictive approaches with regard to the right to life are not legally admissible.<sup>529</sup> Accordingly, if the right to life is not respected, all other rights are meaningless.<sup>530</sup> Thirdly, the Court understands that the right to life includes access to the minimum conditions that guarantee living a “life with dignity,” the right to a “decent life”<sup>531</sup> or to a “dignified existence.”<sup>532 533</sup> In light of this, violations of the right to a “life with dignity” constitute damage to the child’s “life project,”<sup>534,535</sup> that is, a “serious impairment of personal development opportunities that are irreparable or very difficult to repair.”<sup>536</sup> State reparations for violations of the child’s rights in this case would go beyond mere monetary compensation<sup>537</sup> and require further “measures of rehabilitation, satisfaction and non-repetition.”<sup>538</sup>

In several cases, the Court has expanded the meaning and scope of the protection of the children’s right to life. The Court has included the notion

---

526. Sawhoyamaxa Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 150.

527. *Id.*

528. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 186 (Aug. 24, 2010); Sawhoyamaxa Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 150; *id.* ¶ 29 (separate opinion by Cançado Trindade, J.).

529. Xákmok Kásek Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 186; Sawhoyamaxa Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 150; Villagrán-Morales, et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144 (Nov. 19, 1999).

530. Villagrán-Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144; Gomez-Paquiyaui Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 128 (July 8, 2004); Xákmok Kásek Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 186; Sawhoyamaxa Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 150; Barrios Family, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 48.

531. Sawhoyamaxa Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 150.

532. Villagrán-Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144.

533. Villagrán-Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 4, 7 (joint concurring opinions of Cançado Trindade and Abreu-Burelli, JJ.).

534. Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 285 (Aug. 31, 2012); Villagrán-Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 9 (joint concurring opinions of Cançado Trindade and Abreu-Burelli, JJ.).

535. Villagrán-Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 33 (separate opinion by Cançado Trindade, J.).

536. Furlan and Family, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 285.

537. *Id.* ¶ 138.

538. *Id.*



that a child's right to life includes the right to a dignified life, the right to a project of life, and the right to a minimum expectation of fair standards of living. Consequentially, the right to live a life with dignity is profoundly abridged in situations in which children live in extreme or precarious conditions of subsistence,<sup>539,540</sup> excluded from access to the basic essential services provided by any state, such as clean water, basic medical or health services,<sup>541,542</sup> medication<sup>543,544</sup> and adequate nutrition.<sup>545,546</sup>

In its jurisprudence, the Court has already catalogued hundreds of cases of children that are not vaccinated according to international standards<sup>547</sup> and/or lack vaccinations cards,<sup>548,549,550</sup> and babies and young children that die from thirst, hunger or preventable and easily cured diseases.<sup>551,552,553,554</sup> In many cases, children's births are not even registered.<sup>555</sup> In many Inter-American states, pregnant women live in an

---

539. *Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 259 (Aug. 24, 2010).

540. *Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations, and Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 73.67, 73.74, 171 (March 29, 2006); *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 114, 203, 231.

541. *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 260; *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 73.61, 73.74.

542. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 63, 73.72; *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 207.

543. *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 207.

544. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 63, 73.72; *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 207.

545. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 73.67, 73.69, 73.72, 145(a), 166; *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶¶ 113, 201, 203, 259.

546. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 63; *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 203.

547. *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 259.

548. *Id.* ¶ 259.

549. *Id.* ¶ 203.

550. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 63, 73.72; *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 207.

551. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 73.74, 145(c), 159, 171; *Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations and Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 231 (Aug. 31, 2012); *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 231.

552. *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 101.

553. *Id.* ¶ 260.

554. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 63, 73.72; *Xákmok Kásek Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 207.

555. *Sawhoyamaxa Indigenous Community*, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶¶ 73.73.

extreme state of poverty and do not receive medical attention<sup>556</sup> or special measures of protection<sup>557</sup> during pregnancy, delivery or lactation.<sup>558</sup> High maternal mortality is another factor that thwarts fruition of the child's right to life.<sup>559</sup> All of these constitute a flagrant violation of the right to live with dignity.

Indigenous children,<sup>560,561</sup> street children,<sup>562</sup> girl children,<sup>563</sup> children with disabilities<sup>564,565</sup> and children in the context of noninternational armed conflicts<sup>566</sup> are among those whose right to life is even more threatened by state practices. The Inter-American Court considers children with disabilities to be in a situation of extreme vulnerability.<sup>567</sup> The Court utilizes the same *verbatim* of the Committee for the Rights of the Child to state that "children with disabilities are often left out because of several challenges, including discrimination, inaccessibility due to the lack of information and/or financial resources, transportation, geographic distribution and physical access to health care facilities."<sup>568</sup> Throughout its jurisprudence, the Court urges states to take pertinent actions to determine the special needs of these subjects of rights,<sup>569,570</sup> ordering authorities to adopt special measures of protection<sup>571,572</sup> with regard to the health of disabled children<sup>573</sup> and give priority to addressing and resolving such cases.<sup>574</sup>

---

556. Xákmok Kásek Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 232.

557. *Id.* ¶ 233.

558. Sawhoyamaya Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 146, ¶ 177.

559. Xákmok Kásek Indigenous Community, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 233.

560. Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250 ¶ 143 (Sept. 4, 2012).

561. Rosendo Cantú v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 201 (Aug. 31, 2010).

562. Villagrán-Morales, et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 195 (Nov. 19, 1999).

563. Girls Yean and Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130, ¶ 134 (Sept. 8, 2005).

564. Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 124 (Aug. 31, 2012).

565. *Id.* ¶ 138.

566. Santo Domingo Massacre v. Colombia, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 238 (Nov. 30, 2012).

567. Furlan and Family, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 134.

568. *Id.* ¶ 138.

569. *Id.* ¶ 134.

570. *Id.* ¶ 196.

571. *Id.* ¶ 134.

572. *Id.*

573. *Id.* ¶ 138.

574. *Id.* ¶ 196.

In addition to these flagrant violations of the right to live with dignity, the Court has also heard numerous cases in which state agents (or those acting with state consent) were actively involved in a systematic pattern of persecution and extrajudicial killing of children,<sup>575</sup> a practice that is completely incompatible with the duty to protect the right to life.<sup>576</sup> In these cases, extrajudicial killings or executions of children were either perpetrated by state agents or tolerated by state organs.<sup>577</sup> Generally, these killings followed a common pattern.<sup>578</sup> These acts: 1) were committed by state agents;<sup>579</sup> 2) were generally premeditated;<sup>580</sup> 3) were committed with extreme violence;<sup>581,582</sup> 4) left no chance for the victims to defend themselves;<sup>583</sup> 5) were purposefully committed against children “belonging to the poorest sectors of the population;”<sup>584</sup> 6) were generally preceded by threats;<sup>585</sup> 7) involved a great deal of logistics;<sup>586</sup> 8) encompassed threats and harassment against the witnesses and next of kin of the victims;<sup>587,588</sup> and 9) were followed by a “generalized situation of impunity.”<sup>589</sup>

### 6.3. *Judicial interpretation of children’s human right to a family:*

#### *The crime of forced disappearance and the issue of separation of children by state agents*

The mutual convivence between children and their parents constitutes the core element of family life.<sup>590</sup> Under Article 12 of the United Nations

575. *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 82 (Sept. 4, 2012).

576. *Gómez-Paquiyaury Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 128 (July 8, 2004).

577. *Servellón-García et al. v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶¶ 79.2, 123 (Sept. 21, 2006); *Barrios Family v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 39 (Nov. 24, 2011).

578. *Barrios Family*, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 39; *Gómez-Paquiyaury Brothers*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 128.

579. *Barrios Family*, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 39.

580. *Villagran-Morales et al. v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 66 (Nov. 19, 1999).

581. *Servellón-García*, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 79.3.

582. *Villagran-Morales*, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 174.

583. *Id.* ¶ 160.

584. *Barrios Family*, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 39.

585. *Id.* ¶ 43.

586. *Id.*

587. *Id.*

588. *Id.* ¶ 39.

589. *Id.*

590. *Vélez Restrepo and Family v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 225 (Sept. 3,

Universal Declaration of Human Rights,<sup>591</sup> Articles 17, 23 and 24 of the International Pact on Civil and Political Rights<sup>592</sup> and Article 17 of the American Convention, every child has the right to live with his family,<sup>593</sup> who provides him with material, affective, and psychological support.<sup>594</sup> The state has the duty to safeguard this child's right to protection of the family.<sup>595,596</sup> The preservation of family unity is also protected under provisions of the Convention on the Rights of the Child, which, together with the American Convention, are part of the *corpus juris* of children's rights.<sup>597,598</sup> Consequentially, separating a child from his family (family separation) may, under certain conditions, constitute a violation of a child's right to a family.<sup>599</sup>

When state officials separate children from their families, through the crimes of forced disappearance or murder, the children and their families are victims of human rights violations. In other words, families of victims — the next of kin — of state human rights violations may, in turn, also be victims of crimes committed against their loved ones.<sup>600,601,602,603</sup> In many

---

2012).

591. "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art 12 (Dec. 10, 1948).

592. "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 23.1, 999 U.N.T.S. 171.

593. Vélez Restrepo and Family, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 227.

594. *Id.* ¶¶ 225, 227; "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶¶ 187, 188; Gudiel Álvarez et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 312 (Nov. 20, 2012).

595. Vélez Restrepo and Family, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 232.

596. *Id.* ¶ 317.5.

597. Expelled Dominicans and Haitians v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 415 (Aug. 28, 2014).

598. Contreras et al. v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 100 (Aug. 31, 2011).

599. Vélez Restrepo and Family, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 225; Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 312; "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 187; Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012); Contreras, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 84.

600. Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 249 (Aug. 31, 2012).

601. García and Family Members v. Guatemala, Judgment, Merits, Reparations and costs, Inter-Am. Ct. H.R. (ser. C) No. 258, ¶ 158 (Nov. 29, 2012).

602. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 137 (Aug. 31, 2010).

of the crimes committed by state agents, parents find it impossible to learn the fate of their children.<sup>604</sup> Their sons and daughters were either disappeared or secretly murdered. Feelings of guilt and impotence take over as the parents live with the constant uncertainty of whether they will find their children alive or dead.<sup>605</sup> These emotional damages “are intensified by the lack of support of the state authorities in an effective search.”<sup>606</sup>

When family members don’t receive the necessary support to face the trauma, a number of negative effects are triggered “in the family’s normal development and functioning.”<sup>607,608</sup> Psychological damage and lasting impairment are among the main negative effects suffered by victims’ loved ones.<sup>609</sup> “Feelings of sadness, frustration, helplessness, insecurity and anxiety” generally take over.<sup>610</sup> Countless family members have to move elsewhere and live in seclusion.<sup>611</sup> In many cases, there is a pattern of persecution against members of the victim’s family.<sup>612,613</sup> The fear or threat that a second act of aggression may occur against a surviving family

---

603. Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 7 (Nov. 19, 1999) (separate opinion by Cançado Trindade, J.).

604. Serrano-Cruz Sisters v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 114 (March 1, 2005).

605. *Id.*

606. “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 226 (Nov. 24, 2009).

607. Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 256 (Aug. 31, 2012).

608. *Id.* ¶ 255.

609. Furlan and Family, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 249; “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 215; Gómez -Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶¶ 44, 49 (e) (July 8, 2004); Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 6 (Nov. 19, 1999) (separate opinion by Cançado Trindade, J.); Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 137 (Aug. 31, 2010).

610. García and Family Members v. Guatemala, Judgment, Merits, Reparations and costs, Inter-Am. Ct. H.R. (ser. C) No. 258, ¶ 167 (Nov. 29, 2012).

611. Vélez Restrepo and Family v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 87 (Sept. 3, 2012); Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 36 (Nov. 24, 2011); *see* Molina-Theissen v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 30 (a) (July 3, 2004) at note 613.

612. Barrios Family v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237, ¶ 38 (Nov. 24, 2011).

613. Molina-Theissen v. Guatemala, Judgment, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 30 (c) (July 3, 2004).

member is as terrible as the pain of the first violation itself.<sup>614</sup> It is as if the impact of the crime perpetrated by the state agent were continuous, being torturous and terrifying in nature.<sup>615,616</sup> Many of next of kin live in insecurity, facing daily death threats via telephone.<sup>617</sup>

This fear faced by the family is well-understood by the Inter-American Court on Human Rights:

It is clear that the State's role in creating or worsening a person's situation of vulnerability has a significant impact on the integrity of the persons who know him or her, especially on close family members who face the uncertainty and insecurity created by the violation of their immediate family or close relatives.<sup>618</sup>

Such feelings of insecurity, distress, despair, frustration and defenseless<sup>619,620</sup> are even more evident when lack of justice drags on for years and perpetrators and masterminds remain unpunished.<sup>621</sup> In these cases, this pain can be amplified even more. Impunity has profound consequences for family dynamics, ties and social relations.<sup>622,623</sup>

*6.3.1. The dictatorial military regimes in Latin American States: A pattern of family separation through torture, extra-judicial killings and child recruitment*

In the recent history of the Latin American member states of the Organization of American States, several internal conflicts have occurred,

---

614. "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 215.

615. Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 252 (Aug. 31, 2012).

616. Molina-Theissen, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 40.6.

617. Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 89 (May 19, 2014).

618. Furlan and Family, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 249.

619. Molina-Theissen, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 30.a.

620. Furlan and Family, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 256.

621. "Las Dos Erres" Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 215 (Nov. 24, 2009); Furlan and Family, Inter-Am. Ct. H.R. (ser. C) No. 246, ¶ 256; Gudiel Álvarez et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 2 (Nov. 20, 2012).

622. Vélez Restrepo and Family v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 216 (Sept. 3, 2012).

623. "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 215.

resulting “in great human, material, institutional, and moral costs.”<sup>624</sup> In these situations, military actions and operations followed an explicit or implicit state policy of grave human rights violations.<sup>625</sup> Under such a policy, the highest authorities of the state were aware of and/or ordered conduct aimed at eliminating persons or groups of persons defined as the enemy and intended to “provoke terror among the population.”<sup>626</sup>

With the connivance of state law enforcement bodies, guerrilla and/or paramilitary groups took control of whole areas, committing numerous violations of human rights and international humanitarian law. Little, if any, state action was taken to stop the violations, investigate the conduct or establish criminal proceedings aimed at defining responsibilities and stipulating necessary sanctions.<sup>627</sup> The elimination of such groups has been a common excuse for carrying out “cleansing operations,” combating communist ideologies, and kidnapping of children.<sup>628,629</sup> In state counterinsurgency operations, even small children have been considered subversives or internal enemies by the Armed Forces, under the doctrine of National Security.<sup>630</sup>

---

624. “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 53; Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 2 (Sept. 4, 2012); Chitay Nech et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 64 (May 25, 2010); Molina-Theissen, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 30(f); Contreras et al. v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 41 (Aug. 31, 2011); Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 54.

625. “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 82.

626. Afro-Descendant Communities Displaced from the Cacarica River Basin v. Colombia, Preliminary objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 81 (Nov. 20, 2013); “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶¶ 72; 73; Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 70 (Aug. 31, 2010); Massacres of El Mozote and Nearby Places v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 2 (Oct. 25, 2012).

627. Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶¶ 125.1; 125.23; 125.25; 125.33; 125.35; 125.68 (July 1, 2006).

628. Afro-Descendant Communities Displaced from the Cacarica River Basin, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 102.

629. Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 54.

630. *Id.*; Contreras et al. v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 51 (Aug. 31, 2011); Río Negro Massacres v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 57, 58, 80 (Sept. 4, 2012); Molina-Theissen v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶¶ 30(f); 40, 40.2 (July 3, 2004); “Las Dos Erres” Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 71 (Nov. 24, 2009); Chitay Nech et al. v

Under such a doctrine, thousands of children have been subjected to acts of extreme cruelty, exploitation and systematic abuse.<sup>631</sup> They have been subjected to physical and psychological torture<sup>632</sup> as well as summary executions.<sup>633</sup> Pregnant women, newborn babies and defenseless young children have been brutally murdered, either by deliberate acts of state agents, “under the State’s structures and facilities,”<sup>634</sup> or by members of guerrilla groups.<sup>635</sup> Hundreds of indigenous children have been tortured, kidnapped, raped or arbitrarily executed as a means of torturing their families.<sup>636</sup>

As a consequence of the political violence,<sup>637</sup> military forces and illegal armed groups engaged in a systematic pattern of illegally separating children from their families.<sup>638</sup> After this separation, children were “disappeared,” either for torture followed by summary execution or illegal adoption by foreigners or even ultimately denied their right to identity,<sup>639,640</sup> because their names were changed via forged birth certificates or new registrations.<sup>641</sup> Many of the relocated children were

---

Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 64 (May 25, 2010); *Massacres of El Mozote and Nearby Places v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶¶ 3; 63 (Oct. 25, 2012).

631. *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 57; 60; *Las Palmeras*, Inter-Am. Ct. H.R. (ser. C) No. 90, ¶ 53; *Contreras*, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 41; *Massacres of El Mozote and Nearby Places*, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 155.

632. *Massacres of El Mozote and Nearby Places*, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶ 147.

633. *Massacres of El Mozote and Nearby Places*, Inter-Am. Ct. H.R. (ser. C) No. 252, ¶¶ 2, 92, 94; *Contreras*, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 42; *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 2, 58.

634. *Massacres of El Mozote and Nearby Places v. El Salvador*, *supra* note 2, ¶¶ 2, 78, 80.

635. *Id.* ¶¶ 92, 94, 153; *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 56.

636. *Id.* ¶ 60.

637. *Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 64 (May 25, 2010).

638. “*Las Dos Erres*” *Massacre v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶¶ 177, 182-183 (Nov. 24, 2009); *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 60, 77; *Afro-Descendant Communities Displaced from the Cacarica River Basin v. Colombia*, Preliminary objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 101 (Nov. 20, 2013); *Molina-Theissen v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 40.5 (July 3, 2004).

639. “*Las Dos Erres*” *Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 177.

640. *Río Negro Massacres*, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 118.

641. *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 35.3 (March 1, 2005); “*Las Dos Erres*” *Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶¶ 162, 172, 175; *Río Negro Massacres*, Inter-Am. Ct.



kept in situations of systematic exploitation, abuse, permanent fear and complete defenselessness.<sup>642,643,644,645,646</sup> Girls from indigenous communities were even more exposed to the systematic risk of forced disappearance.<sup>647,648</sup>

Many families took various private measures to locate their beloved children.<sup>649</sup> Several parents filed writs of habeas corpus.<sup>650</sup> If they were able to discover that their children were dead, they were generally given no information about the circumstances of death or the whereabouts of the corpse.<sup>651</sup> It is widely recognized by the Inter-American jurisprudence that corpses are “sacred to their families and particularly their mothers.”<sup>652</sup> Hence, the state’s treatment of the remains of the children has a profound impact on the families.<sup>653</sup> Any damage to the victim’s remains constitutes a form of cruel and inhumane treatment for them.<sup>654</sup> The difficulty — or even impossibility — of properly identifying the corpse hinders or prevents the possibility of families performing a final act to honor their dear ones.<sup>655</sup>

The participation and/or tolerance of Inter-American member states in this complex phenomenon of the forced disappearance of thousands of children has been extensively documented.<sup>656,657</sup> The Inter-American Court

---

H.R. (ser. C) No. 250, ¶ 60.

642. *Contreras et al. v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 83 (Aug. 31, 2011).

643. *Id.* ¶ 84.

644. “Las Dos Erres” Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 171.

645. *Id.* ¶ 176.

646. *Id.*

647. *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012).

648. *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 70 (Aug. 31, 2010).

649. *Molina-Theissen v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 40.14 (July 3, 2004); *Molina-Theissen v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 67 (July 3, 2004).

650. *Molina-Theissen*, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶¶ 40.15.

651. *Villagrán-Morales, et al. v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 65 (Nov. 19, 1999).

652. *Id.* ¶ 174.

653. *Id.*

654. *Id.*

655. “Las Dos Erres” Massacre *v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 226 (Nov. 24, 2009).

656. *Id.* ¶¶ 177; 182-183; *Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 35.3 (March 1, 2005); *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60 (Sept. 4, 2012); *Molina-Theissen v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶¶ 40.04; 40.12 (July

has already addressed this issue in several cases. Throughout its jurisprudence, the Court has employed definitions of disappearance from different international instruments.<sup>658,659</sup> Definitions used by the Court are consistent with the American Convention on Human Rights, the Declaration on the Protection of Persons against Forced Disappearance of 1992 and the Inter-American Convention on Forced Disappearance of Persons of 1994.<sup>660</sup>

Following the Court's interpretation of these supra cited legal instruments, one can deduce the concurring constitutive elements of the crime of forced disappearance:

1) The deprivation of liberty: "a person is arrested, detained, or transported against their will, or that they are deprived of their liberty by another means by governmental agents of any sector or level, by organized groups, or private individuals who act in the name of the Government or with its direct or indirect support, its authorization, or consent;"<sup>661</sup>

2) The direct involvement of state agents or their acquiescence: an act is "perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State;"<sup>662</sup> and

3) The refusal to admit the detention and disclose the fate or whereabouts of the individual concerned:<sup>663 664 665</sup> the disappearance is "followed by an absence of information or a refusal to acknowledge that deprivation of liberty or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."<sup>666</sup>

Tying together the Inter-American Court's jurisprudence on this

---

3, 2004).

657. Serrano-Cruz Sisters, Inter-Am. Ct. H.R. (ser. C) No. 120, ¶¶ 2, 27; "Las Dos Erres" Massacre, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶¶ 162, 175; Afro-Descendant Communities Displaced from the Cacarica River Basin v. Colombia, Preliminary objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 118 (Nov. 20, 2013); Villagrán -Morales, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 128; Gudiel Álvarez et al v. Guatemala, *supra* note 13, ¶ 54.

658. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 115.

659. Gudiel Álvarez et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 193 (Nov. 20, 2012).

660. Organization of American States, Inter-American Convention on Forced Disappearance of Persons, June 9, 1994, 33 I.L.M. 1429.

661. Chitay Nech et al. v Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 83 (May 25, 2010).

662. *Id.* ¶ 84.

663. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 115.

664. Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 193.

665. Chitay Nech, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 85.

666. *Id.* ¶ 83.

matter is the interpretation of the crime of forced disappearance of children as a multi-offensive phenomenon.<sup>667</sup> The Court considers that the very fact of a child left in a situation of “legal indetermination,”<sup>668</sup> by an act or omission of state agents, constitutes a deliberate abandonment of the essential principles of human rights.<sup>669</sup> The Court also places this “institutional violence” among the most abject forms of violence that affect children.<sup>670</sup>

Owing to the gravity of this deliberate violation of essential human rights principles,<sup>671</sup> international law and *jus cogens* norms prescribe that whenever there are sufficient grounds to believe that a child has been subjected to forced disappearance, states are under the general obligation to open an investigation irrespective of whether a complaint has been filed.<sup>672,673,674</sup> They must prosecute and punish those responsible according to the relevant law in a prompt, “serious, impartial and effective manner.”<sup>675,676</sup>

Another common state policy separating children from their families during military juntas in the Latin America was the recruitment of children to serve in the armed forces. Hundreds of children under the age of fifteen years were recruited for military activities. This directly violates the Additional Protocols to the Geneva Conventions of August 12, as well as its peremptory Article 3, common to the four 1949 Geneva Conventions,<sup>677,678</sup> which protect victims of international (Protocol I)<sup>679</sup> or

---

667. Chitay Nech, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 81; Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 114 and 118.

668. Chitay Nech, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 102.

669. Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 192; Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 114; Chitay Nech, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 86.

670. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 71 (Aug. 31, 2010).

671. Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 232.

672. *See, id.*

673. For further comments on *jus cogens* normas, refer to section 4.2.

674. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 223; Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 232.

675. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 223.

676. *See, e.g.*, Gudiel Álvarez, Inter-Am. Ct. H.R. (ser. C) No. 253.

677. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 287.

678. Serrano-Cruz Sisters v. El Salvador, Merits, Reparations, and Costs, Judgment,

domestic (Protocol II)<sup>680</sup> armed conflict. Article 77(2) from Protocol I and Article 4.3(c) from Protocol II provide that states must take all necessary measures to ensure that children who have not attained the age of fifteen do not take a direct part in hostilities or are recruited into their armed forces.<sup>681,682</sup> The Inter-American Court recognizes these legal instruments and considers that children shall not be recruited “whether in times of peace or during armed conflict.”<sup>683</sup>

It is important to note that the Inter-American Court is procedurally competent to hear cases regarding situations of armed conflict.<sup>684,685</sup> In exercising its jurisdiction, the “relevant provisions of the Geneva Conventions could be taken into account as elements” for the judicial interpretation of children’s rights inscribed in the American Convention.<sup>686</sup> In analyzing state responsibility, the Court also takes into consideration relevant principles of international humanitarian law, namely the principles of distinction<sup>687,688</sup> and precaution.<sup>689,690</sup> This is because the Court considers

---

Inter-Am. Ct. H.R. (ser. C) No. 120, ¶ 40 (March 1, 2005) (dissenting opinion by Cançado Trindade, J.).

679. Protocol Additions to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3.

680. Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Geneva Protocol II].

681. “Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.” *Id.* art. 3(c).

682. *Vargas-Areco v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 155, ¶¶ 113, 114, 116, 121 (Sept. 26, 2006).

683. *Id.* ¶ 112.

684. *Santo Domingo Massacre v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 22 (Nov. 30, 2012).

685. *Id.* ¶ 23.

686. *Santo Domingo Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶¶ 23, 24, 187; *Afro-Descendant Communities Displaced from the Cacarica River Basin v. Colombia*, Preliminary objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 221 (Nov. 20, 2013).

687. “[t]he parties to the conflict must at all times distinguish between civilians and combatants,” that “attacks may only be directed against combatants” and that “[a]ttacks must not be directed against civilians.” In addition, customary international humanitarian law establishes that: “[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives,” so that “[a]ttacks may only be directed against military objectives,” while “attacks must not be directed against civilian objects.” *Santo Domingo Massacre*, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶ 212.

688. *Id.* ¶¶ 212, 218, 234.

689. “It refers to a customary rule for both international and non-international armed conflicts which establishes that “[i]n the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects,” and that “[a]ll feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of

two specific pillars in cases related to armed conflict: 1) states must provide special protection to children affected by the context of armed conflict; and 2) children are less equipped to adapt or respond to situations of armed conflict. Consequentially, they suffer disproportionately compared to adults.<sup>691</sup>

#### *6.4. Procedural protection in judicial cases involving child victims of rape*

For the Inter-American Court, the special procedural protection of children needs to be even more sensitive in cases involving minors who were victims of rape. The rape of children is an act of sexual violence intentionally committed against minors. It involves acts of a sexual nature, deliberately inflicted as a physical attack on the child's human body.<sup>692,693</sup> For the purposes of the Court, rape

is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage, leaving the victim "physically and emotionally humiliated," a situation that, unlike other traumatic experiences, is difficult to overcome with the passage of time.<sup>694</sup>

In numerous cases, child victims of sexual assault are reluctant to report incidents to competent authorities.<sup>695</sup> Major factors contributing to such unwillingness to report include fear of humiliation,<sup>696</sup> shame, anguish,

---

civilian life, injury to civilians and damage to civilian objects." "Similarly, rule 17 of customary international humanitarian law stipulates that "[e]ach party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects," and rule 18 indicates that "[e]ach party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated." *Id.* ¶ 216.

690. *Id.* ¶ 229; Afro-Descendant Communities Displaced from the Cacarica River Basin, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 222.

691. Santo Domingo Massacre, Inter-Am. Ct. H.R. (ser. C) No. 259, ¶¶ 239, 241; "Las Dos Erres" Massacre v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 191 (Nov. 24, 2009).

692. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶¶ 109, 111 (Aug. 31, 2010).

693. These acts "may include acts which do not involve penetration or even any physical contact." *Id.*

694. *Id.* ¶ 114.

695. *Id.* ¶ 95.

696. Contreras et al. v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 101 (Aug. 31, 2011).

desperation, physical and emotional impotence, social stigma, aggravated moral suffering, feelings of powerlessness,<sup>697</sup> and, in many cases, death threats.<sup>698</sup> Because of this, the Court considers rape to be an acute case of abuse of children's vulnerability.<sup>699</sup>

In the Inter-America Court's *jurisprudence constante*, such an extremely traumatic experience<sup>700</sup> may constitute an act of torture, whether consisting of a single or multiple acts. Determining whether the rape of children amounts to torture depends on specific subjective and objective constitutive elements. The subjective elements are particularly related to the desire of "intimidating, degrading, humiliating, punishing or controlling the victim."<sup>701</sup> The objective elements require that torture be an act that is: "i) intentional, that ii) causes severe physical or mental suffering and iii) is committed with an objective or purpose."<sup>702</sup> It is not reference "to the accumulation of acts or to the place where the act is committed, but rather to the intention, the severity of the suffering and the purpose of the act" that determine whether the child was tortured.<sup>703</sup> In order to assess the severity of a victim's suffering, the detailed circumstances of the act of rape must be taken into consideration by the Court.<sup>704</sup> In doing so

[the Court] must consider various aspects of the treatment such as the duration, the method used or the way in which the suffering was inflicted, the potential physical and mental effects and also the status of the person who endured the suffering, including age, gender and health condition, among other personal circumstances.<sup>705</sup>

Based on the pillar of *corpus juris*, the Court the power to declare the state responsible for violations perpetrated in breach of the Convention against Torture.<sup>706</sup> Provided that the state has "agreed to be obliged by the Torture Convention and has also accepted the jurisdiction of the Inter-

---

697. Rosendo Cantú, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶¶ 115, 116.

698. *Id.* ¶ 95.

699. *Id.* ¶ 115.

700. Contreras, Inter-Am. Ct. H.R. (ser. C) No. 232, ¶ 100; Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63 ¶ 163 (Nov. 19, 1999).

701. Rosendo Cantú, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶¶ 114, 117, 118.

702. *Id.* ¶ 110.

703. *Id.* ¶ 118.

704. *Id.* ¶ 112.

705. *Id.* ¶ 112.

706. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

American Court of Human Rights,<sup>707</sup> the Court may use its competence to interpret and apply this alien instrument to the Inter-American System.

The very nature of this type of violence raises serious obstacles to its investigation. Graphic or documentary evidence cannot be expected,<sup>708</sup> because it frequently “occurs in the absence of persons other than the victim and the aggressor or aggressors.”<sup>709</sup> In such cases, the victim’s testimony in judicial claims is balanced differently than in other claims, as it “constitutes fundamental evidence of the act.”<sup>710</sup> One of the main procedural consequences of such in the jurisprudence of the Court is the fact that there may be some “differences in the statements of individuals recounting the sexual abuse they have suffered.”<sup>711</sup> The Court recognizes that the extreme trauma suffered by the child victim of sexual crimes can lead to some inaccuracies.<sup>712</sup> Therefore, the contextual situation<sup>713</sup> and the *consistency* with which a child recounts the facts of a rape are procedurally more important than the complete *accuracy* of such a narrative.<sup>714</sup> Therefore, in judicially interpreting the crime of rape against children, the Court can use circumstantial evidence as a legitimate judicial instrument.<sup>715</sup>

This is not to say that in cases of the violation of children’s rights that the Court does not verify the formal conditions of the alleged acts.<sup>716</sup> What it means is that the Court is not merely limited to this verification task.<sup>717</sup> The nature and seriousness of the particular circumstances of suspected violations are seen through the lenses of the interest of justice and the vulnerability of the child.<sup>718</sup> Here, the interest of justice means that the state cannot evade its international responsibility as to “whether the rape occurred” and by which state agent it was committed,<sup>719</sup> based on the

---

707. Villagrán-Morales, et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 247, 249, 250 (Nov. 19, 1999).

708. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 89 (Aug. 31, 2010).

709. *Id.*

710. *Id.*

711. *Id.* ¶ 92.

712. *Id.* ¶ 91.

713. Expelled Dominicans and Haitians v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶ 198 (Aug. 28, 2014).

714. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 91 (Aug. 31, 2010).

715. *Id.* ¶ 102.

716. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 30 (Aug. 2, 2004).

717. *Id.*

718. *Id.*

719. Rosendo Cantú, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 103.

grounds of lack of knowledge and/or the difficulty or impossibility of criminal investigation.<sup>720</sup>

#### 6.5. *Judicial interpretation of a girl's human right to freedom from violence*

States have the duty to grant to girl children the special measures of protection their gender requires.<sup>721</sup> Throughout member states of the Organization of American States, varying levels of patriarchal culture and systematic gender-based discrimination exist. States fail to prevent and challenge gender-based crimes against girls and young women,<sup>722,723</sup> so they suffer from brutal acts committed with extreme levels of violence against them.<sup>724,725</sup> In addition, state responses to these crimes are frequently late or deficient,<sup>726</sup> virtually ensuring that a significant proportion of violent crimes perpetrated against girls and young women remain in impunity.<sup>727,728</sup> During armed conflicts, girls are even more affected, as members of state security forces frequently utilize mass or indiscriminate rape as “weapon of terror.”<sup>729</sup> Many victims are “kept in solitary confinement, raped and tortured at the military bases.”<sup>730</sup>

Crimes against girls recurrently show similar characteristics and/or a common pattern of conduct.<sup>731</sup> Crimes of murder, for example, are

---

720. *Id.* ¶ 104.

721. *Véliz Franco et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 136 (May 19, 2014).

722. *González et al. v. Mexico*, *supra* note 104, ¶ 129.

723. “As this Court has previously indicated, the Committee for the Elimination of Discrimination against Women has maintained that the definition of discrimination against women “includes gender-based violence, meaning violence that is directed against a woman because [i] she is a woman or [ii] that affects women disproportionately.” Furthermore, it has also indicated that “[v]iolence against women is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on the basis of equality with men.” (*Rosendo Cantú et al. v. Mexico*, *supra* note 119, ¶ 120.)

724. *González et al. v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 128 (Nov. 16, 2009).

725. *Id.* ¶ 164.

726. *Id.* ¶¶ 114, 122, 128, 149.

727. *Id.* ¶ 149.

728. *Id.* ¶ 114.

729. *Río Negro Massacres v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶¶ 59, 129 (Sept. 4, 2012).

730. *Molina-Theissen v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 30.a (July 3, 2004); *Gudiel Álvarez et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 2 (Nov. 20, 2012).

731. *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 124 (Nov. 16, 2009).



perpetrated with particular brutality.<sup>732</sup> These acts are often preceded by systematic abuse, sexual violence and/or mutilation.<sup>733,734</sup> In this pattern of conduct, girls are frequently “raped and abused with extreme cruelty.”<sup>735</sup> This pattern generally encompasses the following:

Women [are] abducted and kept in captivity, their next of kin report their disappearance<sup>736</sup> and, after days or months, their bodies [are] found on empty lots with signs of violence, including rape and other types of sexual abuse, torture and mutilation.<sup>737</sup>

With regard to the crime of rape against girl children, the Inter-American Court has ruled on numerous occasions that this crime is an extremely traumatic experience for young women and girls, constituting a form of torture of the victim:

Rape is an extremely traumatic experience that has severe consequences and causes great physical and mental harm that leaves the victim “physically and emotionally humiliated,” a situation that is difficult to overcome with the passing of time, contrary to other traumatic experiences. Therefore, it can be understood that the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injury or disease. Indeed, not all cases of rape result in body injury or disease. Women who are victims of rape also experience severe psychological and even social harm and aftereffects. The Court has also established that, in certain circumstances, rape can also constitute a form of torture of the victim.<sup>738</sup>

Article 7<sup>739</sup> of the Inter-American Convention of Belém do Pará, a treaty seeking to protect women and girls, expressly condemns all forms of violence against women. It considers this violence to be an offense against the human dignity of women, which constitutes a foundational element of a democratic society.<sup>740,741</sup> It ultimately requires that all state parties take “all

---

732. *Id.* ¶ 210.

733. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 124, 406, 409; Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 60; Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 178 (May 19, 2014).

734. Molina-Theissen, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 40.6.

735. González, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 210.

736. *Id.* ¶ 119.

737. *Id.* ¶ 125.

738. Río Negro Massacres, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 132.

739. “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence.” Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará,” art. 7, June 9, 1994, 33 I.L.M. 1534.

740. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and

appropriate means and without delay” to “prevent, punish and eradicate such violence.”<sup>742</sup> Therefore, it is the state’s duty to eradicate and reject gender-based murder of women and girls.<sup>743</sup> Signatory states are required to investigate acts of violence against them *ex officio* and in a prompt, diligent and effective manner for the complete determination of truth and attribution of personal liability.<sup>744,745</sup> In these cases, the state is prevented from basing its defense on a lack of knowledge of the facts.<sup>746</sup>

States must defend victims of violence against women and their next of kin, ensuring that state institutions are capable of protecting them.<sup>747</sup> In cases of the murder of girls, the state has the obligation to appoint experts to examine and verify “whether the murder was sexually motivated or whether some kind of sexual violence occurred.”<sup>748</sup> It must also investigate and verify “other specific violations of personal integrity such as torture.”<sup>749</sup> There must be a prompt inspection of the crime scene, preserving all material elements of evidence and certifying the correct chain of custody.<sup>750</sup>

## 7. Conclusion

Children possess a special status in international human rights law. They are entitled to both special material and procedural rights. These rights are enshrined in numerous international and domestic legal instruments, as well as in international customary law. States have an increased responsibility to guarantee and promote these rights within their jurisdiction. Because children are particularly vulnerable, states have an aggravated international responsibility when a child is the victim of a domestic violation of his/her human rights. When subject to administrative and/or judicial procedural mechanisms, children are entitled to a superior judicial interpretation of their rights.

In the Americas, children’s rights were codified in the late 1970s because of two main interrelated events. Firstly, the adoption of the

---

Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 108 (Aug. 31, 2010).

741. Véliz Franco et al. v. Guatemala, *supra* note 123, ¶ 136.

742. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belem do Para”, OAS, June 9, 1994.

743. Véliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 185 (May 19, 2014).

744. *Id.* ¶¶ 185, 188.

745. Rosendo Cantú, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 103.

746. *Id.*

747. Véliz Franco, Inter-Am. Ct. H.R. (ser. C) No. 227, ¶ 185.

748. *Id.* ¶ 188.

749. *Id.*

750. *Id.*

---

American Convention in San José, Costa Rica took place on November 22, 1969 and entered into force on July 18, 1978. The American Convention established the Inter-American Court, which began to exercise jurisdiction on June 29 and 30, 1979. The Court has subsequently determined that children living in member states of the Organization of American States possess the rights delineated in the American Convention as well as other regional legal instruments. In the exercise of its contentious jurisdiction, the Inter-American Court of Human Rights has a long and comprehensive jurisprudence protecting the best interests of the child. Violations of such best interest are seen as particularly serious. In its interpretative task, the Court may analyze the Convention through the lenses of both the core principles of public international law and the international *corpus juris* for the protection of children, including for example, the Convention on the Rights of the Child.

Controversially, the 1970s, 1980s, and 1990s saw frequent and flagrant breaches of the prescriptions of the American Convention. A number of states were involved in systematic patterns of inhumane treatment of children. Thousands of children were subject to extrajudicial execution, torture, sexual molestation or rape, and forced disappearance as well as various gender discriminations. Alarming, many of these violations remain ongoing.

The biggest reason for the persistent nature of these violations is the widespread and systematic climate of impunity. Such an environment indicates that states are unwilling to prevent situations of rights violations and are reluctant or unable to take concrete steps to promptly, efficiently, impartially and timely investigate and punish crimes committed against children within their jurisdiction. Significant flaws have been catalogued by the Court in this regard, particularly those related to the administration of justice. Children's special material and procedural rights are frequently disregarded by states, which aggravates their suffering. Furthermore, such an environment points to state lack of ability in redressing the damage caused by act or omission.

Impunity is the nemesis of the very realization of human rights. It is the adversary of a life with dignity. Impunity allows extreme levels of violence and ensures the unabating repetition of rights violations by state agents either directly or through their toleration. It creates obstacles for the investigation, prosecution and punishment of those who mastermind or commit crimes against children.

To challenge the widespread culture of children's rights violations and impunity, states must guarantee the full effectiveness, realization, protection and exercise of such rights. If violations of these rights occur, states have an obligation to investigate them in a serious, impartial,

effective, swift and comprehensive manner. All organs related to the administration of justice and every state mechanism must be involved in the task of investigating and punishing the crime, imparting justice and compensation to victims and their next of kin, and, ultimately, publicly disclosing the results of the criminal, administrative and victims' remediation processes.

## 7. References

### 7.1. *Inter-American Court of Human Rights – Case Law and Advisory*

#### *Opinions*

In chronological order:

Villagran-Morales et al. (“Street Children”) v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, (Nov. 19, 1999).

Villagran-Morales et al. (“Street Children”) v. Guatemala, Merits, Judgment, Joint Concurring Opinion of Judges A. A. Cançado Trindade and A. Abreu-Burelli, Inter-Am. Ct. H.R. (ser. C) No. 63, (Nov. 19, 1999).

Villagran-Morales et al. (“Street Children”) v. Guatemala, Judgment, Reparations and Costs, Separate Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 63, (May 26, 2001).

Las Palmeras v. Colombia, Judgment, Merits, Inter-Am. Ct. H.R. (ser. C) No. 90 (Dec. 6, 2001).

Juridical Condition and Human Rights of the Child (Arts. 8, 19, 25, 64(1) American Convention on Human Rights), Advisory Opinion OC-17/2002, Inter-Am. Ct. H.R. (ser. A) No. 17 (Aug. 28, 2002).

Juridical Condition and Human Rights of the Child (Arts. 8, 19, 25, 64(1) American Convention on Human Rights), Advisory Opinion OC-17/2002, Concurring Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. A) No. 17 (Aug. 28, 2002).

Bulacio v. Argentina, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 100 (Sept. 18, 2003).

Maritza Urrutia v. Guatemala, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 103, Concurring Opinion of Judge A. A. Cançado Trindade (Nov. 27, 2003).

Molina-Theissen v. Guatemala, Judgment, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 63 (July 3, 2004).

Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110 (July 8, 2004).

Gómez-Paquiyaui Brothers v. Peru, Merits, Reparations and Costs, Judgment, Separate Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 110 (July 8, 2004).

Juvenile Reeducation Institute v. Paraguay, Preliminary Objections,

---

Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112 (Sept. 2, 2004).

Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Concurring Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 112 (Sept. 2, 2004).

Serrano-Cruz Sisters v. El Salvador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 120 (March 1, 2005).

Serrano-Cruz Sisters v. El Salvador, Merits, Reparations and Costs, Judgment, Dissenting Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 120 (March 1, 2005).

Girls Yean and Bosico v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005).

“Mapiripán Massacre” v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134 (Sept. 15, 2005).

Sawhoymaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146 (March 29, 2006).

Sawhoymaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Separate Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 146 (March 29, 2006).

Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148 (July 1, 2006).

Ituango Massacres v. Colombia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Separate Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 148 (July 1, 2006).

Servellón-García et al. v. Honduras, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152 (Sept. 21, 2006).

Servellón-García et al. v. Honduras, Merits, Reparations and Costs, Judgment, Concurring Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 152 (Sept. 21, 2006).

Vargas-Areco v. Paraguay, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 155 (Sept. 26, 2006).

Tiu Tojín v. Guatemala, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 190 (Nov. 26, 2008).

González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009).

“Las Dos Erres” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211 (Nov. 24, 2009).

Chitay Nech et al. v. Guatemala, Judgment, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 212, (May 25, 2010).

Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214 (Aug. 24, 2010).

Rosendo Cantú et al v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216 (Aug. 31, 2010).

Gelman v. Uruguay, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221 (Feb. 24, 2011).

Torres Millacura et al v. Argentina, Judgment, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 229 (Aug. 26, 2011).

Contreras et al v. El Salvador, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011).

Barrios Family v. Venezuela, Merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237 (Nov. 24, 2011).

Furlan and Family v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment, (ser. C) No. 246 (Aug. 31, 2012).

Vélez Restrepo and Family v. Colombia, Preliminary objection, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248 (Sept. 3, 2012).

Río Negro Massacres v. Guatemala, Preliminary objection, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250 (Sept.4, 2012).

Massacres of El Mozote and Nearby Places v. El Salvador, Merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 252 (Oct. 25, 2012).

Gudiel Álvarez et al (“Diario Militar”) v. Guatemala, Judgment, Merits, reparations and costs, Inter-Am. Ct. H.R. (ser. C) No. 253 (Nov. 20, 2012).

Castillo González et al v. Venezuela, Judgment, Merits, Inter-Am. Ct. H.R. (ser. C) No. 256 (Nov. 27, 2012).

García and Family Members v. Guatemala, Judgment, Merits, Reparations and costs, Inter-Am. Ct. H.R. (ser. C) No. 258 (Nov. 29, 2012).

Santo Domingo Massacre, Preliminary objections, merits and reparations, Inter-Am. Ct. H.R. (ser. C) No. 259 (Nov. 30, 2012).

Mendoza et al. v Argentina, Preliminary objections, merits and reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 260 (May 14, 2013).

Afro-Descendant Communities Displaced From The Cacarica River Basin (Operation Genesis) v. Colombia, Judgment, Preliminary objections, merits, reparations and costs, Inter-Am. Ct. H.R. (ser. C) No. 270 (Nov. 20, 2013).

Pacheco Tineo Family v. Plurinational State of Bolivia, Preliminary

objections, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 272 (Nov. 25, 2013).

Véliz Franco et al. v. Guatemala, Preliminary objections, merits, reparations and costs, Inter-Am. Ct. H.R. (ser. C) No. 277 (May 19, 2014).

Rights and Guarantees of children in the context of Migration and/or in Need of International Protection (Art. 64 (1) American Convention on Human Rights; Arts. 70 to 75 Rules of Procedure of the Court), Advisory Opinion OC-21/14, Requested by the Argentine Republic, The Federative Republic of Brazil, The Republic of Paraguay and The Oriental Republic of Uruguay, Inter-Am. Ct. H.R. (ser. A) No. 14 (Aug. 19, 2014).

Juridical Condition and Human Rights of the Child (Arts. 8, 19, 25, 64(1) American Convention on Human Rights), Advisory Opinion OC-17/2002, Inter-Am. Ct. H.R. (ser. A) No. 17 (Aug. 28, 2002).

Expelled Dominicans and Haitians v. Dominican Republic, Preliminary objections, merits, reparations and costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282 (Aug. 28, 2014).

## 7.2 Treaty law

In chronological order:

American Convention on Human Rights, "Pact of San Jose", OAS, Nov. 21, 1969.

Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the protection of victims of international armed conflicts (Protocol I), International Committee of the Red Cross (ICRC), June 8, 1977.

Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the protection of victims of non-international armed conflicts (Protocol II), International Committee of the Red Cross (ICRC), June 8, 1977.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

Inter-American Convention to Prevent and Punish Torture, OAS, Dec. 1985.

Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Convention of Belem do Para", OAS, June 9, 1994.

Inter-American Convention on Forced Disappearance of Persons, OAS, June 9, 1994.