

Inter-American Remedies on the Rights to Peaceful Assembly and Association

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This brief addresses the standards of non-repetition adopted by the Inter-American Court of Human Rights (henceforth the Court or IACtHR) when dealing with the rights to Freedom of Peaceful Assembly and of Association. The IACtHR is known for its ambitious reparations regime. Section A reports on measures of non-repetition ordered in cases involving freedom of association. Section B reports on measures of non-repetition ordered in cases involving freedom of assembly. Section C takes the experience of the IACtHR to assess the role of regional bodies in the establishment of standards for the investigation of violations, the call for specific investigations, and the supervision of State compliance.

A. With regards to bringing accountability for serious violations related to the exercise of the right to freedom of association

6) What guarantees of non-repetition has/should Governments implement to ensure such abuses do not reoccur – such as changes of relevant legislation, policies, practices, institutional changes, security reform?

As of December 2022, the Inter-American Court of Human Rights (IACtHR) has declared the violation of the right to freedom of association, contained in Article 16 of the American Convention on Human Rights, in 18 cases. To remedy these violations, the Court has ordered guarantees of non-repetition related to legal reforms, training policies, and security measures. The following paragraphs provide examples of these remedies within specific cases.

When the Court has ordered *legal reforms*, it has emphasized the importance of adjusting the State's internal legislation and policies so that they uphold international human rights standards. In the Case of the Former Employees of the Judiciary v. Guatemala, the Court found that the State violated the right to strike. This violation stemmed from the application and enforcement of legislation that established disproportionate requirements for holding a strike, thus violating victims' rights to freedom of association, among others.¹ As a consequence, the Court ordered the State to clearly specify or regulate the remedy, procedure and judicial competence for challenging the declaration of illegality of a strike.²

The Court has ordered the implementation of new *training policies* for public officials in multiple cases. Several of these cases concern police mistreatment and abuse of human rights defenders. In the Case Fleury v. Haiti, police arbitrarily arrested and inflicted severe torture upon Mr. Fleury, who was targeted for his work as a human rights defender in a

¹ Inter-American Court of Human Rights. Case of the Former Employees of the Judiciary v. Guatemala (Preliminary Objections, Merits and Reparations. Judgment of November 17, 2021. Par. 132.

² Inter-American Court of Human Rights. Case of the Former Employees of the Judiciary V. Guatemala. Judgment of November 17, 2021. (Preliminary Objections, Merits and Reparations). Par. 144.

non-governmental organization.³ In its judgment for this case, the Court ordered that officers from all ranks of the Haitian National Police must undergo formal training in national and international human rights standards, particularly focusing on the proportionate use of force, the appropriate treatment of detainees, and the prosecution of torture.⁴ Similarly, in the Cases *Yarce et. al. v. Colombia* and *Kawas Fernández v. Honduras*, human rights defenders were subjected to harassment, forced displacement,⁵ and murder⁶ due to their participation in social movements. In these cases, the Court ordered the implementation of trainings for public officials and local communities that place special emphasis on the work of human rights defenders.⁷

The Court has also recommended human rights training in cases that do not explicitly concern the targeting and maltreatment of human rights defenders. In the Case *Escher v. Brazil*, the Court determined that the State violated the free and normal exercise of the right to freedom of assembly because it unlawfully monitored and publicly disseminated the telephone communications of an association.⁸ To remedy this violation, the Court ordered permanent training for police forces and judicial officials about human rights standards, with special emphasis on the right to freedom of association.⁹

The Court has ordered *security measures* in order to protect vulnerable or targeted groups and associations. For example, in the Case *Isaza Uribe V. Colombia*, the Court concluded that the detention and later disappearance of the victim was motivated by his membership in a trade union.¹⁰ As a result, the Court has ordered the reinforcement of the protection mechanisms for union members and trade unions, and the establishment of mechanisms to ensure that unions may freely exercise their activities.¹¹

The Court has supervised compliance with these guarantees of non-repetition, a strategy that has facilitated the implementation of such measures. For instance, in the Case of *Kawas Fernández v. Honduras*, the Court found that the State had reached total compliance with the Court's order of a national campaign addressing the importance of climate and human rights defenders in Honduras.¹² Likewise, in the Case of *Women Victims of Sexual Torture in Atenco v. Mexico*, the Court recognized that the State has taken steps to implement trainings for police officials; however, it requested the State to demonstrate that the implemented training programs fulfill the following purposes: (i) raising awareness among members of the police forces to approach police operations from a gender perspective, the discriminatory nature of gender stereotypes such as those used in this case, and the absolute duty to respect and protect the civilian population with which they come into

³ Ibid. Par. 101

⁴ Inter-American Court of Human Rights. Case of *Lysias Fleury et al v. Haiti*. (Merits and Reparations). Judgment of November 23, 2011. Par. 129-130.

⁵ Inter-American Court of Human Rights. Case of *Yarce et. al. v. Colombia*. Par. 274-275

⁶ Inter-American Court of Human Rights. Case of *Kawas-Fernández v. Honduras*. Par. 152

⁷ Inter-American Court of Human Rights. Case of *Yarce et. al. v. Colombia* (Preliminary Objections, Merits, Reparations, and Costs). Judgment of November 22, 2016. Par. 350; Case of *Kawas-Fernández v. Honduras* (Merits, Reparations and Costs). Judgment of April 3, 2009. Par. 214.

⁸ Ibid. Par. 180

⁹ Inter-American Court of Human Rights. Case of *Escher et al v. Brazil*. (Preliminary Objections, Merits, Reparations, and Costs). Judgment of July 6, 2009. Par. 250-251

¹⁰ Inter-American Court of Human Rights. Case of *Isaza Uribe and others v. Colombia* (Merits, Reparations, and Costs). Judgment of November 20, 2018. Par. 145

¹¹ Ibid.. Par. 191

¹² Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of September 2, 2022. Case of *Kawas-Fendández v. Honduras*. Supervision of Compliance with Judgments. Par. 9

contact in the framework of their public order work, and (ii) train police officers on the standards regarding the use of force in contexts of social protest established in the Court judgment.¹³

In other cases, implementation of non-repetition remedies has not been successful. For example, in the aforementioned Case of Fleury v. Haiti, the Court has declared that the State is non-compliant with its obligation to inform the IACtHR about the implementation of training courses for the police about human rights standards.¹⁴ Moreover, in cases such as Yarce et. al. v. Colombia, the Court has identified the State's willingness to comply, but the course or workshop on human rights defenders at the *Comuna 13* of Medellin has not been implemented.¹⁵

B. With regards to bringing accountability for serious violations related to the exercise of the right to freedom of assembly

6) Please provide information on what guarantees of non-repetition has the Government implemented to ensure such abuses do not reoccur – such as changes of relevant legislation, policies, practices, institutional changes, security reform?

As of December 2022, the Inter-American Court on Human Rights has found a violation of the right to freedom of assembly, contained in Article 15 of the American Convention on Human Rights, in 2 cases. To remedy the breach of the rights declared violated in those judgments, the Court has ordered guarantees of non-repetition only in the judgement of the Case of Women Victims of Sexual Torture in Atenco v. Mexico. This case concerns the violation of several rights as a consequence of the unlawful and excessive use of force of the State when a group of women were arbitrarily detained, and then tortured, as they were exercising their right to assembly in a protest.¹⁶

In this case, the Court ordered that the State must implement *training policies* focused on educating police officers on international standards for the use of force in contexts of social protest.¹⁷

As for *institutional changes*, the Court ordered the establishment of an independent observatory to monitor the implementation of policies on accountability and the use of force in the police. The Court established that the observatory must also produce information that leads to relevant institutional improvements that permit: (i) evaluating the effectiveness of the existing mechanisms to supervise and monitor police operations before, during and after the use of force, and (ii) providing feedback on the required institutional improvements, based on the information obtained from the observatory.¹⁸ As of December 2022, the State has yet to comply with any of these reparations. Regarding compliance with this remedy,

¹³ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of November 19, 2020. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Supervision of Compliance with Judgments. Par. 35

¹⁴ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of November 22, 2019. Case of Lysias Fleury et al v. Haiti. Supervision of Compliance with Judgments. Par. 2

¹⁵ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of November 22, 2019. Case of Yarce and others v. Colombia. Supervision of Compliance with Judgments. Par. 44-45.

¹⁶ Inter-American Court of Human Rights. Case of Women Victims of Sexual Torture in Atenco V. Mexico (Preliminary objection, merits, reparations and costs). Judgment of November 28, 2018. Par. 172

¹⁷ Ibid. Par. 355

¹⁸ Ibid. Par. 356

the State of Mexico has informed that it has created a project of decree for the fulfillment of these obligations as informed in 2020 to the Court¹⁹.

C. With regards to the role of other actors in bringing accountability for serious human rights violations in the context of exercising the rights to freedom of peaceful assembly and associations.

3) How do you see the role of regional bodies for helping your government to bring accountability for serious violations against those exercising their rights to freedom of association and peaceful assembly?

The Inter-American Court of Human Rights has promoted the fulfillment of member states' obligations to investigate and sanction serious violations of the rights of freedom of association and peaceful assembly in three ways: first, by establishing regional standards on the scope of the obligation to investigate violations to these rights, which is legally binding through the Conventionality Control of the American Convention on Human Rights; second, by ordering the investigation of the violations to the rights to freedom of peaceful assembly and associations in concrete cases; and third, by supervising compliance with orders to investigate as a way to prevent impunity in concrete cases.

A. The establishment of a regional standard of investigating violation to the rights of rights to freedom of peaceful assembly and associations

The IACtHR issued an Advisory Opinion in the Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their relation to other Rights, with a Gender Perspective in May 2021. The Court recalled that as a consequence of the state's obligation to guarantee the free and full exercise of these rights, states have specific duties to prevent, investigate and punish any violation of these rights recognized by the American Convention and to provide reparations for the human rights violation.²⁰ According to the IACtHR, states have a positive obligation to investigate violations of these rights in order to protect the right of freedom of association.²¹ The Court established that the states must adopt "all necessary political, administrative and cultural measures, with a gender perspective, to promote the safeguarding of freedom of association for trade unions, foster the strengthening of union organizations and the effectiveness of collective action, and ensure that if any violations should occur, they would be duly investigated in accordance with domestic legislation and in keeping with the seriousness of the incidents."²² In regards to private party breaches of these rights, the state must adopt measures that facilitate proper regulation, supervision and oversight of these private entities.²³

Moreover, the Advisory Opinion emphasizes that the freedom of association must be protected with a gender perspective. This involves the execution of public policies that prevent and address gender-based violence in the workplace, an obligation which also

¹⁹ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights, November 1, 2020. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Supervision of Compliance with Judgments. Par. 35.

²⁰ Inter-American Court of Human Rights. Advisory Opinion OC-27/21. Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to other Rights, with a Gender Perspective. May 5, 2021. Par. 108

²¹ Ibid. Par. 121

²² Ibid. Par. 112 and 168.

²³ Ibid. Par. 112

extends to private sector employers. Accordingly, the Court holds that governments must implement policies to combat gender-based violence in the workplace and in labor unions. These policies must include the following:

“(a) prohibiting by law violence and harassment, and adopting policies designed to prevent them; (b) fostering the use of internal monitoring systems in both the public and private sectors to address violence and labor or sexual harassment; (c) ensuring access to remedies, redress, and support for victims; (d) developing tools, guidance, and education and training activities, and raising awareness, in accessible formats; and (e) ensuring effective means of inspection and investigation to fight violence and harassment.” (Par. 184)

B. The requirement to investigate violations of the rights to freedom of peaceful assembly and association in specific cases

The Inter-American Court of Human Rights has ordered the investigation, prosecution and sanctions of serious human rights violations that have breached the right to freedom of association and peaceful assembly in 11 out of 17 cases that have declared the responsibility of the State for those violations. According to the Notre Dame Reparations Lab database, these 11 cases have a total of 18 reparation measures related to the obligation to investigate. Of these 18 remedies, the Court has declared partial compliance for two of them, and the rest are still pending compliance. All orders related to the investigation of violations are in cases related to freedom of assembly. The majority of these cases involve harm to the life or personal integrity of the victim in a way that violates the victim’s human right to freedom of assembly.²⁴ As a result, the Court has ordered the investigation of massacres, enforced disappearances and extrajudicial killings, torture, and persecution as a reparation for this human right.

The IACtHR ordered an investigation into the facts of the case and prosecution of those responsible in several cases involving violations of the right to freedom of association. For instance, in the Case of the Plan de Sánchez Massacre v. Guatemala, related to the massacre of 268 persons in Plan De Sánchez, the Court found that because the State had not investigated the facts of the case or prosecuted those responsible, the Case had reached a “situation of impunity” regarding the human rights violations in question.²⁵ As a result, the Court ordered that the State must conduct an investigation into the facts of the case to repair this impunity.²⁶ Likewise, in the Case of Huilca Tecse v. Peru, the Court ordered the investigation of the extrajudicial killing of Mr. Pedro Huilca Tecse, a trade union member whose persecution and death violated his individual right to freedom of association, as well as the right to freedom of association of the Peruvian workers willing to create a trade union.²⁷ In the Case of Fleury et. al. v. Haiti, which involved the torture of a human rights defender, Mr. Fleury experienced a violation of his freedom of association due to the

²⁴ Inter-American Court of Human Rights. Case of Kawas-Fernández v. Honduras. Par. 150; Case Huilca Tecse v Peru (Merits, Reparations and Costs). Judgment of March 3, 2005. Par. 75; Case Cantoral Huamaní and García Santa Cruz (Preliminary Objections, Merits, Reparations, and Costs). July 10, 2007. Par.146; Case Gudiel Álvarez et al (“Diario Militar”) v. Guatemala (Merits, Reparations, and Costs). Judgment of November 20, 2012. Par. 196

²⁵ Inter-American Court of Human Rights. Case of Plan de Sánchez Massacre v. Guatemala (Reparations). Judgment of November 19, 2004. Par. 95

²⁶ Ibid. par. 98.

²⁷ Inter-American Court of Human Rights. Case Huilca Tecse v Peru. Para. 107.

relationship between the right to freedom of association and the work of a human rights defender.²⁸

There is only one case related to the right to freedom of assembly where the IACtHR has ordered the criminal investigation of the violation of this human right. In the Case of Women Victims of Sexual Torture in Atenco vs. Mexico, which involved the unlawful use of force for the dispersion of female peaceful protesters,²⁹ the Court found that the State had failed to investigate the instances of torture and sexual violence that had occurred over 12 years before the Court issued its judgment, and ordered that the State must immediately investigate these instances and prosecute those responsible.³⁰

The Inter-American Court of Human Rights has established in several cases that it is not admissible to use legal techniques such as amnesties, statutes of limitations, or circumstances precluding responsibility to avoid investigating, prosecuting and sanctioning the agents responsible for violations.³¹ Furthermore, it has mentioned that accountability encompasses criminal, administrative and disciplinary accountability.³² The Court has indicated in many cases that the investigations must be conducted expeditiously and in a reasonable time.³³

C. The supervision of State compliance with of the orders to investigate as a way to prevent impunity in specific cases

The Court's role in preventing impunity for violations of the rights of freedom of association and peaceful assembly goes beyond issuing orders to investigate. The Supervision Unit of the Court has overseen the implementation of orders to investigate, thereby facilitating State accountability for the perpetrators of these violations. For instance, in the supervision of the Case Masacre Plan De Sánchez v. Guatemala, the Court determined that the State had established the criminal responsibility of five perpetrators of the massacre.³⁴ However, two of them were fugitives and it had not been possible to execute the arrest warrants against them.³⁵ In the Case of Huilca Tecse v. Perú, the Court has supervised two opened cases against the perpetrators of an extrajudicial killing (former President of Perú Alberto Fujimori and others), but it has not obtained updated information on the progress of the investigations.³⁶ Regarding the Case of Women Victims of Sexual Violence in Atenco v. Mexico, the Mexican state reported to the IACtHR that the Office of the Prosecutor of the State of Mexico has opened an investigation of the crimes committed against the female

²⁸ Inter-American Court of Human Rights. Case of Lysias Fleury et al v. Haiti. Par. 101

²⁹ Inter-American Court of Human Rights. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Par. 173

³⁰ Ibid. Par. 338, 339.

³¹ Inter-American Court of Human Rights. Case of Plan de Sánchez Massacre v. Guatemala (Reparations). Par. 99; Case Huilca Tecse v Peru. Par. 108

³² Inter-American Court of Human Rights. Case Gudiel Álvarez et al ("Diario Militar") v. Guatemala. Par. 196

³³ Inter-American Court of Human Rights. Case of Kawas-Fernández v. Honduras. Par. 9

³⁴ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of November 24, 2015. 12 Guatemalan cases. Supervision of Compliance with Judgments. Par.94

³⁵ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of April 30, 2015. Case of Plan de Sánchez Massacre v. Guatemala. Par. 6-13.

³⁶ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of April June 1, 2020. Case Huilca Tecse v Peru. Supervision of Compliance with Judgments.

protesters in Atenco. Therefore, the Court considers that the compliance of the investigation is still pending.³⁷

Regional bodies fulfill several important functions in bringing accountability for violations of the rights to peaceful assembly and associations. One of these is to identify whether the damages victims suffered were a result of their attempts to freely exercise their rights to peaceful assembly and associations. Regional bodies help to identify violations which, in addition to damaging victims' right to life and personal integrity, also have concrete negative consequences on victims' and society's ability to exercise their rights to peaceful assembly and association. Secondly, regional bodies may leverage their legal powers to encourage member states to investigate violations of the right to peaceful assembly and association, and to prosecute and sanction those responsible for the violation. Thirdly, regional bodies help to maintain national and international attention on the advancement of legal proceedings relating to the violation. Finally, regional bodies contribute to the State's ability to overcome obstacles in the way of completing criminal proceedings. This function is particularly true for regional bodies that monitor the implementation of the remedies they order, as the Inter-American Court of Human Rights does.

The experience of the Inter-American Court of Human Rights, summarized in this report, underscores three lessons for the protection of the Rights to Freedom of Peaceful Assembly and of Association. On the one hand, measures of non-repetition play a distinctive function in order to (i) retrain State officials, (ii) promote legal and institutional reforms, and (iii) strengthen security guarantees for victims. On the other hand, mechanisms of supervision are essential to promote timely compliance with measures of non-repetition as well as accountability standards. Mechanisms for the supervision of compliance are ultimately necessary to create effective protections and to secure reparations.

³⁷ Inter-American Court of Human Rights. Resolution of the Inter-American Court of Human Rights of April November 1, 2020. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Supervision of Compliance with Judgments. Par.4-9.