

The American Convention on Human Rights.  
Updated by the Inter-American Court<sup>1</sup>  
La Convención Americana sobre Derechos Humanos,  
Actualizada por la Corte Interamericana<sup>2</sup>

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**Summary**

This work attempts to provide an instrument allowing non-specialized readers to become acquainted with the Inter-American Court of Human Rights case law. In order to do so, it inserts the Inter-American Court's case law into the American Convention on Human Rights. The author makes this insertion using the prescriptive and concise format of international treaties, so that the result of this work is neither a manual nor a casebook, but a document that is brief and easy to consult.

**Keywords**

Inter-American Convention on Human Rights / Inter-American Court of Human Rights / Evolutive Interpretation.

**Resumen**

El presente trabajo busca posibilitar que el público no especializado acceda a la jurisprudencia de la Corte Inter-Americana de Derechos Humanos. Para hacerlo, intercala la jurisprudencia de la Corte Interamericana en la Convención Americana sobre Derechos Humanos. Esta incorporación se hace utilizando el formato prescriptivo y conciso que tienen los tratados internacionales, de modo que el resultado no sea un manual ni un compendio de Derecho, sino que un documento breve y de fácil consulta.

**Palabras clave**

Convención Americana sobre Derechos Humanos / Corte Interamericana de Derechos Humanos / Interpretación Evolutiva.

It is desirable that the instruments of the American corpus juris include unequivocal orders, as clear as possible, whose interpretation does not require greater effort by the applicator of the norm, and even for any common reader.

<sup>1</sup> Editor's note: Due to the particular nature of this article and the advice of the Dossier's coordinator we have used footnotes for the citation instead of parenthesis in order to add fluidity for the reading.

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Sergio García-Ramírez,  
then President of the Inter-American Court  
*Miguel Castro-Castro Prison v. Perú*

### 1. Preliminary remarks

The Inter-American Court of Human Rights has been adjudicating for nearly forty years. In this lapse of time it has developed a wide case law that, due to the Court's system of interpretation, has somewhat transformed the American Convention on Human Rights (ACHR) to such an extent, that nowadays it is impossible to grasp its scope without referring to the Court's rulings<sup>4</sup>. Because of this interpretation, non-specialized readers of the ACHR miss much of the breadth of this treaty. This reality encouraged us to provide an "up to date" version of the ACHR. As a result, we offer the common reader a treaty-like document, where we include the Inter-American Court's case law, so that it is possible to have an instant grasp of what the Inter-American Court requires of States. We limited our work to the first three chapters of the ACHR, because they include what is most relevant to the readers of the ACHR.

Of course, since this work has a simple format, it cannot be assessed as an in-depth academic paper. The specific strength of this work is not to provide a detailed and comprehensive analysis of each Article of the ACHR, but to present the Inter-American Court's case law at a glance. Hence, there are many nuances that cannot be registered in this work. Furthermore, the methodology for selecting the cases that are presented as sources would not be suitable for an in-depth academic Article. In part, this methodological choice arose because of length concerns that prevented us from including all the relevant judgments that "updated" the ACHR (this is also the reason why we excluded references to academic papers). As a result of this restriction, when we were faced with the need to provide sources for each "update" of the ACHR, we decided to choose a single judgment on the merits or a single advisory opinion. In order to choose this source, we took into account different qualities of the decision, such as its clarity, its completeness (when establishing requisites), and even if their English translation had an adequate wording. We also tried to include a significant number of cases, but we could not consider them all. The reader should, however, know that this paper is only the first approach to having an ACHR "up to date"; particularly, because it is part of a larger project, where it will be possible to analyze each Article more in depth.

We are aware that, even though the Inter-American Court has the practice of supporting its decisions by referring to its previous judgments, the principle of *stare decisis* has no standing before the Court, as it is often the case with international courts<sup>5</sup>. Nevertheless, consistent application of legal instruments allows for legal certainty, so it is a goal that courts should try to achieve. Therefore, case law will always be important, particularly before the Inter-American Court, since it created the doctrine of *conventionality control*, which attempts to require States and its domestic bodies to directly apply the Court's rulings, even if they were issued in judgments against third States<sup>6</sup>.

When "updating" the American Convention, we did not only use the *ratio decidendi* of cases, because the Court often quotes its *obiter dicta* in subsequent cases. Similarly, we did not

<sup>4</sup> Due to the nature of this work, we will not address the legal value of the Court's interpretations. All the translations from Spanish to English are mine.

<sup>5</sup> See, e.g., Statute of the International Court of Justice (1945), Art. 59.

<sup>6</sup> This doctrine is, in and of itself, a complex issue that could not be addressed in depth in our paper, even though we included it in Article 1C. For a good account of this doctrine, see Ariel E. Dulitzky (2015).

await for a statement to become *jurisprudence constant* of the Court before including it in this paper, because there are some issues that are not frequently addressed by the Court, so it would be difficult to await for subsequent decisions confirming earlier interpretations, as it could happen with cases concerning slavery. We even included case law that could be considered contradictory, as it happened with decisions regarding the right to life in *Villagrán-Morales* and *Artavia-Murillo*<sup>7</sup>, unless the earlier interpretation was definitely abandoned by a subsequent *jurisprudence constant*, as it happened with the interpretation of the right to the truth in *Bulacio v. Argentina*<sup>8</sup>.

Before proceeding to the core of this work, we must clarify that this paper does not attempt to issue value judgments as to the appropriateness of the Court's interpretations, or regarding the Court's power to interpret the ACHR the way it does. We must also explain a few formal issues. The text in bold shows the original text of the ACHR. The rest of the text shows the interpretations of the Inter-American Court. We tried to copy the Court's wording in quotation marks as much as possible, in order to be faithful to its rulings. When we considered that the Court created a new right based on an existing one, we added it as close as possible to the right in which it was based. No text of the ACHR has been omitted. If we considered that the Court dismissed or disregarded some text of the ACHR, we simply crossed it out. It is also relevant to note that we did not use gender neutral language, just as a way of maintaining the style in which the ACHR was drafted.

## AMERICAN CONVENTION ON HUMAN RIGHTS UP TO DATE

**Adopted at the Inter-American Specialized Conference on Human Rights,  
San José, Costa Rica, 22 November 1969**  
(as interpreted by the Inter-American Court up to 2016)

### PART I - STATE OBLIGATIONS AND RIGHTS PROTECTED CHAPTER I - GENERAL OBLIGATIONS

#### Article 1. Obligation to Respect Rights

**1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex<sup>9</sup>, language, religion or belief<sup>10</sup>, political or other opinion, national, ethnic<sup>11</sup> or social origin, nationality, age<sup>12</sup>, economic status, property, civil status<sup>13</sup>,**

<sup>7</sup> See below in this article: Art. 4(1).

<sup>8</sup> In *Bulacio* the Inter-American Court broadened its case law on the right to the truth *in the narrow sense* in order to include non-gross human rights violations, but this interpretation was soon narrowed down. *Bulacio v. Argentina* (2003, ¶¶ 113-117). In relation to the distinction of a right to the truth *in the narrow sense* or *in the broad sense*, see Álvaro Paúl (2017).

<sup>9</sup> The Court refers to "gender" instead of "sex" in its Advisory Opinion No. 18. However, it seems that the Court just wanted to use these to concepts as synonyms, which is why "gender" is not added as a separate category. Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 (2003, ¶ 101).

<sup>10</sup> Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 (2003, ¶ 101).

<sup>11</sup> *Norín-Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile* (2014a, ¶ 206).

<sup>12</sup> Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 (2003, ¶ 101).

<sup>13</sup> Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 (2003, ¶ 101).

**birth, sexual orientation<sup>14</sup>, or any other social<sup>15</sup> condition.**

1B. “[D]ecisions adopted by domestic bodies that could affect human rights must be duly funded and justified<sup>16</sup>. Otherwise, they will be considered arbitrary<sup>17</sup>. In addition, States Parties must consult indigenous and tribal communities and peoples before taking administrative or legal measures affecting their rights<sup>18</sup>.

**2. For the purposes of this Convention, “person” means every human being.**

This provision must be read in relation to Article 4(1)<sup>19</sup>. Legal persons are not right holders according to this Convention<sup>20</sup>. However, indigenous communities, trade unions, federations and confederations may be considered victims<sup>21</sup>. Natural persons may appear before the Court claiming for actions committed against legal persons, whenever there is an essential and direct link between them<sup>22</sup>.

Article 1B. Right to the Truth

1. Every person has the right to know the truth about the human rights violations that affected him or his next of kin, in accordance with Articles 8 and 25 of this Convention<sup>23</sup>.

2. States Parties must take effective measures to prevent and investigate human rights violations, even by non-state actors<sup>24</sup>. States Parties must promptly investigate those responsible for violations of human rights and, where possible, punish them<sup>25</sup>. In cases where statutes of limitation are applicable, the state must adopt some kind of measure that allows the victim of human rights violations or their relatives to know what happened in a given case<sup>26</sup>. Victims or the next of kin of deceased victims shall have the right to participate in these proceedings<sup>27</sup>.

3. In cases of serious offenses to a human right, the right to the truth requires:

a. “the procedural determination of the most complete historical truth as possible”<sup>28</sup>;

<sup>14</sup> *Atala-Riffo and Daughters v. Chile* (2012b, ¶ 91).

<sup>15</sup> The English version of Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 (2003, ¶ 101) refers to “status” instead of “social condition”. However, the Spanish original replaces “condición social” with “condición”, so it seemed better to leave it more similar to the Spanish version, which is closer to the original ACHR.

<sup>16</sup> *Escher et al. v. Brazil* (2009c, ¶ 139).

<sup>17</sup> *Escher et al. v. Brazil* (2009c, ¶ 139).

<sup>18</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012d, ¶ 166).

<sup>19</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 256).

<sup>20</sup> Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System (Interpretation and Scope of Article 1(2), in Relation to Articles 1(2), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as Well as of Article 8(1)(A) and (B) of the Protocol of San Salvador). Advisory Opinion OC-22/16 (2016). Only in Spanish.

<sup>21</sup> Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System. Advisory Opinion OC-22/16 (2016). Only in Spanish.

<sup>22</sup> Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System. Advisory Opinion OC-22/16 (2016, ¶¶ 119-120).

<sup>23</sup> *Rochela Massacre v. Colombia (The)* (2007e, ¶ 147).

<sup>24</sup> *García-Prieto et al. v. El Salvador* (2007d, ¶¶ 77, 99-104, 115-116).

<sup>25</sup> *Miguel Castro-Castro Prison v. Perú* (2006g, ¶¶ 253-256).

<sup>26</sup> *Vera-Vera et al. v. Ecuador* (2011g, ¶¶ 122-123).

<sup>27</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 109).

<sup>28</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 117).

- b. that the state does “not invoke the statute of limitations, the non-retroactivity of criminal law or the *ne bis in idem* principle to decline its duty to investigate and punish those responsible”<sup>29</sup>;
- c. that states shall enact no amnesties in cases of serious human rights violations<sup>30</sup>. This prohibition shall extend to amnesties benefitting both sides of a domestic conflict<sup>31</sup>, and those enacted by democratic governments and ratified via referendum<sup>32</sup>.
- d. This investigation shall be initiated *ex officio*<sup>33</sup>. The state shall also provide immediately sufficient and overall protection measures regarding any act of coercion, intimidation and threat towards witnesses and investigators<sup>34</sup>.
4. States have the obligation to repair the victim’s violation of human rights<sup>35</sup>. Reparations must be comprehensive; they cannot be restricted to the payment of compensation<sup>36</sup>. Civil or administrative procedures aimed at obtaining compensation cannot rest exclusively on the victim or their next of kin’s procedural or evidentiary initiative<sup>37</sup>.

#### Article 1C. Conventionality Control

1. The obligation to respect rights established in Article 1 must be understood as requiring state bodies to exercise a conventionality control<sup>38</sup>. This means that “the organs of any of the branches whose authorities perform judicial duties should exercise not only a control of constitutionality, but also of ‘conventionality’ *ex officio* between the domestic norms and the American Convention, evidently in the context of their respective spheres of competence and the corresponding procedural regulations”<sup>39</sup>. When performing this task, these domestic bodies must “take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention”<sup>40</sup>.
2. The existence of domestic laws that are contrary to the Convention or to the Inter-American Court’s interpretation of it shall not prevent domestic bodies from exercising the control of conventionality<sup>41</sup>. Domestic laws that are contrary to this Convention shall not be considered a violation of it, unless they are self-executing laws<sup>42</sup>.

<sup>29</sup> *Almonacid-Arellano et al. v. Chile* (2006b, ¶ 151).

<sup>30</sup> *Barrios Altos v. Perú* (2001b, ¶ 41). The English translation of this paragraph is deficient.

<sup>31</sup> *Almonacid-Arellano et al. v. Chile* (2006b, ¶¶ 82(10), 110-114).

<sup>32</sup> *Gelman v. Uruguay* (2011e, ¶¶ 147, 149, 238).

<sup>33</sup> *García-Lucero et al. v. Chile* (2013a, ¶ 122).

<sup>34</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 107).

<sup>35</sup> *García-Lucero et al. v. Chile* (2013a, ¶ 182).

<sup>36</sup> *Pueblo Bello Massacre v. Colombia (The)* (2006h, ¶ 206).

<sup>37</sup> *Pueblo Bello Massacre v. Colombia (The)* (2006h, ¶ 209).

<sup>38</sup> *Aguado-Alfaro et al. v. Perú* (2006a, ¶ 128).

<sup>39</sup> *Vélez-Loor v. Panama* (2010c, ¶ 287).

<sup>40</sup> *Cabrena-García & Montiel-Flores v. Mexico* (2010a, ¶ 225).

<sup>41</sup> *Cabrena-García & Montiel-Flores v. Mexico* (2010a, ¶¶ 233-234).

<sup>42</sup> Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 (1989, ¶¶ 41-50).

## Article 2. Domestic Legal Effects

**1. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by constitutional<sup>43</sup>, 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.** This obligation “implies the adoption of two different measures, namely:

“[a.] the elimination of any norms and practices that in any way violate the guarantees provided under the Convention or disregard the rights therein enshrined or obstruct its exercise; [and]

“[b.] the promulgation of norms and the development of practices conducive to the effective observance of those guarantees”<sup>44</sup>.

1B. States may take some time to adjust their domestic laws, but this time must be reasonable<sup>45</sup>. The foregoing shall not be interpreted as excluding or limiting the self-executive nature of the Convention or of the Inter-American Court’s interpretation thereof, according to the conventionality control, referred to in Article 1C.

2. “[I]n complying with the general obligation to respect and guarantee rights, the States are obliged to ‘take affirmative action, avoid taking measures that restrict or infringe a fundamental right, and eliminate measures and practices that restrict or violate a fundamental right’”<sup>46</sup>.

## CHAPTER II - CIVIL AND POLITICAL RIGHTS

### Article 3. Right to Juridical Personality

**1. Every person has the right to recognition as a person before the law.** This right “implies the capacity to be the holder of rights (capacity of exercise) and obligations”<sup>47</sup>.

2. States have the duty to “implement mechanisms enabling all persons to register their births and get any other identification documents, ensuring that these processes are, at all different levels, accessible both legally and geographically”<sup>48</sup>.

3. Indigenous and tribal groups have “the right to have their juridical personality recognized by the State”<sup>49</sup>.

### Article 4. Right to Life and to a Dignified Existence<sup>50</sup>

**1. Every person has the right to have his life respected,** and “restrictive approaches to it are inadmissible”<sup>51</sup>. **This right shall be protected by law and, in general** gradually

<sup>43</sup> *Cabrera-García & Montiel-Flores v. Mexico* (2010a, ¶ 234).

<sup>44</sup> *Salvador-Chiriboga v. Ecuador*, (2008b, ¶ 122).

<sup>45</sup> *Barreto-Leiva v. Venezuela*, (2009b, ¶ 108).

<sup>46</sup> *Boyce et al. v. Barbados* (2007a, ¶ 69).

<sup>47</sup> *Bámaca-Velásquez v. Guatemala* (2000, ¶ 179).

<sup>48</sup> *Sawhoyamasa Indigenous Community v. Paraguay (The)* (2006i, ¶ 193).

<sup>49</sup> *Saramaka People v. Suriname (The)* (2007f, ¶ 172).

<sup>50</sup> *Villagrán-Morales et al. v. Guatemala (Street Children)* (1999, ¶ 144).

<sup>51</sup> *Villagrán-Morales et al. v. Guatemala (Street Children)* (1999, ¶ 144).

and incrementally according to the human being's level of development<sup>52</sup>, **from the moment of conception** implantation<sup>53</sup>. **No one shall be arbitrarily deprived of his life.** States parties have the positive obligation to “adopt all the appropriate measures to protect and preserve the right to life”<sup>54</sup>.

1B. In the case of armed conflicts, the arbitrariness of the deprivation of life shall be judged according to the principles of International Humanitarian Law<sup>55</sup>.

**2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime.** Death penalty shall not be carried out if international proceedings are pending<sup>56</sup>. A death “sentence must be individualized in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused”<sup>57</sup>. Thus, the law may not establish mandatory death sentences for certain crimes<sup>58</sup>. **The application of such punishment shall not be extended to crimes to which it does not presently apply.**

**3. The death penalty shall not be reestablished in states that have abolished it.**

**4. In no case shall capital punishment be inflicted for political offenses or related common crimes.**

**5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.**

**6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.**

7. Every person has the right to a dignified existence<sup>59</sup>. This right includes the access to goods and services such as drinkable water, food, healthcare, and education<sup>60</sup>.

Article 4B. Right to Free Basic Education

“States have the duty to guarantee accessibility and sustainability to free basic education. Particularly when it comes to satisfying the right to basic education in the heart of indigenous communities, the State must provide this right from an ethno-educational perspective. This means taking positive measures to make the education culturally acceptable from the perspective of a unique ethnicity”<sup>61</sup>.

<sup>52</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 264). As we said in the introduction, this interpretation is in conflict with the aforementioned interpretation of *Villagrán-Morales*.

<sup>53</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 264).

<sup>54</sup> *Gómez-Paquiyaury Brothers v. Perú* (2004c, ¶ 129).

<sup>55</sup> *Cruz-Sánchez et al. v. Perú*, (2015a, ¶ 273).

<sup>56</sup> *Boyce et al. v. Barbados* (2007a, ¶ 113).

<sup>57</sup> *Boyce et al. v. Barbados* (2007a, ¶ 50).

<sup>58</sup> *Boyce et al. v. Barbados* (2007a, ¶¶ 51, 60).

<sup>59</sup> *Villagrán-Morales et al. v. Guatemala (Street Children)* (1999, ¶ 144).

<sup>60</sup> *Xákmok Kásek Indigenous Community v. Paraguay* (2010d, ¶¶ 194-213).

<sup>61</sup> *Xákmok Kásek Indigenous Community v. Paraguay* (2010d, ¶ 211).

## Article 5. Right to Humane Treatment and Medical Care

**1. Every person has the right to have his physical, mental, and moral integrity respected.** This right may be violated as a result of the breach of other rights declared in this Convention<sup>62</sup>; for instance, forced disappearances will be considered to violate the right to a humane treatment<sup>63</sup>.

1B. “Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being”<sup>64</sup>. “The absence of adequate medical care can lead to the violation of art. 5.1 of The Convention. [...] [T]he protection of the right to personal integrity supposes the regulation of the health care services in the domestic sphere, as well as the implementation of a series of mechanisms designed to ensure the effectiveness of this regulation”<sup>65</sup>.

1C. States must “regulat[e] and supervis[e] at all times the rendering of services and the implementation of the national programs regarding the performance of public quality health care services so that they may deter any threat to the right to life and the physical integrity of the individuals undergoing medical treatment”<sup>66</sup>.

**2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.** This provision shall be interpreted according to international standards<sup>67</sup>. Among others, corporal punishment<sup>68</sup> and radically disproportionate punishments<sup>69</sup> are forbidden. **All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.** This will include the existence of adequate prison conditions, in accordance with paragraph 6B<sup>70</sup>.

2B. The elements of torture are the following:

- a. an intentional act<sup>71</sup>,
- b. which causes severe physical or mental suffering; and<sup>72</sup>
- c. committed with a given purpose or aim<sup>73</sup>.

2C. Threats and real danger of submitting a person to physical injuries may be considered by the Court as a kind of psychological torture<sup>74</sup>. Placing a person under the custody of Government officials who practice torture and murder, or private individuals who do this with the state’s tolerance or consent, shall be considered a violation of the state’s duty to prevent violations to the right to physical integrity, even if no actual violation is proved<sup>75</sup>.

<sup>62</sup> *Bueno-Alves v. Argentina* (2007b, ¶ 95).

<sup>63</sup> *Ticona-Estrada et al. v. Bolivia* (2008c, ¶ 58).

<sup>64</sup> *Duque v. Colombia* (2016a, ¶¶ 172-174).

<sup>65</sup> *Suárez-Peralta v. Ecuador* (2013d, ¶ 130).

<sup>66</sup> *Ximenes-Lopes v. Brazil* (2006j, ¶ 99).

<sup>67</sup> *Fleury (Lysias) et al. v. Haiti* (2011c, ¶¶ 85, 87).

<sup>68</sup> *Caesar v. Trinidad and Tobago* (2005a, ¶ 70).

<sup>69</sup> *Mendoza et al. v. Argentina* (2013c, ¶ 174).

<sup>70</sup> *Miguel Castro-Castro Prison v. Perú (The)* (2006g, ¶ 315).

<sup>71</sup> *Bueno-Alves v. Argentina* (2007b, ¶ 79).

<sup>72</sup> *Bueno-Alves v. Argentina* (2007b, ¶ 79).

<sup>73</sup> *Bueno-Alves v. Argentina* (2007b, ¶ 79).

<sup>74</sup> *Miguel Castro-Castro Prison v. Perú (The)* (2006g, ¶ 272).

<sup>75</sup> *Velásquez-Rodríguez v. Honduras* (1988, ¶ 175).

2D. If States Parties authorities receive an accusation or have well founded reasons to believe that there has been an act of torture committed within their jurisdiction, they will be obliged to proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process<sup>76</sup>. This obligation shall not cease if the relevant act of torture cannot be subject to a rule of statute of limitations<sup>77</sup>.

**3. Punishment shall not be extended to any person other than the criminal.**

**4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.**

**5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.** Minors cannot be subject to life imprisonment<sup>78</sup>.

**6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners** or the retribution or deterrence of gross human rights violations<sup>79</sup>. Solitary confinement and detention *incommunicado* are prohibited as disciplinary methods<sup>80</sup>.

6B. The “detention in overcrowded conditions, with lack of ventilation and natural light, without a bed to rest on, or adequate hygiene conditions, in isolation or solitary confinement, or with undue restrictions on visits constitutes a violation of personal integrity”<sup>81</sup>. “[T]he State has the obligation to provide regular medical examinations and care to prisoners, and also adequate treatment when this is required. The State must also allow and facilitate prisoners being treated by the physician chosen by themselves or by those who exercise their legal representation or guardianship”<sup>82</sup>.

6C. The use of force by security officials “must respect criteria of legitimate reasons, need, appropriateness and proportionality”<sup>83</sup>. The assessment regarding the use of force must take into account all the circumstances and the context of the facts<sup>84</sup>.

Article 5B. Rights of persons with disabilities

1. “States have the obligation to promote the inclusion of persons with disabilities through equality of conditions, opportunities and participation in all spheres of society [...]. Consequently, it is necessary for States to promote social inclusion practices and adopt affirmative measures to remove [barriers that may affect people with disabilities]”<sup>85</sup>.

2. “[D]isability is not defined exclusively by the presence of a physical, mental, intellectual or sensorial impairment, but that it is interrelated to the barriers or limitations that

<sup>76</sup> *Miguel Castro-Castro Prison v. Perú (The)* (2006g, ¶ 345).

<sup>77</sup> *García-Lucero et al. v. Chile* (2013a, ¶¶ 462-470, in conjunction with ¶ 160).

<sup>78</sup> *Mendoza et al. v. Argentina* (2013c, ¶¶ 166, 175, 183).

<sup>79</sup> *Rodríguez-Vera et al. (The Disappeared from the Palace of Justice) v. Colombia* (2014b, ¶¶ 462-470).

<sup>80</sup> *Juvenile Reeducation Institute v. Paraguay* (2004e, ¶ 167).

<sup>81</sup> *Fleury (Lysias) et al. v. Haiti*, (2011c, ¶ 85).

<sup>82</sup> *De la Cruz-Flores v. Perú* (2004b, ¶ 132).

<sup>83</sup> *Fleury (Lysias) et al. v. Haiti* (2011c, ¶ 74).

<sup>84</sup> *Cruz-Sánchez et al. v. Perú* (2015a, ¶ 266). Only in Spanish.

<sup>85</sup> *Furlan and Family v. Argentina* (2012c, ¶ 134).

exist in society for the individual to be able to exercise his rights effectively. The types of limits or barriers that are commonly encountered in society by individuals with functional diversity include those that are attitudinal or socio-economic”<sup>86</sup>.

3. People with infertility shall be considered persons with disabilities, and are, therefore, protected by this article<sup>87</sup>.

## Article 6. Freedom from Slavery

**1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, ~~as are the slave trade and traffic in women~~ is human trafficking**<sup>88</sup>.

**2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.**

2B. For the purposes of this article:

a. “[T]he two main elements that define a situation as slavery are: i) the state or condition of the individual, and ii) the exercise of one of the attributes of the right to property, that is, that the slaveholder exercises his power or control over the person that is enslaved, to the point of annulling the victim’s personhood”<sup>89</sup>.

b. Servitude shall be understood as “the obligation to perform certain services for others, imposed by the use of coercion, and the obligation to live on another person’s property and the impossibility of altering this condition”<sup>90</sup>.

c. Human trafficking means the “recruitment, transportation, transfer, harbouring or receipt of persons [,] by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. For people under 18 years, these means are not a necessary condition for the existence of trafficking [,] for the purpose of [any form of] exploitation”<sup>91</sup>.

d. Forced or compulsory labor shall be understood as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”<sup>92</sup>.

<sup>86</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 291).

<sup>87</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 293).

<sup>88</sup> *Hacienda Brasil Verde Workers v. Brazil (Case of the)* (2016c, ¶ 289). Only in Spanish.

<sup>89</sup> *Hacienda Brasil Verde Workers v. Brazil (Case of the)* (2016c, ¶ 269).

<sup>90</sup> *Hacienda Brasil Verde Workers v. Brazil (Case of the)* (2016c, ¶ 280). For this translation I used the wording of a European Court of Human Rights judgment that was quoted by the Inter-American Court.

<sup>91</sup> *Hacienda Brasil Verde Workers v. Brazil (Case of the)* (2016c, ¶ 290). For this translation I used the wording of the Protocol of Palermo.

<sup>92</sup> *Ituango Massacres v. Colombia* (2006d, ¶¶ 156-160).

**3. For the purposes of this article, the following do not constitute forced or compulsory labor:**

- a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;**
- b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;**
- c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or**
- d. work or service that forms part of normal civic obligations.**

**Article 7. Right to Personal Liberty and Self Determination**

**1. Every person has the right to personal liberty and security.** The concept of liberty shall be interpreted in broad terms, as “the ability to do and not do all that is lawfully permitted”<sup>93</sup>. Every person may “self-determinat[e] and [...] choose freely the options and circumstances that give meaning to [his] life, according to [his] own choices and beliefs”<sup>94</sup>.

**2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.** The state may exercise its punitive power “only to the extent that is strictly necessary in order to protect fundamental legal rights from serious attacks [that] may impair or endanger them”, in accordance with the principle of *ultima ratio*<sup>95</sup>.

2B. A law depriving or restricting liberty must fulfill the following requirements:

“[a.] that the purpose of the measures that deprive or restrict liberty is compatible with the Convention;

“[b.] that the measures adopted are appropriate to achieve the sought-after purpose;

“[c.] that they are necessary, [...] absolutely essential to achieve the purpose sought and that, among all possible measures, there is no less burdensome one in relation to the right involved, that would be as suitable to achieve the proposed objective. [...];

“[d.] and, that the measures are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought”<sup>96</sup>.

<sup>93</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 142).

<sup>94</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 142).

<sup>95</sup> *Kimel v. Argentina* (2008a, ¶ 76).

<sup>96</sup> *Vélez-Loor v. Panama*, (2010c, ¶ 166).

**3. No one shall be subject to arbitrary arrest or imprisonment.** This means that the state may not arrest or imprison somebody claiming motives or using means that — although classified as legal— are incompatible with an individual’s fundamental rights<sup>97</sup>. This incompatibility may arise in diverse situations, such as when these motives or means are unreasonable, unpredictable or disproportionate<sup>98</sup>.

3B. Measures such as remand in custody can only be applied when there is “sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation”<sup>99</sup>. Nevertheless, “even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes”<sup>100</sup>, but only as a way of ensuring “that the accused does not prevent the proceedings from being conducted or elude the system of justice”<sup>101</sup>. “Liberty is always the rule and the limitation or restriction always the exception”<sup>102</sup>.

3C. Open-ended reasons for pre-trial detention, such as being a “danger to the security of society”, are not sufficient. Judges must also “verify whether, in the specific case, the reference to these grounds [are] accompanied by a factor or criterion that could be considered to seek a precautionary objective and that would justify the measure, in the specific case”<sup>103</sup>.

3D. Preventive detention shall be limited by the principle of proportionality, which implies the right not to be treated equally or worse than a convicted person. Hence, the state must not impose preventive detention in cases where it is not possible to sentence the offender to imprisonment. In addition, detention shall cease when it has exceeded a reasonable time, particularly in light of the purpose sought with such a detention<sup>104</sup>.

**4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.**

4B. If the affected person “cannot defend himself or herself or appoint a private counsel”, “legal aid must be provided by a legal professional in order to satisfy the requirements of a procedural representation”<sup>105</sup>.

**5. Any person detained, regardless of the reason of his detention or the authority who carried out this act<sup>106</sup>, shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.**

5B. A forced disappearance is “an autonomous and continuous or permanent crime”, and shall be considered to continue “in time until the fate and whereabouts of the alleged victim [are] known”<sup>107</sup>. The state’s duty to investigate and punish will only be considered

<sup>97</sup> *Vélez-Loor v. Panama* (2010c, ¶ 165).

<sup>98</sup> *Vélez-Loor v. Panama* (2010c, ¶ 165).

<sup>99</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 111).

<sup>100</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 111).

<sup>101</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 111).

<sup>102</sup> *Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador* (2007c, ¶ 53).

<sup>103</sup> *Norín-Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile* (2014a, ¶¶ 321-324, 337).

<sup>104</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 123).

<sup>105</sup> *Vélez-Loor v. Panama* (2010c, ¶¶ 132-133).

<sup>106</sup> *Vélez-Loor v. Panama* (2010c, ¶ 107).

<sup>107</sup> *Ticona-Estrada et al. v. Bolivia* (2008c, ¶ 56).

accomplished “if all the circumstances relating to the violation are clarified”<sup>108</sup>.

**6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. This right cannot be suspended in time of war, public danger, or other emergency**<sup>109</sup>.

6B. If a foreign national is detained, he shall have the right to consular assistance, according to Article 36 of the Vienna Convention on Consular Relations<sup>110</sup>. This duty requires, “[f]rom the point of view of the rights of a detained person”<sup>111</sup>:

- a. “the right to be informed of his rights under the Vienna Convention”<sup>112</sup>,
- b. “the right to have effective access to communication with the consular official; and”<sup>113</sup>;
- c. “the right to the assistance itself”<sup>114</sup>, within a procedure that allows the implementation of “consular assistance as part of due process of law”<sup>115</sup>.

6C. “[W]hen interpreting and applying their domestic laws [in relation to imprisonment or pre-trial detention], [states] must take into consideration the inherent characteristics that differentiate members of the indigenous peoples from the general population and that constitute their cultural identity”<sup>116</sup>.

**7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.**

### **Article 8. Right to a Fair Trial**<sup>117</sup>

**1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.** Domestic bodies, including some administrative bodies, must give

<sup>108</sup> *Ticona-Estrada et al. v. Bolivia* (2008c, ¶ 80).

<sup>109</sup> Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 (1987, ¶ 44).

<sup>110</sup> The Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law. Advisory Opinion OC-16/99 (1999, ¶¶ 84, 124).

<sup>111</sup> *Vélez-Loor v. Panama* (2010c, ¶ 153).

<sup>112</sup> *Vélez-Loor v. Panama* (2010c, ¶ 153).

<sup>113</sup> *Vélez-Loor v. Panama* (2010c, ¶ 153).

<sup>114</sup> *Vélez-Loor v. Panama* (2010c, ¶ 153).

<sup>115</sup> *Vélez-Loor v. Panama* (2010c, ¶ 159).

<sup>116</sup> *Norin-Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile* (2014a, ¶ 357).

<sup>117</sup> The Spanish text of the Convention is *Garantías Judiciales* (“Judicial Guarantees”).

reasons when issuing decisions<sup>118</sup>. If they fail to do so, their decision will be deemed arbitrary<sup>119</sup>. Nevertheless, judicial subjective impartiality is presumed<sup>120</sup>. This paragraph is also applicable to administrative, labor, and other procedures<sup>121</sup>.

1B. “[T]he following assurances arise from judicial independence: an appropriate selection process, guaranteed tenure and the guarantee against external pressures”<sup>122</sup>. “[J]udges must be selected exclusively based on their personal merits and professional qualifications, through objective selection and continuance mechanisms that take into account the peculiarity and specific nature of the duties to be fulfilled”<sup>123</sup>. Anyone who is brought before a court must have the chance to request the revision of this court’s impartiality<sup>124</sup>.

1C. “[T]he protection of judicial independence requires that the dismissal of judges be considered as the ultima ratio”<sup>125</sup>. “[W]hen a judge’s tenure is affected in an arbitrary manner, the right to judicial independence [...] is violated”<sup>126</sup>. The fundamental “guaranty of the stability and tenure of judges requires that:

“[a.] the termination of their contract is based exclusively on established grounds [...];

“[b.] judges can only be dismissed because of serious breaches of their duties or incompetence [, and]

“[c.] any disciplinary action of judges must be resolved according to the rules of judicial behavior established in fair proceedings that guarantee objectivity and impartiality according to the Constitution or the law”<sup>127</sup>.

1D. In order to determine whether a domestic court issues a decision within a reasonable time, the Inter-American Court shall take into consideration the following facts:

“[a.] the complexity of the matter,

“[b.] the procedural activity of the interested party,

“[c.] the conduct of judicial authorities, and

“[d.] the impairment to the legal situation of the person involved in the proceedings”<sup>128</sup>.

1E. The appropriateness of the aforementioned criteria will depend on the circumstances of the case, because “the State’s duty to wholly serve the purposes of justice prevails over the guarantee of reasonable time”<sup>129</sup>. The Inter-American Court may not only assess whether proceedings as a whole lasted a reasonable time, but also if specific stages of the proceedings did so<sup>130</sup>.

<sup>118</sup> *Maldonado-Ordoñez v. Guatemala* (2016, ¶ 87).

<sup>119</sup> *Chocrón-Chocrón v. Venezuela* (2011a, ¶ 118).

<sup>120</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 98).

<sup>121</sup> *Chocrón-Chocrón v. Venezuela* (2011a, ¶ 115).

<sup>122</sup> *López-Lone et al. v. Honduras* (2015c, ¶ 191).

<sup>123</sup> *Reverón-Trujillo v. Venezuela* (2009f, ¶ 72).

<sup>124</sup> *López Lone et al. v. Honduras* (2015c, ¶¶ 226-228).

<sup>125</sup> *López Lone et al. v. Honduras* (2015c, ¶¶ 259).

<sup>126</sup> *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador (Case of the)* (2013e, ¶ 155).

<sup>127</sup> *López-Lone et al. v. Honduras* (2015c, ¶ 200).

<sup>128</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 112).

<sup>129</sup> *La Cantuta v. Perú* (2006e, ¶ 149).

<sup>130</sup> *Tarazona-Arrieta et al. v. Perú* (2014c, ¶ 100).

1F. Military criminal courts may only “judge members of the armed forces when they commit crimes or misdemeanors that, owing to their nature, affect rights and duties inherent to the military system”<sup>131</sup>. In “situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance”<sup>132</sup>.

**2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:**

**a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;**

**b. prior notification in detail to the accused of the charges against him, including “the reasons for them, and the evidence for such charges, and the legal definition of the facts”<sup>133</sup>. “[I]t is necessary for said notification to take place before the accused renders his first statement before any public authority”<sup>134</sup>;**

**c. adequate time and means for the preparation of his defense, including the right to have access to the records of the case, and the right to intervene in the analysis of evidence<sup>135</sup>;**

**d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;**

**e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law. The State Party must provide for unpaid state legal counsel if the accused person is indigent<sup>136</sup>, or may be subject to deportation, expulsion or deprivation of freedom<sup>137</sup>;**

**f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts. The use of anonymous witnesses may only be “adopted subject to judicial control, based on the principles of necessity and proportionality, taking into account that this is an exceptional measure and verifying the existence of a situation of risk for the witness”<sup>138</sup>;**

**g. the right not to be compelled to be a witness against himself or to plead guilty; and**

<sup>131</sup> *Rochela Massacre v. Colombia (The)* (2007e, ¶ 200).

<sup>132</sup> *Radilla-Pacheco v. Mexico* (2009f, ¶ 274).

<sup>133</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 28).

<sup>134</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 30).

<sup>135</sup> *Palamara-Iribarne v. Chile* (2005d, ¶ 170).

<sup>136</sup> Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 (1990, ¶¶ 25-26).

<sup>137</sup> *Vélez-Loor v. Panama* (2010c, ¶¶ 145-146 especially; but also ¶¶ 132, 133, 137).

<sup>138</sup> *Norin-Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile* (2014a, ¶ 242).

**h. the right to appeal the judgment to a higher court.** The higher court must be entitled to address both the facts and the law of the case<sup>139</sup>. In particular, the appeal “must be an ordinary, accessible and effective remedy that permits a comprehensive review or examination of the appealed ruling, that is available to anyone who has been convicted, and that observes basic procedural guarantees”<sup>140</sup>. The fact of being tried by the highest court of a state shall not be considered an excuse for the application of this right<sup>141</sup>.

2B. As far as possible, the aforementioned guarantees will be applicable to proceedings of “a civil, labor, fiscal or any other nature”<sup>142</sup>.

**3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.** Any other statement obtained under duress shall be deemed inadmissible<sup>143</sup>.

**4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.** This rule is subject to the following caveat: “if there appear new facts or evidence that make it possible to ascertain the identity of those responsible for human rights violations or for crimes against humanity, investigations can be reopened, even if the case ended in an acquittal with the authority of a final judgment”<sup>144</sup>. In particular, this right shall be subject to exceptions when:

“[a.] the intervention of the court that heard the case and decided to dismiss it or to acquit a person responsible for violating human rights or international law, was intended to shield the accused party from criminal responsibility;

“[b.] the proceedings were not conducted independently or impartially in accordance with due procedural guarantees, or

“[c.] there was no real intent to bring those responsible to justice”<sup>145</sup>.

**5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.**

#### **Article 9. Freedom from Ex Post Facto Laws**<sup>146</sup>

**1. No one shall be convicted of any act or omission that did not constitute a criminal or administrative<sup>147</sup> offense, under the applicable law, or that was not clearly and unambiguous defined<sup>148</sup>, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a**

<sup>139</sup> *Herrera-Ulloa v. Costa Rica* (2004d, ¶¶ 157-159).

<sup>140</sup> *Norín-Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile* (2014a, ¶ 270).

<sup>141</sup> *Barreto-Leiva v. Venezuela* (2009b, ¶ 90).

<sup>142</sup> *Maldonado-Ordoñez v. Guatemala* (2016, ¶ 74).

<sup>143</sup> *Cabrera-García & Montiel-Flores v. Mexico* (2010a, ¶¶ 165-166).

<sup>144</sup> *Almonacid-Arellano et al. v. Chile* (2006b, ¶ 154).

<sup>145</sup> *Almonacid-Arellano et al. v. Chile* (2006b, ¶ 154).

<sup>146</sup> In the Spanish text of the Convention the heading of this provision is “Principio de Legalidad y de Retroactividad” (“Principle of Legality and of Retroactivity”). It is interesting to note that this heading in Spanish should have referred to the principle of “non-retroactivity” (*Irretroactividad, no retroactividad*).

<sup>147</sup> *Baena et al. v. Panama* (2001a, ¶¶ 106, 107, 115).

<sup>148</sup> *Usón-Ramírez v. Venezuela* (2009g, ¶ 57).

**lighter punishment, the guilty person shall benefit therefrom**, unless this contradicts “the principle of proportionality of punishment”<sup>149</sup>.

2. The aforementioned rule shall not be applicable to serious violations of human rights *of a permanent nature*<sup>150</sup>, where the application of new laws does not imply retroactive application<sup>151</sup>.

#### **Article 10. Right to Compensation**

**Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.**

#### **Article 11. Right to Privacy**<sup>152</sup>

**1. Everyone has the right to have his honor respected and his dignity recognized.**

**2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.**

**3. Everyone has the right to the protection of the law against such interference or attacks.** This protection shall not be granted via prior restraint<sup>153</sup>, but may include criminal sanctions imposed by the judiciary<sup>154</sup>.

3B. The right to privacy allows having a “different threshold of protection” in relation to the honor of public personalities<sup>155</sup>, especially if they are democratically elected<sup>156</sup>.

3C. Telephone tapping is only admissible if performed according to laws that are clear and detailed<sup>157</sup>.

4. Privacy “includes, among other protected realms, the sex life and the right to establish and develop relationships with other human beings. Thus, privacy includes the way in which the individual views himself and to what extent and how he decides to project this view to others”<sup>158</sup>. “[E]very person has the right to organize, in keeping with the law, [his] individual and social life according to [his] own choices and beliefs”<sup>159</sup>. “The protection of private life encompasses a series of factors associated with the dignity of the individual, including, for example, the ability to develop his or her own personality and aspirations, to determine his or her own identity and to define his or her own personal relationships”<sup>160</sup>.

<sup>149</sup> *Rochela Massacre v. Colombia (The)* (2007e, ¶ 196).

<sup>150</sup> I.e., that “its consummation is prolonged in time”. *Tiu-Tojín v. Guatemala* (2008d, ¶ 87).

<sup>151</sup> *Tiu-Tojín v. Guatemala* (2008d, ¶ 87).

<sup>152</sup> The Spanish version of the ACHR entitles this right as “Protection of Honour and Dignity” (*Protección de la Honra y de la Dignidad*). The French and Portuguese versions have wordings similar to their Spanish counterpart: *Protection de l’Honneur et de la Dignité de la Personne* and *Proteção da Honra e da Dignidade*.

<sup>153</sup> *Olmedo-Bustos et al. v. Chile* (2001c, ¶ 71).

<sup>154</sup> *Mémoli v. Argentina* (2013b, ¶¶ 138 & 139). Some consider that this interpretation is in conflict with the *Kimel v. Argentina* (2008a) reading of Article 12.

<sup>155</sup> *Kimel v. Argentina* (2008a, ¶ 86).

<sup>156</sup> *Fontevuechia and D’Amico v. Argentina* (2011d, ¶ 59).

<sup>157</sup> *Escher et al. v. Brazil* (2009c, ¶ 131).

<sup>158</sup> *Atala-Riffo and Daughters v. Chile* (2012b, ¶ 162).

<sup>159</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 142).

<sup>160</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 143).

5. “[T]he State has an obligation to guarantee the right to privacy through positive actions”<sup>161</sup>.

6. The right to private life protects people from the undesired publication of their images or pictures<sup>162</sup>, but not all publication of images will require the consent of the person who is portrayed<sup>163</sup>.

### **Article 12. Freedom of Conscience and Religion**

**1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.**

**2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.**

**3. Freedom to manifest one’s religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.**

**4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.** This provision shall not prevent the state from educating in issues of human rights in accordance with the Court’s reparation orders that seek to overcoming stereotypes<sup>164</sup>.

### **Article 13. Freedom of Thought and Expression**

**1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, in any language<sup>165</sup>, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.** In exercising this right, “journalists have an obligation to verify, reasonably although not necessarily exhaustively, the facts on which they base their opinions”<sup>166</sup>.

**2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure<sup>167</sup>:**

**a. respect for the rights or reputations of others; or**

**b. the protection of national security, public order, or public health or morals.**

<sup>161</sup> *Fontevéchia and D’Amico v. Argentina* (2011d, ¶ 49).

<sup>162</sup> *Fontevéchia and D’Amico v. Argentina* (2011d, ¶ 67).

<sup>163</sup> *Fontevéchia and D’Amico v. Argentina* (2011d, ¶ 70).

<sup>164</sup> *González et al. (“Cotton Field”) v. Mexico* (2009d, ¶¶ 541, 543). Particularly in relation to *González et al. (“Cotton Field”) v. Mexico*, Monitoring Compliance with Judgment (2013, footnote 39).

<sup>165</sup> *López-Álvarez v. Honduras* (2006f, ¶¶ 160-161, 169, 173).

<sup>166</sup> *Mémoli v. Argentina* (2013b, ¶ 122).

<sup>167</sup> “The English text of this provision constitutes an erroneous translation of the original Spanish text. The here relevant phrase should read ‘and be necessary to ensure...’”. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 (1985, footnote to ¶ 29).

2B. The aforementioned limitations can be imposed only insofar as they are necessary in a democratic society<sup>168</sup>. Thus, if there are various ways of achieving this objective, the State Party must choose the one that least restricts freedom of thought and expression<sup>169</sup>. The foregoing does not preclude the state's power to impose criminal sanctions regarding abuses of this right, as long as they are absolutely necessary, and the principle of legality is complied with<sup>170</sup>.

2C. There is a presumption that all information possessed by the state is public<sup>171</sup>. Hence, the States Parties have the obligation to provide state-held information, unless, "for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case"<sup>172</sup>. These cases must be established by law<sup>173</sup>, and the State Party must give grounds for its refusal to provide the information<sup>174</sup>.

**3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, the request of mandatory licensing of journalists before they can have full use of the news media<sup>175</sup>, or by any other means tending to impede the communication and circulation of ideas and opinions.**

**4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.**

**5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.**

#### Article 14. Right of Reply

**1. Anyone injured by inaccurate or offensive statements or ideas<sup>176</sup> disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.** The States Parties shall make this right enforceable according to their domestic law<sup>177</sup>.

<sup>168</sup> *Claude-Reyes et al. v. Chile* (2006c, ¶ 91).

<sup>169</sup> *Claude-Reyes et al. v. Chile* (2006c, ¶ 91).

<sup>170</sup> *Kimel v. Argentina* (2008a, ¶ 78).

<sup>171</sup> *Claude-Reyes et al. v. Chile* (2006c, ¶ 92).

<sup>172</sup> *Claude-Reyes et al. v. Chile* (2006c, ¶ 77).

<sup>173</sup> *Claude-Reyes et al. v. Chile* (2006c, ¶ 89).

<sup>174</sup> *Claude-Reyes et al. v. Chile* (2006c, ¶ 77).

<sup>175</sup> Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 (1985, ¶ 85).

<sup>176</sup> "The word 'ideas' does not appear in the Spanish, Portuguese or French texts of this provision, which refer to 'informaciones inexactas o agraviantes,' 'informações inexatas ou ofensivas' and to 'données inexactes ou des imputations diffamatoires' "[.] Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights). Advisory Opinion OC-7/86 (1986, footnote to ¶ 20).

<sup>177</sup> Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights). Advisory Opinion OC-7/86 (1986, ¶ 35).

**2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.**

**3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.**

#### **Article 15. Right of Assembly**

**The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.** “This right includes private meetings and also meetings in public places, whether they are static or involve movement”<sup>178</sup>.

#### **Article 16. Freedom of Association**

**1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes,** “without pressure or interference that may alter or impair the nature of such purpose”<sup>179</sup>. The state is obliged “to prevent attacks on [this freedom of association], to protect those who exercise it, and to investigate violations restricting such freedom. These positive obligations must be enforced, even in the sphere of relations between individuals, if necessary”<sup>180</sup>.

**2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.**

**3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.**

#### **Article 17. Rights of the Family**

**1. The family, in any of its forms or models<sup>181</sup>, is the natural and fundamental group unit of society and is entitled to protection by society and the state.**

1B. Homosexual couples that live together also constitute family units, regardless of the time they have been living together<sup>182</sup>. The State Party shall protect them according to the preceding paragraph and to Article 11(2)<sup>183</sup>.

**2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.**

<sup>178</sup> *López-Lone et al. v Honduras* (2015c, ¶ 167).

<sup>179</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 143).

<sup>180</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 144). Quotation marks are omitted.

<sup>181</sup> *Atala-Riffo and Daughters v. Chile* (2012b, ¶¶ 142, 145).

<sup>182</sup> *Atala-Riffo and Daughters v. Chile* (2012b, ¶ 177).

<sup>183</sup> *Atala-Riffo and Daughters v. Chile* (2012b, ¶ 177).

**3. No marriage shall be entered into without the free and full consent of the intending spouses.**

**4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.** “[T]he determination of the child’s best interest in cases involving the care and custody of minors must be based on an assessment of specific parental behaviors and their negative impact on the well-being and development of the child, or of any real and proven damage or risks to the child’s well-being and not those that are speculative or imaginary”<sup>184</sup>.

**5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.**

6. States Parties “have the obligation to adopt the most appropriate measures to facilitate and to implement contact between the individuals deprived of liberty and their families”<sup>185</sup>.

#### **Article 18. Right to a Name**

**Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.**

#### **Article 19. Rights of the Child**

**1. Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.** These measures shall also be granted to pregnant women<sup>186</sup>.

2. Children also have a right to identity<sup>187</sup>, which is “the collection of attributes and characteristics that allow for the individualization of the person in a society”<sup>188</sup>. This right “encompasses the right to nationality, to a name, [...] to family relationships”, and “a number of other rights according to the subject it treats and the circumstances of the case”<sup>189</sup>.

3. The rights recognized in this Convention shall be applied to children in light of the Convention on the Rights of the Child, “which comprise[s] the *corpus juris* of the rights of the child”<sup>190</sup>.

4. Children cannot be discriminated against based on the conditions of their parents<sup>191</sup>.

<sup>184</sup> *Atala-Riffo and Daughters v. Chile* (2012b, ¶ 109).

<sup>185</sup> *Norín-Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile* (2014a, ¶ 407).

<sup>186</sup> *Sawhoyamaxa Indigenous Community v. Paraguay (The)* (2006i, ¶ 177).

<sup>187</sup> *Gelman v. Uruguay* (2011e, ¶¶ 121-122).

<sup>188</sup> *Gelman v. Uruguay* (2011e, ¶ 122).

<sup>189</sup> *Gelman v. Uruguay* (2011e, ¶ 122).

<sup>190</sup> *Contreras et al. v. El Salvador* (2011b, ¶ 107).

<sup>191</sup> *Atala-Riffo and Daughters v. Chile* (2012b, ¶ 151).

## Article 20. Right to Nationality

**1. Every person has the right to a nationality.** States' authority to determine who their nationals are, is limited "by their obligation to provide individuals with the equal and effective protection of the law and [...] by their obligation to prevent, avoid and reduce statelessness"<sup>192</sup>. This provision does not limit the states' power to make conditions for naturalization more restrictive<sup>193</sup>.

**2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.**

**3. No one shall be arbitrarily deprived of his nationality or of the right to change it.**

## Article 21. Right to Private and Collective Property<sup>194</sup>

**1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.** Thus, the State Party may restrict this right, as long as the restrictions are:

- a. previously established by law;
- b. necessary;
- c. proportional, and
- d. with the aim of achieving a legitimate objective in a democratic society<sup>195</sup>.

1B. Property shall be understood to include "material objects which are susceptible of being possessed, as well as any rights which may be part of a person's assets. Such concept includes all movables and immovables, and all tangible and intangible assets, as well as any other property susceptible of having value"<sup>196</sup>.

**2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.** "[I]n order for the just compensation to be adequate, the trade value of the property prior to the declaration of public utility must be taken into account and also, the fair balance between the general interest and the individual interest"<sup>197</sup>.

**3. Usury and any other form of exploitation of man by man shall be prohibited by law.**

4. States parties shall protect "the close relationship that the indigenous peoples have with their lands, as well as with the natural resources within those lands, and the incorporeal elements that are derived from them"<sup>198</sup>. The following rules apply to communal property on indigenous lands, and to tribal communities with a special relationship to land, even if they are not indigenous<sup>199</sup>:

<sup>192</sup> *Girls Yean and Bosico v. Dominican Republic* (2005b, ¶ 140).

<sup>193</sup> Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica. Advisory Opinion OC-4/84 (1984, ¶ 36).

<sup>194</sup> The heading of this Article in the other official languages of the ACHR translates as "Right to Private Property".

<sup>195</sup> *Saramaka People v. Suriname (The)* (2007f, ¶ 127).

<sup>196</sup> *Palamara-Iribarne v. Chile* (2005d, ¶ 102).

<sup>197</sup> *Salvador-Chiriboga v. Ecuador* (2008b, ¶ 98).

<sup>198</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 129).

<sup>199</sup> *Saramaka People v. Suriname (The)* (2007f, ¶¶ 85-86).

- a. “the indigenous’ traditional possession of their lands has the same effect as a full land title granted by the State”<sup>200</sup>;
- b. “traditional possession grants the indigenous the right to demand official recognition of their property and its registration”<sup>201</sup>;
- c. “the State must delimit, demarcate, and grant collective title of the lands to members of the indigenous communities”<sup>202</sup>. The delimitation and demarcation must be done in consultation with such people and other neighboring peoples<sup>203</sup>;
- d. “the members of the indigenous peoples who have involuntarily lost possession of their lands maintain a right to their land, even without legal title, except when the land has been legitimately transferred to an innocent third party in good faith”<sup>204</sup>. In the latter case, the members of the indigenous peoples “ha[ve] the right to recover [their land] or to obtain other lands of the same size and quality”<sup>205</sup>. Indigenous peoples retain their right to recover traditional lands as long as they maintain their unique relationship with it. If this relationship ceases to exist, so does their right<sup>206</sup>.
- e. The state, not the Court, has the task to decide whether the right to collective property should take precedence over the right to private property<sup>207</sup>. The State Party must assess “the legality, necessity, proportionality and attainment of a legitimate objective in a democratic society (public utility and social interest) [...] on a case-by-case basis”<sup>208</sup>. The state must also take into consideration “the special relationship that the indigenous peoples have with their lands”<sup>209</sup>.
- f. “[T]he State is obliged to provide for appropriate procedures in its national legal system to process the land claim proceedings of the indigenous peoples with an interest thereon”<sup>210</sup>.
- g. The obligation to carry out special and differentiated consultations processes whenever interests of indigenous peoples and communities are to be affected; such processes must respect the specific consultation system of each people or community<sup>211</sup>.

5. The legitimate restriction to the rights of indigenous or tribal community property, including development plans, demands to:

- a. “[C]onduct an appropriate and participatory process that guarantees the right to consultation, particularly with regard to development plans or large-scale

<sup>200</sup> *Xákmok Kásek Indigenous Community v. Paraguay* (2010d, ¶ 109).

<sup>201</sup> *Xákmok Kásek Indigenous Community v. Paraguay* (2010d, ¶ 109).

<sup>202</sup> *Xákmok Kásek Indigenous Community v. Paraguay* (2010d, ¶ 109).

<sup>203</sup> *Saramaka People v. Suriname (The)* (2007f, ¶ 115).

<sup>204</sup> *Xákmok Kásek Indigenous Community v. Paraguay* (2010d, ¶ 109).

<sup>205</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 131).

<sup>206</sup> *Xákmok Kásek Indigenous Community v. Paraguay* (2010d, ¶ 112).

<sup>207</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 156).

<sup>208</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 155).

<sup>209</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 156).

<sup>210</sup> *Sawhoyamaxa Indigenous Community v. Paraguay (The)* (2006i, ¶ 109).

<sup>211</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012d, ¶¶ 165-166).

investment”<sup>212</sup>. “This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement”<sup>213</sup>.

b. Conduct a “prior social and environmental impact assessment”<sup>214</sup>, performed by “independent and technically-qualified entities, under the State’s supervision”<sup>215</sup> and

c. “[W]here applicable, reasonably share the benefits arising from the exploitation of natural resources [...], with the community itself determining and deciding who the beneficiaries of such compensation should be, according to its customs and traditions”<sup>216</sup>.

6. Indigenous and tribal peoples have a “right [...] to the protection of the natural resources in their territories”<sup>217</sup>.

#### Article 21B. Right to Cultural Identity

Indigenous and tribal peoples have a collective right to cultural identity<sup>218</sup>. This right, in consistency with Article 1(1), is both a component and a means of interpretation of the human rights of indigenous peoples and communities<sup>219</sup>.

#### Article 22. Freedom of Movement and Residence

**1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.** No one shall be “forcibly displaced within a State Party”<sup>220</sup>.

**2. Every person has the right to leave any country freely, including his own.**

2B. “[T]he right to freedom of movement and residence can be violated by de facto restrictions if the State has not established the conditions or provided the appropriate means to exercise it”<sup>221</sup>. Thus, this right “may be violated when an individual is the victim of threats or harassment and the State fails to provide the necessary guarantees to enable [him] to move about and reside freely in the territory in question, even when the threats and harassment are executed by non-state actors”<sup>222</sup>.

**3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.**

<sup>212</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012d, ¶ 157).

<sup>213</sup> *Saramaka People v. Suriname (The)* (2007f, ¶ 133).

<sup>214</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 201).

<sup>215</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 201).

<sup>216</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012d, ¶ 157).

<sup>217</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 181).

<sup>218</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012d, ¶¶ 213-217).

<sup>219</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012d, ¶ 213, 217).

<sup>220</sup> “*Mapiripán Massacre*” v. *Colombia* (2005c, ¶ 188).

<sup>221</sup> *Fleury (Lysias) et al. v. Haiti* (2011c, ¶ 93).

<sup>222</sup> *Cepeda-Vargas (Manuel) v. Colombia* (2010b, ¶ 197).

**4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.**

**5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.**

**6. An alien lawfully<sup>223</sup> in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.**

6B. The process of expulsion of an alien must be individual and non-discriminatory, and within it, the migrant has the following guarantees:

“[a.] To be expressly and formally informed of the charges against [him] and of the reasons for the expulsion or deportation. This notification must include information about [his] rights, such as:

“[i.] The possibility of stating [his] case and contesting the charges against [him];

“[ii.] The possibility of requesting and receiving consular assistance, legal assistance and, if appropriate, translation or interpretation;

“[b.] In case of an unfavorable decision, the alien must be entitled to have [his] case reviewed by the competent authority and appear before this authority for that purpose, and

“[c.] The eventual expulsion may only take effect following a reasoned decision in keeping with the law that is duly notified”<sup>224</sup>.

**7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes, or any other ground that gives him a refugee status according to the treaties ratified by the States Parties<sup>225</sup>. Every person who is granted refugee status in a State Party has the right to have his status recognized in other States Parties, according to the 1951 Convention relating to the Status of Refugees<sup>226</sup>. The process for granting asylum must follow the guarantees established in the relevant international instruments<sup>227</sup>.**

**8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.**

8B. In the case of migrant children, the following rules must be applied:

a. States Parties “are obliged to identify non-national children who require international protection within their jurisdictions, [...] in order to provide them with the necessary, suitable and individualized attention”<sup>228</sup>.

<sup>223</sup> *Nadege Dorzema et al. v. Dominican Republic* (2012e, ¶ 159).

<sup>224</sup> *Nadege Dorzema et al. v. Dominican Republic* (2012e, ¶ 175).

<sup>225</sup> *Pacheco-Tineo Family v. Plurinational State of Bolivia* (2013, ¶¶ 137-150).

<sup>226</sup> *Pacheco-Tineo Family v. Plurinational State of Bolivia* (2013, ¶ 150).

<sup>227</sup> *Pacheco-Tineo Family v. Plurinational State of Bolivia* (2013, ¶ 159).

<sup>228</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory

- b. States must collect any other information relevant for identifying the children's need of international protection<sup>229</sup>.
- c. If the state initiates administrative or judicial proceedings against migrant children, it must respect due process, taking also into consideration their peculiar needs as children<sup>230</sup>.
- d. States may not deprive children of their liberty because of their migrant condition<sup>231</sup>, but should implement a set of non-custodial measures while immigration proceedings are being held<sup>232</sup>.
- e. The places where children are accommodated or deprived of liberty must meet the relevant international principles on the matter<sup>233</sup>.
- f. "[A]ny decision on the return of a child to the country of origin or to a safe third country shall only be based on the requirements of [his] best interest"<sup>234</sup>.
- g. "When the protection of the rights of the child and the adoption of measures to achieve this protection is involved, the following four guiding principles of the Convention on the Rights of the Child should transversely inspire and be implemented [...]: the principle of non-discrimination, the principle of the best interest of the child, the principle of respect for the right to life, survival and development, and the principle of respect for the opinion of the child [...]"<sup>235</sup>. These principles must also guide the procedures for granting refugee status<sup>236</sup>.
- h. When a child "has a right to the nationality of the country from which one or both of [his] parents may be expelled, or the child complies with the legal conditions to reside there on a permanent basis, States may not expel one or both parents for administrative immigration offenses"<sup>237</sup>.

**9. The collective expulsion of aliens is prohibited.** "[T]he 'collective' nature of an expulsion involves a decision that does not make an objective analysis of the individual circumstances of each alien and, consequently, incurs in arbitrariness"<sup>238</sup>.

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Opinion OC-21/14 (2014, ¶ N° 3).

<sup>229</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, ¶ N° 3).

<sup>230</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, ¶ N° 4-5).

<sup>231</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, ¶ N° 6).

<sup>232</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, ¶ N° 7).

<sup>233</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, ¶ N° 8-9).

<sup>234</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, ¶ N° 10-11).

<sup>235</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, ¶ 69).

<sup>236</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, §§ 243-262 and Opinion ¶ N° 12).

<sup>237</sup> Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 (2014, Opinion ¶ N° 13).

<sup>238</sup> *Nadege Dorzema et al. v. Dominican Republic* (2012e, ¶ 171).

10. If the detention of aliens is strictly necessary for immigration purposes, states must accommodate these migrants, as far as possible, in centers specifically designed for that purpose, “offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel”, avoiding the disintegration of family groups<sup>239</sup>.

11. States shall in no case use detention as a way of punishing aliens who, breaching a previous deportation order, irregularly reenter the aforementioned states’ territory<sup>240</sup>.

## Article 23. Right to Participate in Government

### 1. Every citizen shall enjoy the following rights and opportunities:

**a. to take part in the conduct of public affairs, directly or through freely chosen representatives.** “[T]he participation of the indigenous communities in the conservation of the environment is [...] part of the exercise of their right as indigenous peoples ‘to participate in decision-making in matters which would affect their rights, [...] in accordance with their own procedures and [...] institutions’”<sup>241</sup>. “[T]he State must, for the effects of this [...], put in place mechanisms for the effective participation of the indigenous peoples using procedures that are culturally adapted to the decision-making of such peoples”<sup>242</sup>;

**b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and**

**c. to have access, under general conditions of equality, to the public service of his country,** and to remain in this position under similar conditions of equality<sup>243</sup>. This right is also violated “when a judge’s tenure is affected in an arbitrary manner”<sup>244</sup>.

**2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.** The requirement of belonging to political parties in order to be elected in periodic elections, or any other condition, is not allowed if it disproportionately affects a specific societal group’s participation in public affairs, because of this group’s particular traditions or organization<sup>245</sup>.

3. Everyone has the right to defend democracy, which “constitutes a specific manifestation of the right to take part in public affairs and also includes, at the same time, the exercise of other rights such as freedom of expression and the right of assembly”<sup>246</sup>. There is also an “obligation to defend democracy”, which includes taking actions against *coups d’etat*, in favor

<sup>239</sup> *Vélez-Loor v. Panama* (2010c, ¶ 209), quoting a decision of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

<sup>240</sup> *Vélez-Loor v. Panama* (2010c, ¶ 169).

<sup>241</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 196).

<sup>242</sup> *Kaliña and Lokono Peoples v. Suriname* (2015b, ¶ 203).

<sup>243</sup> *Reverón-Trujillo v. Venezuela* (2009f, ¶ 138).

<sup>244</sup> *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador (Case of the)* (2013e, ¶ 155).

<sup>245</sup> *YATAMA v. Nicaragua* (2005e, ¶¶ 215-223).

<sup>246</sup> *López-Lone et al. v. Honduras* (2015c, ¶ 164).

of the re-establishment of democracy and the rule of law<sup>247</sup>. If a state has “norms that ordinarily restrict the right of judges to participate in politics”, they will not be applicable “at times of grave democratic crises”, regarding “actions in defense of the democratic order”<sup>248</sup>.

### **Article 24. Right to Equal Protection**

**1. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.**

2. The fundamental principle of equality and non-discrimination shall be deemed *jus cogens*<sup>249</sup>. Thus, “any exclusion, restriction or privilege that is not objective and reasonable, and which adversely affects human rights” is forbidden<sup>250</sup>. States may only grant distinct treatment when this “is reasonable, proportionate and objective”<sup>251</sup>.

3. This Article, while intimately related to Article 1.1, refers only to discriminations established by law<sup>252</sup>.

### **Article 25. Right to Judicial Protection**

**1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.** This right cannot be suspended in time of war, public danger, or other emergency<sup>253</sup>.

#### **2. The States Parties undertake:**

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;**
- b. to develop the possibilities of judicial remedy; and**
- c. to ensure that the competent authorities shall enforce such remedies when granted.**

2B. When investigating a violent death, “State authorities in charge of conducting the investigation should at least try, inter alia:

“[a.] to identify the victim;

“[b.] to collect and preserve evidence related to the death in order to assist in any investigation;

“[c.] to identify possible witnesses and obtain testimonies in relation to the death under investigation;

<sup>247</sup> *López-Lone et al. v Honduras* (2015c, ¶ 153).

<sup>248</sup> *López-Lone et al. v Honduras* (2015c, ¶ 174).

<sup>249</sup> *Duque v. Colombia* (2016a, ¶ 91). Only in Spanish.

<sup>250</sup> Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 (2003, ¶ 84).

<sup>251</sup> Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 (2003, ¶ 84).

<sup>252</sup> *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 285).

<sup>253</sup> Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 (1987, ¶ 44).

“[d.] to determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and

“[e.] to distinguish between natural death, accidental death, suicide and homicide”<sup>254</sup>.

2C. “In addition, it is necessary that a thorough investigation of the crime scene be conducted and rigorous autopsies and analyses of human remains be performed by competent professionals, using the best available procedures”<sup>255</sup>.

3. This Article is intimately related to Article 8<sup>256</sup>. This simple and prompt recourse shall comply with the requirements of article 8.1<sup>257</sup>.

## CHAPTER III - ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

### Article 26. Progressive Development

1. **The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.**

2. The Inter-American Court may also adjudicate upon individual or State requests on this economic, social and cultural rights, because “regression is actionable when economic, social and cultural rights are involved”<sup>258</sup>.

3. Every person has “the right to enjoy the benefits of scientific and technological progress”<sup>259</sup>.

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<sup>254</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 102).

<sup>255</sup> *Kawas-Fernández v. Honduras* (2009e, ¶ 102).

<sup>256</sup> *Cantos v. Argentina* (2002, ¶ 54). However, the Court’s case law in this matter is not uniform, particularly after Judge Medina’s influence. See ¶¶ 1-4 of the partially dissenting opinion of Judge Medina in *19 Tradesmen v. Colombia* (2004a).

<sup>257</sup> *Claude-Reyes et al. v. Chile* (2006c, ¶ 127).

<sup>258</sup> *Acevedo-Buendía et al. v. Perú (Discharged and Retired Employees of the Office of the Comptroller)* (2009a, ¶ 103).

<sup>259</sup> *Gómez-Murillo et al. v. Costa Rica* (2016b, ¶ 28) (only in Spanish) in conjunction with *Artavia-Murillo et al. (“in vitro fertilization”) v. Costa Rica* (2012a, ¶ 150).

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