



Implementation of the recommendations of the Inter-American Commission on Human Rights in the Brazilian constitutionalism: proposals and perspectives

Flávia Piovesan *

Melina Girardi Fachin **

ABSTRACT: Based on the study of some Brazilian cases submitted to the Inter-American Commission on Human Rights, this article aims to identify proposals to overcome common Latin-American challenges in the implementation of international recommendations. In the first part, in a retrospective analysis, several emblematic Brazilian cases and their domestic impacts and changes are addressed. In a second part, with a prospective view guided by the domestic contributions to which the Inter-American System is oriented, highlights the current system's challenges. At this stage, proposals to overcome challenges are outlined, especially regarding the obstacles to implement the Commission's recommendations, where the main results of the article arise. The reason for this study stands on the conviction that the compliance with international recommendations is the element that guarantees the exercise of the transformative potential of Human-Rights Systems. With the methodological research based on a bibliographical research and case law, the role of the Inter-American Commission is redesigned in the light of a dialogical triad composed by the organs of the International System, the States constitutionalism and organised civil society.

KEYWORDS: Inter-American Commission on Human Rights – impacts of the Inter-American System – compliance with recommendations.

* Professor at the Faculty of Law of the Pontifical Catholic University of São Paulo, Brazil (PUC/SP) and Commissioner of the Inter-American Commission on Human Rights (Organization of American States).

** Professor at the Faculty of Law of the Federal University of Paraná, Brazil (UFPR). Coordinator of NESIDH - Centre for Studies in Human Rights Systems.

1. Introduction

The main theme of this study is to clarify the importance of the Inter-American System of Human Rights (ISHR), of the Inter-American Commission on Human Rights (IACHR), as well as to focus on proposals and challenges for compliance with the recommendations of the inter-American system, particularly with the Brazilian experience as a case study. Starting from the transformative potential of the IACHR in the American context, the purpose is to present measures for the achievement of such potential. To this end, the work is divided into two steps:

Firstly, by recalling what has already been produced in this field of reflection, the role of the Inter-American Commission in the continent and the impact of its recommendations in the Brazilian context are identified. Thus, from a retrospective view, the legacy of the IACHR in its mandate to promote and protect human rights in Brazil is examined. Subsequently, the way in which the IACHR contributes to the strengthening of the protection of human rights will be analysed, considering the Brazilian experience, by safeguarding the rights of victims, also making possible normative and public policy changes.

Having demonstrated these contributions, in a second moment and from a prospective view, the agenda of challenges critical to its future will be reviewed, being necessary to rethink, to re-signify and to reinvent the role of the Inter-American Commission. Thus, to contribute and refine the existing theoretical studies on the subject, it intends to reflect the role of the IACHR to contribute to the improvement of human rights, democracy, the rule of law and the culture of peace in the region, through an articulated, integrated and coordinated action to involve greater balance between the duties of promoting, defending, and monitoring human rights.

In such context, in conclusion, special emphasis will be given to the challenge of implementing its recommendations, associated with it, in the sense of original contribution, proposals aimed at improving the degree of compliance. This is because the hypothesis on which it is based is that the future of international human rights protection is increasingly subject to mechanisms that allow the full implementation of international recommendations.

To carry out such an endeavour, from a methodological point of view, starting from an open and cross methodology between domestic and international law, the necessary case study was added to the literature review to evidence what is claimed and to bridge the gap between the theory and practice of rights and the ISHR.

2. Inter-American Commission on Human Rights under the retrospective view: importance of its legacy in the light of the Brazilian experience

Pursuant to Article 41 of the American Convention on Human Rights¹ (ACHR), the promotion, monitoring, and protection of human rights in the region is the highest vocation of the Inter-American Commission, in combining the conciliating, advising, criticising, promoting, protective, and preventive functions. It is a specification of what Article 106 of the Charter of the Organization of American States² provided when it

¹ OAS, *American Convention of Human Rights*, signed at the Inter-American Specialized Conference on Human Rights (San José, Costa Rica, 1969).

² OAS, *Charter of the Organization of American States*, celebrated in IX American International Conference (Bogotá, 1948).

foresaw that there would be “*an Inter-American Commission on Human Rights which primary function will be to promote respect and defense of human rights and to serve as an advisory body to the Organization on such matters,*” which structure, competence, and operation would be – as they indeed were – densified in the Inter-American Convention on Human Rights.³

From this provision of the OAS Charter, in addition to the specification made in the American Convention, there is a system of operation based on the American Declaration of the Rights and Duties of Man, which derives from the mandate set forth in the OAS Charter and thus becomes applicable to all member countries of the Organization. For member countries that have ratified the American Convention, however, the Commission relies more specifically on the American Convention for its analysis. Its mandate is, therefore, twofold.

That is why, even though they have not ratified the Convention, OAS Member States are subject to the Commission’s petition system, as provided for in the IACHR Rules of Procedure and Regulations, which, in these cases, despite assessing infringements to the American Declaration only (pursuant to Article 1 of the IACHR Rules of Procedure⁴ and Articles 51 and 52 of its Regulation),⁵ symbolises an important tool to safeguard rights.

It is from all these faculties, conferred by the OAS Charter or the American Convention, that the Inter-American Commission has been playing an outstanding role in disclosing regional protective parameters related to the safeguarding of human dignity (the so-called inter-American *corpus iuris*). These parameters have enabled the offsetting of national deficits, fostering advances in legislative frameworks and public policies on human rights, as well as prevented setbacks and retreats in the rights protection regime.

In the Brazilian experience, as it will be demonstrated, cases submitted to the Inter-American Commission, by the system provided for in the American Convention, have been showing a significant impact on the amendment to the laws and public policies of human rights, enabling significant internal progress.

It is the analysis of the Brazilian experience in the inter-American petition, whether it derives from the system provided for in the American Convention – after the ratification of the instrument by Brazil in 1992 – or from the OAS Charter itself, which will be firstly discussed in the following topic.

Subsequently, the 2018 Report⁶ issued by IACHR will serve as a critical input to the analysis of the cases, since it contains updated contributions of the human rights scenario in Brazil, originating from two on-site visits to the country.

³ André de Carvalho Ramos, *Processo Internacional dos Direitos Humanos* (São Paulo: Saraiva, 2012), 218.

⁴ IACHR Bylaws: *The Inter-American Commission on Human Rights is an organ of the Organization of American States established to promote the observance and defense of human rights and to serve as an advisory body to the Organization in such matter. 2. For the purposes of these Bylaws, human rights shall mean: a. the rights defined in the American Convention on Human Rights with respect to the States Parties thereto; b. the rights enshrined in the American Declaration of the Rights and Duties of Man, with respect to the other member states.* [OAS, *Rules of Procedure of the Inter-American Commission on Human Rights*, approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013. OAS, Treaty Series, no. 3608/27/79].

⁵ IACHR, *Regulation of the Inter-American Commission of Human Rights*, approved for IACHR on Session 137, from 28 October to 13 November 2009.

⁶ IACHR, *Annual Report of the Inter-American Commission on Human Rights for the year 2018*, to the General Assembly, Washington, D.C. Organization of American States, 2018.

A. Cases against the Brazilian State before the Inter-American Commission on Human Rights

There are about 141 cases⁷ against the Brazilian State that were admitted by the Inter-American Commission from 1970 to 2018. Out of this total, there are cases that have been considered by the Inter-American Commission, the respective reports being published in the Commission's annual report, and there are those – most of them – which are still pending.

From this universe, the intention is to briefly demonstrate the process that was or is in progress before IACHR, the nature of the committed infringements, and to give some recommendations. Also, some results that are not related to the performance of institutional entities will be compared, such as the advocacy actuation profile over the years and its relationship with the growing maturity of the ISHR. Therefore, the impact of the Commission recommendations on the Brazilian domestic scope is being analysed, in a broad sense, that goes beyond mechanisms of reception of international recommendations by institutional entities.⁸

In this endeavour, in view of the analysed cases, the choice was to create a typology of analysis, guided by the nature of the infringed law, didactically bringing together similar cases, warning that the analysis of cases in the categories is not intended, however, to be exhaustive, either quantitatively or qualitatively. In such concern, 10 categories were created, corresponding to cases of: 1) arbitrary detention, torture and murder committed during the authoritarian military regime; 2) violation of the rights of indigenous peoples; 3) rural violence; 4) police violence and other violations by state agents; 5) violation of the rights of children and adolescents; 6) violation of women's rights; 7) racial discrimination; 8) violence against human rights defenders; 9) violation of rights of other vulnerable groups; and 10) violation of social rights.

a) Cases of arbitrary detention, torture and murder committed during the military authoritarian regime⁹

These are cases involving allegations of arbitrary detention and torture committed during the authoritarian military regime, submitted to the review of the Inter-American Commission from 1970 to 1974, except for the *Araguaia guerrilla* (Case 11.552),¹⁰ which was referred to the Commission in 1997, and the case of *Vladimir Herzog et al.* (Case P-859-09),¹¹ which was referred in 2009. Considering that from 1970 to 1974 Brazil was not a signatory to the American Convention¹², these actions were based on the American Declaration of the Rights and Duties of Man. In the category, there is no

⁷ His number corresponds to cases formally admitted by the Inter-American Commission. In addition to the 140 cases admitted, there are petitions against the Brazilian State submitted to the Inter-American Commission (in the initial review process), and there are also petitions requesting provisional remedies.

⁸ Hellen Keller and Alec Stone Sweet, *A Europe of Rights: the impact of the ECHR on national legal systems* (Oxford: Oxford Press, 2008).

⁹ Case 1.684; Case 1.769; Case 1.788; Case 1.789; Case 1.835; Case 1.841; Case 1.844; Case 1.846; Case 1.897, Case 1.552 and Case P-8.509-09

¹⁰ IACHR, Report 33/01, Case 11.552, *Guerrilha do Araguaia* (Julia Gomes Lund e outros), Brazil, 6 March 2001. All IACHR Reports are available at <https://www.oas.org/en/iachr/decisions/merits.asp>.

¹¹ IACHR, Report of admissibility 80/12, Petition P-859-09, *Case Vladimir Herzog and others*, Brazil, 8 November 2012.

¹² The Convention was signed and ratified by Brazil in 1992. The jurisdiction of the Court was recognized only in 1988.

case in which the petition was submitted by a non-governmental organization. The victims of the perpetrated violations are those who, somehow, showed reaction and resistance to the repressive regime that lasted in the country from 1964 to 1985.

Firstly, Case 1684 is worth to be highlighted,¹³ of which three communications were forwarded to the Commission in 1970, denouncing the practice of illegal detention and torture in 1969 and 1970. The first communication of June 25, 1970 denounced the murder of a priest in Recife. The second, on the same date, led the Commission to examine the arbitrary detention and torture of seven people in Belo Horizonte. The third communication, of July 24, 1970, claimed that there were at least 12.000 political prisoners in the country.¹⁴ The communications requested the Commission to carefully investigate the facts they denounced, which pointed to the authoritarian practice of the repressive military regime.

In the same year, the Commission declared the case admissible. By majority vote in 1972, the Inter-American Commission adopted a resolution stating that “*the evidence collected in these cases leads to the strong assumption that in Brazil there are serious cases of torture, abuse and cruel treatment of persons of both sexes that were deprived of their freedom*”.¹⁵ It proposed, at that time, the Brazilian State to start investigating the denounced facts and their processes.

In its answer, the Government of Brazil considered only that the grounds for assumption of human rights violations in the country were insufficient and fragile and lacked consistency. It added that the Commission, pursuant to Article 50 of the Convention, should act discreetly in the process of gathering the information required for the examination of the submitted complaint and that the possibility for the Commission to carry out on-site observation of complaints should be considered an exceptional measure, as it is more costly and depending on the consent of said Government.¹⁶

From such answer, the Inter-American Commission decided to publish, in its 1973 annual report, recommendations addressed to the Brazilian Government.

In addition to Case 1.684, all others submitted to the Inter-American Commission between 1973 and 1974¹⁷ denounced the practice of arbitrary detention and torture by the repressive military regime. However, the Inter-American Commission, while admitting the cases, chose not to publish its conclusions and recommendations in its annual report, and the reasons for this option are not known.

It must also be stated that in 1997, the case of the “*Araguaia guerrilla*” (Case 11.552)¹⁸ was referred to the Inter-American Commission, referring to the disappearance of more than twenty members of the guerrilla group in the 1970s, during military operations in the region. Since 1982, family members have tried unsuccessfully to obtain information on the disappearance of victims. In 2001, the IACHR admitted the case, in 2008 the Commission issued its Merits Report and, on March 26, 2009, referred the case to the IACtHR, which condemned Brazil for the disappearance of

¹³ IACHR, *Report of Admissibility of Case 1.684*, 8 January 1974.

¹⁴ IACHR, *Ten Years of Activities: 1971-1981* (Washington, D.C.: OAS, 1982), 104.

¹⁵ IACHR, *Ten Years of Activities: 1971-1981*, 121.

¹⁶ IACHR, *Ten Years of Activities: 1971-1981*, 127.

¹⁷ IACHR, *Ten Years of Activities: 1971-1981*, 89-100.

¹⁸ IACHR, Report 33/01, Case 11.552, *Guerrilha do Araguaia* (Julia Gomes Lund e outros), Brazil, 6 March 2001.

the Araguaia guerrilla members during military operations in the 1970s, in a judgment issued on November 24, 2010.¹⁹

In addition, in 2009 the *Vladimir Herzog et al.* case (Case 12.879)²⁰ was submitted to the Inter-American Commission, concerning the arbitrary detention, torture and death of journalist Vladimir Herzog in October 1975, and the continuing impunity of the facts, by virtue of amnesty law promulgated during the Brazilian military dictatorship. After the case being admitted in 2012, in 2015, the IACHR Merits Report was issued, and on April 22, 2016, the case was submitted to the IACtHR. On March 15, 2018, a judgment was issued by the Court, holding the Brazilian State liable for violating the American Convention by failing to investigate, prosecute and punish those responsible for the torture and murder of Herzog, as well as for violating the right to know the truth and the right to personal integrity of the journalist's family members.²¹

b) Cases of violation of rights of indigenous people²²

Concerning the theme, Case 7.615²³ had great international impact, concerning the violation of the rights of indigenous peoples in Brazil, particularly the Yanomami communities, submitted to ISHR in 1980. This case is distinguished from the others by being the first case submitted by international non-governmental organizations against the Government of Brazil.

Indeed, in Case 7.615, entities such as the Indian Law Resource Center, American Anthropological Association, Survival International, Anthropology Resource Center, stated that the rights of the Yanomami²⁴ people to life, freedom, security, equality before the law, health and welfare, education, recognition of legal personality, and property had been affronted by the Government of Brazil, in violation of the American Declaration.²⁵

Notwithstanding, between 1979 and 1984, proposals were made for demarcation of areas in Roraima and Amazonas for the *Yanomami* peoples, including the so-called "Yanomami Indian Park", that has never been implemented. These facts, according to the petitioners, implied a violation of the fundamental rights of the Yanomami. Government comments in response to the petitioners' communication²⁶ focused on Brazilian laws on the legal status of Indians in Brazil, their civil and political rights, and government projects to extend the protection to the Indians and their lands.²⁷

¹⁹ IACtHR, *Case of Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 24.11.2010, Série C no. 219. All IACtHR decisions are available at <http://www.corteidh.or.cr/index.php/en/jurisprudencia>.

²⁰ IACHR, Report of admissibility 80/12, Petition P-859-09, *Case Vladimir Herzog and others*, Brazil, 8 November 2012.

²¹ IACtHR, *Case of Vladimir Herzog e outros vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 15 March 2018.

²² Cases 7.615, 11.745, 250-04, 4.355-02.

²³ IACHR, *Resolution of individual cases*, Report 12/85, Case 7.615, Brazil, 5 March 1985.

²⁴ Concerning the Yanomami, in addition to case 7.615, Case 11.745 was submitted to the Inter-American Commission, which consisted of the complaint of slaughter of sixteen Indians in June 1993, because of a confrontation with prospectors.

²⁵ IACHR, *Resolution of individual cases*, Report 12/85, Case 7.615, Brazil, 5 March 1985, at 24-34.

²⁶ Acc. to Notes no. 127, of 05/13/1981, no. 316, of 11/03/1981, no. 101, of 04/14/1982, and no. 38, of 02/03/1985.

²⁷ Antônio Augusto Cançado Trindade, *A proteção internacional dos direitos humanos: fundamentos jurídicos e instrumentos básicos* (São Paulo: Saraiva, 1991), 581.

In view of these considerations, the Inter-American Commission in 1985 admitted the case and decided that there was sufficient evidence to characterise the violation of the right to life, freedom and security, the right to residence and movement, and the right to the preservation of health and safety welfare²⁸. The Commission also decided to recommend the Brazilian Government to adopt Yanomami protection measures, demarcating the “Yanomami Park”, and to conduct education, medical protection, and social integration programmes.

Still about violations of the rights of indigenous peoples, another case of Roraima is worth mentioning. In 2004, the Roraima Indigenous Council (CIR) and the Rainforest Foundation US forwarded petition 250-04,²⁹ alleging violations of the rights of the Ingaricó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples of Raposa Serra do Sol and their members, as a result of (i) unjustified delay (dating from 1977 to 2009) in the demarcation, delimitation and title awarding of Raposa Serra do Sol indigenous territory, and (ii) due to violent incidents, environmental degradation and restrictions on the right of the people to exercise their culture and religion, in addition to their right of movement and residence, caused by the continued presence of non-indigenous people within the territory. In Report 125 of 2010, IACHR concluded that the petition was admissible without analysing the merits of the matter so far.

Finally, the *Xucuru people* case should be highlighted, which in 2018 was reviewed by the IACtHR. Case 4.355-02³⁰ and was referred to the Inter-American Commission in 2002 by the National Human Rights Movement/Northeastern Region Chapter, the Office of Legal Advisory to Popular Organizations (GAJOP), and the Indian Missionary Council (CIMI). The petition denounces the denial of the right to property of the Xucuru indigenous people, due to the delay in the delimitation, demarcation and title awarding of the indigenous ancestral territory and the ineffectiveness of judicial protection aimed at guaranteeing their right to property. After admitting the case in 2009, in 2015, the Commission issued its merits report and on March 16, 2016, the case was submitted to the IACtHR. On February 5, 2018, a judgment was issued, convicting Brazil for its failure to respect indigenous collective property, court protection and judicial guarantees in relation to the Xucuru people.³¹

c) *Cases of rural violence*³²

Initially, it should be noticed that cases of rural violence were referred to the Inter-American Commission mainly by international and national non-governmental organizations. Secondly, it is recorded that most cases in this category are pending before the Inter-American Commission. With these clarifications, we will comment on some of the cases of the universe related to rural violence:

Case 11.287³³ reports the murder of *João Canuto*, president of the Rio Maria Rural Workers Union in the State of Pará, in 1985. The petitioners, in a petition

²⁸ IACHR, *Resolution of individual cases*, Report 12/85, Case 7.615, Brazil, 5 March 1985, at 24-34.

²⁹ IACHR, Report 125/11, Petition 250-04, *Raposa Serra do Sol Indigenous People*, Brazil, 23 October 2010.

³⁰ IACHR, Report of admissibility 98/09, Petition 4355-02, *Xucuru Indigenous People*, Brazil, 29 October 2009.

³¹ IACtHR, *Case of Xucuru people and their members vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 05 February 2018.

³² Cases 11.287, 11.289, 11.405, 11.495, 11.556, 11.820, 11.517, 12.066, 12.200, 12.310, 12.353, 12.478, 12.332, 1.290-04, 1.236-06, 1.330-07, 4.643-02, 462-01 and 4-04.

³³ IACHR, Report 24/98, Case 11.287, *João Canuto de Oliveira*, Brazil, 7 April 1998.

dated of 1994, claimed that the government's response was inadequate. In 1998, the Inter-American Commission approved the final report of admissibility and merits, which was published in the 1997 IACHR Annual Report. Brazil was convicted for violating the rights to life, freedom, security, integrity, and justice. The Brazilian State was recommended to expedite the criminal proceeding related to the case, for payment of compensation to the victims' relatives. In July 1999, the Pará State Executive Branch enacted a decree establishing a special pension payment in favor of the murdered rural leader's widow.

Case 11.289,³⁴ in turn, reports the attempted murder of a young rural worker, José Pereira, at the time of the attempted escape from the slave labor regime to which he was subjected in a farm in Xinguará, State of Pará, in 1989.

The 2018 Report³⁵, when addressing the progress made for implementation of friendly settlement agreement measures, referred to Case 11.289, disclosing that the Brazilian State has implemented actions aimed at proposing amendments to laws for compliance with the National Plan for the Eradication of Slave Labor, besides having made efforts to approve bills related to this issue and having argued that the jurisdiction to judge crimes like slavery should be of the federal courts.

With its first petition dated in 1998, Case 12.066³⁶ discloses charges of slave labour in a farm located in Pará (*Fazenda Brasil Verde*). After the merits and admissibility report being issued by the Commission in 2011, in 2015 the case was referred to the IACtHR, which, on October 20, 2016, issued its first judgment in connection with contemporary slavery and convicting Brazil for its practice.³⁷

In turn, Case 11.478,³⁸ reported to IACHR in 2003, is related to the murder of Sétimo Garibaldi, a rural worker in the State of Paraná, by private militias, hired by landowners, and to the absence of diligent investigations and adequate accountability for the government. After the Commission having issued an admissibility report in 2007, in the same year IACHR ruled on the merits of the case. With insufficient state responses, at the end of 2007 the case was referred to the IACtHR which, on September 23, 2009, convicted Brazil for violating the rights to freedom of association, honour and dignity, and judicial protection and guarantees.³⁹

Case 11.820,⁴⁰ in turn, involves the murder of nineteen members of Movimento dos Trabalhadores Rurais Sem-Terra (Landless Rural Workers Movement) (MST) on April 17, 1996 (*Eldorado de Carajás massacre*). The victims had interrupted a section of highway in the State of Pará (PA-150) when they were violently evicted by military police officers, resulting in the deaths of nineteen people. One hundred and fifty-six military police were indicted, who took part in the operation. The proceeding was filed with ISHR in 1996, with judgment still pending on its merits, after the issuance of the admissibility report by IACHR in 2003.

³⁴ IACHR, Report 95/03, Case 11.289, *José Pereira*, Brazil, 24 October 2003.

³⁵ IACHR, *Annual Report of the Inter-American Commission on Human Rights for the year 2018*, to the General Assembly, Washington, D.C. Organization of American States, 2018.

³⁶ IACHR, Report of admissibility and merits 169/10, Caso 12.066, *Brasil Verde Farm*, Brazil, 03 November 2011.

³⁷ IACtHR, *Case of Workers of "Brasil Verde" Farm vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 20 October 2016.

³⁸ IACHR, Case 11.478, *Sétimo Garibaldi*, Brazil, 24 December 2007.

³⁹ IACtHR, *Case of Sétimo Garibaldi vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 23 September 2009.

⁴⁰ IACHR, Report 21/03, Case 11.820, *Eldorado dos Carajás*, Brazil, 20 February 2003.

The *Camarazal Massacre* case, which took place in June 1997 in Pernambuco, is registered in the system, as Case 1.330-07⁴¹, since 2007. Admitted in 2012, still without judgment on its merits, it is related to the death of two landless rural workers and the attempted murder of six others who were injured, including two children.

Illegal interception and monitoring of telephone lines belonging to Arlei Jose Escher, Dalton Luciano de Vargas, Delfino Jose Becker, Pedro Alves Cabral and Celso Aghinoni – belonging to institutions associated with Movimento dos Trabalhadores Rurais Sem-Terra – were the object of the complaint filed in Case 12.353,⁴² dated in 2000. In 2007, IACHR issued its Merits Report and in the same year the case was submitted to the Court. In 2009, Brazil was convicted of violating the rights of freedom of association, honor and dignity, and judicial protection and judicial guarantees.⁴³

Case 11.556,⁴⁴ filed in 1995 and admitted in 1998, refers to the case called *Corumbiara*, in which, due to an agrarian conflict on the Santa Elina farm (in Rondônia), ten people linked to Movimento dos Trabalhadores Rurais Sem-Terra (MST) were killed by military police officers and more than 100 were injured. The Inter-American Commission, in its final merits report, dated in 2004, convicted the Brazilian State.

Finally, in Case 12.310,⁴⁵ presented in ISHR in 2000, considering the context of rural violence and impunity in Brazil, the Inter-American Commission admitted the case and concluded that the Brazilian State was responsible for violating the right to life, to court guarantees, and court protection, to the detriment of Sebastião Camargo Filho. In its merits and admissibility report dated in 2009, it recommended the Brazilian State to investigate the facts and hold the perpetrators of the violence liable; to indemnify the family members for both pecuniary and non-pecuniary damages; to adopt policies for the eradication of rural violence and the dismantling of illegal armed groups, and to fight against the impunity of human rights violations of people involved in agrarian conflicts, who struggle for an equitable distribution of land.

d) Cases of police violence⁴⁶

Considering that some of these actions are pending before the Inter-American Commission, this study is focused on the submitted complaint, in view of the confidentiality status accepted by the Commission in relation to pending cases.

It should be noted that most cases were submitted to the Inter-American Commission by non-governmental human rights organizations, and some were submitted by the Public Defender's Office and family members.

⁴¹ IACHR, Report of admissibility 70/12, Petition P-1330-07, *Pedro Augusto da Silva, Inácio José da Silva and others*, Brazil, 17 July 2012.

⁴² IACHR, Report of admissibility 18/06, Case 12.353, *Arley José Escher and others (interception of telephone lines of social organizations)*, Brazil, 2 March 2006.

⁴³ IACtHR, *Caso Escher and others vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 06 June 2009.

⁴⁴ IACHR, Report of admissibility 32/04, Case 11.556, *Corumbiara*, Brazil, 11 March 2004.

⁴⁵ IACHR, Report of merits 25/09, Petition 12.310, *Sebastião Camargo Filho*, 19 March 2009.

⁴⁶ Refers to Cases 10.301, 11.285, 11.286, 11.290, 11.291, 11.406, 11.407, 11.409, 11.412, 11.413, 11.414, 11.415, 11.416, 11.417, 11.516, 11.566, 11.598, 11.599, 11.634, 11.694, 11.793, 11.841, 11.852, 11.994, 12.003, 12.008, 12.019, 12.198, 12.227, 12.293, 12.398, 12.426, 12.440, 12.479, 1.113-06, 394-02, 478-07 and 1.342-04. On these, according to the IACHR 2018 Report, the status of compliance with the orders set forth in Article 51 of the American Convention on Human Rights is partial. See: IACHR, Annual Report of the Inter-American Commission on Human Rights for the year 2018, to the General Assembly, Washington, D.C. Organization of American States, 2018.

The petitioners denounce police abuse and violence, involving the unjustified killing of innocent victims, torture, disappearances, injuries, and arbitrary arrests by state agents. They also denounce the insufficient response of the Brazilian State, or even the lack of any response, due to the non-punishment of those responsible for the committed violations.⁴⁷

In summary, in all cases denouncing the violence committed by the military police, the request is the same: the conviction of the Brazilian state to prosecute and punish the agents responsible for the committed violations, as well as to indemnify the victims of the violations in the cases where this has not yet occurred. These petitions highlight the obligation of the Brazilian State to respect, ensure and remedy violations of rights enshrined in the American Convention, pursuant to its Article 1. Impunity infringes the duty to fully guarantee the free exercise of the affected right.⁴⁸

Indeed, in the survey made by IACHR in Brazil in November 2018, the Commission expressed its concern about the country's situation of violence, specifically the increase of incidents involving excessive use of force by the police, given the figures that indicated, only in the State of Rio de Janeiro, a total of 1375 people killed by police from February to December 2018, of which 75% of the fatalities were Afro descendants.⁴⁹

From 1989 to 2003, case 10.301 was in progress at ISHR (*Parque São Lucas* case).⁵⁰ It reports that in 1989, in the 42nd Police Office of São Paulo, 50 prisoners were incarcerated in a 1m x 3m cell in which tear gas was released, resulting in the death by suffocation of eighteen prisoners. Considering the unjustified delay in investigations and punishment and the lack of commitment by the court authorities and Prosecution office to prosecute and punish the perpetrators, the Commission, in 2003, declared the petition admissible and held the Brazilian State liable for the violation of rights to life and personal integrity, as well as the right to court protection.

Among other measures, Brazil was recommended to transfer to the common courts the judgment of crimes committed by military police officers, the punishment of the involved policemen and the payment of indemnity to the relatives of the victims. In accepting the friendly settlement procedure, the Brazilian Government proposed to comply with the aforementioned recommendations. In such concern, the indemnity was paid to the relatives of the victims, as well as Law No. 9299/96, which transfers to the common justice the jurisdiction to prosecute intentional crimes against life committed by military police officers.

Another profoundly serious case of police violence is case 11.291, referred to as the *Carandiru* case.⁵¹ The petition – signed by the Center for Justice and International Law (CEJIL), Human Rights Watch/Americas and the Teotônio Vilela Commission – alleges that, in 1992, 111 prisoners were massacred by police officers at the São Paulo House of Detention, called Carandiru. According to the petitioners, all evidence indicates the occurrence of summary execution of the victims. The case was filed in the system in 1994, and the Inter-American Commission was required, in addition to full remediation measures – including investigation and prosecution, compensation

⁴⁷ Amnesty International, *Beyond despair: an agenda for human rights in Brazil* (1994), 19.

⁴⁸ Robert K. Goldman, “Responsabilidad internacional e impunidad nacional”, in *Comissão internacional de juristas. Derecho internacional de los derechos humanos* (Los Angeles, 1993), 160.

⁴⁹ IACHR, *Annual Report of the Inter-American Commission on Human Rights for the year 2018*, to the General Assembly, Washington, D.C. Organization of American States, 2018.

⁵⁰ IACHR, Report 40/03, Case 10.301, *Parque São Lucas*, Brazil, 8 October 2003.

⁵¹ IACHR, Report 34/00, Case 11.291, *Carandiru*, Brazil, 13 de April de 2000.

for family members, and the deactivation of the Carandiru complex – to convict the State of Brazil for violating the rights to life and physical, mental, and moral integrity and the right to a fair trial and court protection. In its 2000 report on the merits and admissibility, IACHR convicted the state and recommended a thorough, impartial, and effective investigation to be carried out, identifying perpetrators and all victims – directing policies for full remediation to them. In addition, it recommended the development of public policies against prison overcrowding and staff training for peaceful conflict resolution and restoration of order.

Other cases worth to be highlighted are Cases 11.694 and 11.566. Case 11.694, filed in 1996, known as *Nova Brasilia I*,⁵² involves the deaths of 14 people living in the Nova Brasilia slum in Rio de Janeiro, due to police operation in the area on October 18, 1994. It was admitted in 2001 and its merits have not yet been reviewed by IACHR.

Case 11.566⁵³ refers to police violence perpetrated, once again, against residents of the same slum on May 8, 1995. In the same year, a petition was filed with ISHR. In the latter case, with the aim of arresting a drug dealer, the police operation resulted in the deaths of more than ten residents, and during police actions, torture in the form of sexual violence against women was committed by the police. After admitting the case in 1998, IACHR issued a merits report convicting Brazil in 2011. It should be noted that this case was submitted by the Commission to the Inter-American Court in 2015 and that, on February 16, 2017, it convicted Brazil for violations of the American Convention.⁵⁴

In Case 1.113-06,⁵⁵ presented in 2006, the Inter-American Commission granted precautionary measures in favor of approximately 400 persons deprived of their freedom in the 76th Police District of Niterói. Prison overcrowding, the absence of any criterion of separation by categories of prisoners, which is contrary to the principle of individualisation of penalty, poor hygiene conditions, high risk of fire and the absence of health care and possibility of physical activity led the IACHR, in 2006, to request measures to guarantee the life and personal integrity of prisoners. In the subsequent year, an admissibility report was issued, pending consideration of the merits.

Having been filed with ISHR in 2002, Case 394-02⁵⁶ refers to the death and mistreatment of prisoners at the Urso Branco Prison in Rondônia. Due to its seriousness, it has given rise to the granting of successive and increasingly extended provisional measures, since 2002, by the Commission and, later, by the IACtHR, to prevent irreparable damage to the victims. The complaint petition was admitted in an IACHR report dated 2006, which emphasised the granting of provisional measures

⁵² IACHR, Annual Report of the Inter-American Commission on Human Rights for the year 2000, to the General Assembly, Report 36/1, Case 11.694, *Evandro de Oliveira and others*, Brazil, 22 February 2001.

⁵³ IACHR, Annual Report of the Inter-American Commission on Human Rights for the year 1998, to the General Assembly, Report 78/98, Case 11.566, *Favela Nova Brasília*, Brazil, 25 September 1998.

⁵⁴ IACtHR, *Case of Favela Nova Brasília vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 16 February 2017.

⁵⁵ IACHR, Report 36/07, Petition 1113-06, *People deprived of their liberty in the prison of the 76th Police Station (76th DP) in Niterói*, Rio de Janeiro, Brazil, 17 July 2007.

⁵⁶ IACHR, Report of admissibility 81/06, Case 394-02, *Inmates of Urso Branco Prison*, Brazil, 21 October 2006.

and remedies by both the Commission and the Court.⁵⁷ Such measures were again reiterated by the Court in 2008. The case, however, is still pending judgment by the Commission.

Case 478-07⁵⁸ also involves the dramatic situation of persons deprived of their freedom at the Guarujá Public Prison, in São Paulo. On October 26, 2007, the same year in which it received the complaint, the Commission granted provisional remedies in favour of adolescents interned in the Guarujá Public Prison. The situation in the prison continued to worsen, which led the Commission to increase the measures in 2008, the same year in which it declared the case as admissible. Since then, judgment on the merits is pending.

It should be emphasised that, concerning the other cases admitted by the IACHR,⁵⁹ all involve, as the petitioners say, the murder of innocent people, sometimes adolescents, due to the abuse and violence of the military police.

Cases 1.448-06, 1.452-06, 1.458-06 and 65-07 are emphasised⁶⁰ – the first three presented in 2006 and the last one in 2007.⁶¹ Such cases report injuries, disappearances and/or murders committed by the Rio de Janeiro Military Police, between May 2003 and January 2004, in compliance with a “*violent and discriminatory public safety policy*”, as the petitioners say. It is noteworthy that the victims were young (including children and adolescents), African-descendent, who lived in poor neighborhoods (slum or similar) in Rio de Janeiro, who could have been victimised due to their age and their social and racial characteristics. In 2010, IACHR declared the admissibility of cases to be dealt with by the American Convention and the Inter-American Convention to Prevent and Punish Torture, and since then the judgment by the Commission is pending.

Case 12.440, in which an 18-year-old black man and Army soldier was killed by military police officers in 1998, is also worth being highlighted.⁶² Insufficient state responses led to a petition before the ISHR in 2001. In examining admissibility and merit, in a 2009 report, the Commission considered the context of racial discrimination, police violence and impunity. IACHR also pointed out that the investigation and prosecution of the murder of the victim by members of the military police were carried out by police officers, without guarantee of independence, autonomy, and impartiality.

In such concern, in this case the Commission recommended the Brazilian State to carry out appropriate investigations, to provide indemnities to family members, to take measures directed to court and police officers, to avoid actions that would imply racial

⁵⁷ IACtHR, *Case of Urso Branco's Prison*, Provisional measures requested by the Inter-American Commission on Human Rights with respect to the Federative Republic of Brazil, 18 of July 2002.

⁵⁸ IACHR, Report of admissibility 41/08, Petition 478-07, People deprived of their liberty in the public jail of Guarujá, São Paulo, Brazil, 23 July 2008.

⁵⁹ In this regard, it is worth mentioning Provisional Remedy 1489-18, granted by the IACHR on December 31, 2018, concerning the probable homicide of the military police officer André Luiz Moreira da Silva, who disappeared on September 22, 2018, by “corrupt police officers”, who would be part of “militias”.

⁶⁰ The four petitions were filed in the same case under no. 12.778 at the merits stage since they deal with similar facts and apparently illustrate the same pattern of conduct. For more information, see Report no. 126/10.

⁶¹ C IACHR, Report of admissibility 126/10, Petitions P-1448-06 – *Roberto Carlos Pereira de Souza* and *Cristiano da Silva Souza*; P-1452-06 – *Fábio Eduardo Soares Santos de Souza* and *Rodrigo Abilio*; P-1458-06 – *Leandro dos Santos Ventura*, *Fabio dos Santos da Silva* e *Adriano Paulino Martiniano*; P-65-07 – *Wallace Damião Gonçalves Miranda*, *Flavio Moraes de Andrade*, *Eduardo Moraes de Andrade*, *Julio César Pereira de Jesus*, *José Manuel da Silva* and *William Borges dos Reis*, Brazil, 23 October 2010.

⁶² IACHR, Report of admissibility and merits 26/09, Case 12.440, *Wallace de Almeida*, 20 March 2009.

discrimination in police operations, investigations, prosecution or criminal judgment. The 2018 Report, however, diagnosed that the state of compliance with the measures recommended by the Court was partial.

e) Cases of violation of children and adolescent rights⁶³

Case 11.993 refers to the case referred to as *Candelária*: eight children and adolescents were found dead in the vicinity of the Candelária church in Rio de Janeiro in July 1993.⁶⁴ The petition claims that military police officers are responsible for the deaths. The petitioners request the Commission to declare the violation by the Brazilian State of the right to life, the right of the child to special protection, and the right to court protection. It is also required that the Brazilian Government be recommended to take the necessary measures to ensure that those responsible are investigated, prosecuted, and punished, as well as the payment of indemnity to the relatives of the victims.

In the same direction, Case 12.328,⁶⁵ filed in 2000, is related to the claim of torture and mistreatment of interned adolescents at the FEBEM facilities of the Tatuapé complex in São Paulo. In 2002, the case was declared admissible, and in 2004 the IACHR requested provisional remedies to protect the lives and physical integrity of adolescents. There has not yet been a judgment on the merits of the case.

Cases 12.426 and 12.427,⁶⁶ both filed in 2001, refer to the case of the “emasculated boys from Maranhão”, in which children and adolescents have been victims of murder, marked by violence and sexual abuse, culminating in the extraction of the victims’ genitals, in the state of Maranhão. In these cases, in an agreement dated 2005, Brazil recognized the international liability of the State and undertook the prosecution and punishment of those responsible, as well as the adoption of symbolic and pecuniary remediation measures, non-repetition measures and follow-up measures. In a 2006 report, IACHR ended the process by publishing a report announcing the adoption of a friendly settlement.

In addition, Case 897-04,⁶⁷ concerning the alleged illegal detention of two minor children of the Argentine citizen, Alejandro Daniel Esteve, in Brazilian territory, with alleged violations of due process having occurred in the process of international restitution of children. The petition was sent in 2004 to IACHR, which in 2011 declared that the case was admissible.

Finally, a mention is made of Case 12.428,⁶⁸ referring to the case of the employees of the Fireworks Factory in Santo Antônio de Jesus and their families against the Brazilian State, forwarded by IACHR to the Court on September 19, 2018. The case is related to the international liability of the State for violating the right to life of 64 people and the personal integrity of 6 people because of the explosion of a fireworks factory on December 11, 1998, out of which 22 were boys and girls between 11 and 17 years of age. In its report, the Commission recommended the Brazilian State to fully

⁶³ Cases 11.993, 11.702, 12.328, 12.426 and 12.427.

⁶⁴ Amnesty International, *Rio de Janeiro 2003: Candelária e Vigário Geral, 10 anos depois* (2003).

⁶⁵ IACHR, Report of Admissibility 39/02, Petition 12.328, *Teenagers in custody for Febem. Brazil*, 9 October 2002.

⁶⁶ IACHR, Report 43/06, Cases 12.426 e 12.427, *Emasculated boys from Maranhão, Brazil*, 15 March 2006.

⁶⁷ IACHR, Report of admissibility 173/111, Petition 897-04, *Alejandro Daniel Esteve and children, Brazil*, 2 November 2011.

⁶⁸ IACHR, Report of admissibility and merits 25/18, Case 12.428, *Employees of the Santo Antônio de Jesus Firework Factory and their families, Brazil*, 2 March 2018.

remedy the human rights violations through economic indemnities and recognition of non-pecuniary damages to the surviving victims and to the immediate family members of the victims of the explosion. In addition, IACHR recommended Brazil to investigate and clarify the facts to impose penalties on those responsible, as well as the adoption of legislative and administrative measures to prevent similar situations in the future.

In 2020, the IACtHR judged the case, recognizing the responsibility of the Brazilian State for the violation of the rights to life and of the child, to the personal integrity of the child and his/her right to equal protection under the law, the prohibition of discrimination at work, in addition to the violation of the rights to judicial guarantees and judicial protection.⁶⁹

*f) Cases of violence and discrimination against women*⁷⁰

These cases are distinguished from the others by denouncing a specific pattern of violence that reaches women. It is a gender-based violence capable of causing death, injuries or physical, sexual, or psychological distress to women, whether in the public or in the private scope. Thus, it is recognized that the private domain is no longer inaccessible when human rights violations occur. Although this specific pattern of violence is different from the other patterns hitherto examined – in which state agents themselves act as perpetrators in the public scope⁷¹ – the cases resemble the other cases in that they also require the fight against impunity, emphasising the duty of the state to investigate, prosecute and punish those responsible. Some of the cases in this category will be dealt with below and, except for 12.378,⁷² which deals with discrimination and denounces violence against women, the central ground of which is the violation of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, ratified by Brazil on November 27, 1995.

Nevertheless, at the Commission's last visit to the country in November 2019, IACHR approved⁷³ the recent measures adopted by the Brazilian Government, which enacted bills with measures to protect women's rights, on November 19, 2018. The adopted measures included increased penalty in cases of femicide when the perpetrator has failed to comply with protective measures, such as those related to gun possession or the prohibition of photographing or filming, without consent, scenes of nudity or sexual acts.

The petition related to case 12.051 denounces serious violence perpetrated against Maria da Penha Maia Fernandes⁷⁴ by her companion at that time. Attempts at murder and assaults eventually led to irreversible paraplegia in the victim, as well as other injuries. Although convicted by the local court, after fifteen years the defendant was still free, using successive procedural appeals against the condemnatory decision of the Jury. All these reasons led to the filing of a petition before the ISHR in 1998

⁶⁹ IACtHR, *Case of the Workers of the Fireworks Fabric Santo Antônio de Jesus and their relatives vs. Brazil*, Judgment (Preliminary Objection, Merits, Reparations, and Costs), 15 June 2020.

⁷⁰ Cases 11.996, 12.051, 12.263, 1.279-04, 337-03 and 12.378.

⁷¹ IACHR, *Annual Report of the Inter-American Commission on Human Rights for the year 2018*, to the General Assembly, Washington, D.C. Organization of American States, 2018.

⁷² ACHR, Report of admissibility 7/10, Petition 12.378, *Fátima Regina Nascimento de Oliveira and Maura Tatiane Ferreira Alves*, Brazil, 15 March 2010.

⁷³ IACHR, *Annual Report of the Inter-American Commission on Human Rights for the year 2018*, to the General Assembly, Washington, D.C. Organization of American States, 2018.

⁷⁴ IACHR, Annual Report of the Inter-American Commission on Human Rights for the year 2000, to the General Assembly, Report 54/01, Case 12.051 *Maria da Penha Maia Fernandes*, Brazil, 4 April 2009.

seeking to get a state response. In 2001, in an unprecedented decision, the Inter-American Commission declared the case admissible and convicted the Brazilian State for negligence and omission in relation to domestic violence, recommending the State, among other measures, “to interrupt state tolerance and discriminatory treatment with respect to domestic violence against women in Brazil” (IACHR, Case 12.051, April 4, 2001).

It is the first time that a case of domestic violence has led to the conviction of a country under the inter-American human rights protection system.⁷⁵ In compliance with the decision of the IACHR, in Case 12.051 (*Maria da Penha* case), the Brazilian State adopted Law no. 11.340/2006, which establishes mechanisms to restrain and prevent domestic and family violence against women and determined the payment of indemnity to the victim. However, what is clear from IACHR Report 2018 is that this case is still considered by the Court to be partially complied with by the Brazilian State.

Case 12.263 refers to the murder of student Márcia Barbosa de Souza, outside João Pessoa, State of Paraíba, on June 18, 1998. According to the police investigation, the main accused of the crime is a state congressman. Because of his parliamentary immunity at that time, he could only be prosecuted criminally with the prior permission of the State Legislative Assembly. However, the license application was rejected twice, which justified the referral of the case to the Inter-American Commission, given the impunity assured.⁷⁶ A petition was then filed with the ISHR in 2000, which was declared admissible in a 2007 report, and on July 11, 2019, IACHR filed the case with the Court.

Finally, Case 12.378,⁷⁷ which was submitted in 2001, is worth being mentioned. It involves the charge of discrimination against adoptive mothers and their respective children, upon a final judgment rendered by the Federal Supreme Court, in Extraordinary Appeal 197.807, judged in May 2000, who denied the adoptive mother the right to maternity leave. The case was declared admissible in 2010 and has not yet been judged by IACHR.

g) *Case of racial discrimination*

Despite race being a vulnerability that intersects other cases, especially those highlighted in the above-mentioned category of police violence, Case 12.001⁷⁸ – submitted in 1997 –, in the universe of cases under consideration, stands out as being the only case involving complaint of racial discrimination. Notwithstanding, the Commission constantly expresses⁷⁹ concern about the high levels of violence committed against this group, defending the need for the adoption of a citizenship policy focused on the fight against institutional racism, as well as the adoption of an efficient institutional structure capable of assuring to the Afro-descendant population the effective enjoyment of its economic, social, and cultural rights.

The case refers to the racial discrimination suffered by a victim, Simone André Diniz, whose employment was refused because she was black. In 2002, the case was declared admitted and its merits report was published in 2006. The Inter-American

⁷⁵ Flávia Piovesan and Silvia Pimentel, “Conspiração contra a impunidade”, *Folha de São Paulo*, November 25, 2002, <https://www1.folha.uol.com.br/fsp/opiniao/fz2511200210.htm>.

⁷⁶ Flávia Piovesan, “O caso Márcia Barbosa e a imunidade parlamentar”, in *Direitos humanos internacionais: avanços e desafios do século XX*, ed. Jayme B. Lima Júnior (Imprensa: Recife, MNDH, 2001), 161.

⁷⁷ IACHR, Report of admissibility 7/10, Petition 12.378, *Fátima Regina Nascimento de Oliveira* and *Maura Tatiane Ferreira Alves*, Brazil, 15 March 2010.

⁷⁸ CIDH, Relatório de mérito no. 66/06, Caso 12.001, *Simone André Diniz*, Brasil, 21 de outubro de 2006.

⁷⁹ IACHR, Report of Merits 66/06, Case 12.001, *Simone André Diniz*, Brazil, 21 October 2006.

Commission recognized the international responsibility of the State for a particular act committed in violation of the right to equality before the law and non-discrimination. It analysed the racial status in Brazil, the evolution of the anti-racism legal order, and the problems of anti-racism law enforcement in Brazil, especially concerning the evidence and institutional racism. Finally, it determined that the Brazilian State, among other measures, should repair the victim's non-pecuniary and pecuniary damages, officially recognize the international responsibility, and create advertising campaigns against racism, as well as conduct diligent investigation, establishing the truth and applying penalties to the perpetrators.

*b) Cases of violence against human rights defenders*⁸⁰

The definition here is that human rights defenders are all individuals, groups and organs of society who promote and protect universally recognized human rights and fundamental freedoms, as provided for in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Individual Freedoms, adopted by the UN on December 9, 1998. Two of the cases⁸¹, marked by threats, forced disappearances and murders against human rights defenders, will be shown below:

It is emphasized herein the emblematic *Gilson Nogueira Carvalho* case⁸² (Case 12.058), concerning the brutal murder of this human rights defender, lawyer of the Human Rights and Popular Memory Center of Natal, by an extermination group, on October 20, 1996, in the State of Rio Grande do Norte. According to the complaint, dated 1997, the lawyer had prominent action in defense of victims of police violence in the region. He also acted as an assistant to the Public Prosecution Service in proceedings examining the possible existence of an extermination group within the Department of Public Safety of the State of Rio Grande do Norte.

IACHR declared the case admissible in 2000 and, in 2004, assessed the merits of the case, condemning the Brazilian state for violations of court guarantees and protection. In 2005, it decided to refer the case to the Court, which, however, in a judgment issued in 2006, decided to close the case due to insufficient evidence that the Brazilian State had infringed the rights to court guarantees and protection.⁸³

⁸⁰ See Cases 12.058, 12.397, 12.213, 12.308, 12.309, 265-05, 702-03, 1.294-05, 06-07, 1.170-09. All, according to Report 2018, have not been complied in full by the Brazilian State.

⁸¹ Apart from the choice to submit the cases admitted by the Court regarding the violation of the rights of human rights defenders, in 2018 three (3) Provisional Remedies were granted by the IACHR. Provisional Remedy 1262-18, granted by the Commission on November 20, 2018 to the former Congress Representative Jean Wyllys, due to a series of death threats received by the then Representative on the grounds of his sexual orientation and its work performance in favor of the LGBTI community in the country. Also noteworthy is the Provisional Remedy 767-18, granted by the Commission on August 1, 2018, to Monica Tereza Azeredo Benício, who is at risk after denouncing the murder of Marielle Franco, city councilwoman of Rio de Janeiro and defender of human rights, which took place on March 14, 2018. Finally, it is mentioned Provisional Remedy 1358-18, granted on December 7, 2018, to Joana D'Arc Mendes and Mariana Tavares Ferreira. That were both victims of threats related to their work as human rights defenders, more specifically in the search for justice related to the murder of their son, allegedly murdered by police officers.

⁸² IACHR, Annual Report of the Inter-American Commission on Human Rights for the year 2000, to the General Assembly, Report 61/01, Case 12.058, *Gilson Nogueira Carvalho*, Brazil, 3 October 2004.

⁸³ IACHR, *Case of Nogueira de Carvalho and others Vs. Brazil*, Judgment (Preliminary Objection and Merits), 28 November 2006.

In such concern, the Inter-American Commission recommended the Brazilian State to recognize publicly its international responsibility, carry out diligent investigation and possible prosecution of the material and intellectual perpetrators of the violations, compensate the family for pecuniary and non-pecuniary damages, implement measures to recover the historical memory of journalists murdered in Bahia during the 1990s and, finally, adopt a global policy to protect the work of journalists, including eradicating impunities related to aggression and threats to them.

i) Cases of violation of rights of other vulnerable groups⁸⁴

Some cases analysed by the Inter-American Commission refer to violations of rights of other vulnerable groups, such as internees, homeless people, persons deprived of their freedom and the elderly.

Case 12.237⁸⁵ refers to mistreatment, followed by death, to which Damião Ximenes Lopes was subjected while interned in a psychiatric treatment institution – Casa de Reposuo Guararapes – in 1999. Even the family members of Ximenes Lopes attempting to file various appeals, there were no further investigations and, therefore, no liability to the material authors, since it was alleged that the death simply had an “*undetermined cause*”.

The case was submitted to the ISHR in 2009. In 2002 it was admitted and, in 2003, the Commission published its merits report, convicting the Brazilian State. In 2004, the case was referred to the IACtHR. The judgment, of 2006, recognized Brazil’s international liability for violating the victim’s right to life and personal integrity, in addition to the right to court protection and guarantees.⁸⁶

Case 1.198-05⁸⁷ refers to a series of assaults against the lives and personal integrity of 13 homeless people in downtown São Paulo, on October 19 and 22, 2004. In the episode known as “*Sé Massacrè*”, the victims were beaten on the head – some fatally – with pieces of wood and/or iron bars, with strong signs that the perpetrators were state military police officers, resulting in the deaths of 8 people and injuries to 5 other homeless people. In addition, the petition, which dates from 2005, denounced the lack of diligence and bias of the authorities responsible for investigating the facts, noting that, after more than five years from the date of the assaults, the murders and injuries against the alleged victims remained unpunished.

In its 2010 admissibility report, the Inter-American Commission declared the petition admissible with respect to the alleged violation of the American Convention and in accordance with the principle *iura novit curia*, the Commission also decided for admissibility in relation to possible violations of the Inter-American Convention to Prevent and Punish the torture. The merits of the case, however, have not yet been appreciated.

Case 303-05⁸⁸ involves a complaint, also dated 2005, on the conditions of detention and deprivation of freedom under the differentiated disciplinary regime

⁸⁴ Cases 12.237, 1.198-05, 38/10, 303-05, 342-07, 362-09.

⁸⁵ IACHR, Report of Admissibility 38/02, Petition 12.237, *Damião Ximenes Lopes*, Brazil, 9 October 2002.

⁸⁶ IACtHR, *Case of Ximenes Lopes vs. Brazil*, Judgment (Merits, Reparations, and Costs), 04 June 2006.

⁸⁷ IACHR, Report of admissibility 38/10, Petition 1198-05, *Ivanildo Amaro da Silva* and others, Brazil, 17 March 2010.

⁸⁸ IACHR, Report of admissibility 143/11, Petition 303-05, *Mauricio Hernández Norambuena*, Brazil, 31 October 2011.

(RDD) applied to the victim from February 2002 to November 2006. The Commission admitted the case in 2011, which is pending analysis on the merits.

Case 342-07⁸⁹ involves the death of an elderly woman in a privately-owned nursing facility due to alleged negligence and inadequate medical treatment provided in the private clinic, as well as the lack of adequate and effective investigation to clarify the facts, prosecute and punish the responsible. The complaint, made in 2007, was admitted in a report dated 2012 and the merits of the case have not yet been considered.

At last, Case 362-09⁹⁰ is the first to involve transgender rights violations, in view of a denial of sex change surgery in the public health system. The case is in progress in ISHR since 2009, and its admissibility report was issued by IACHR in 2016. The merits are currently pending judgment.

j) Case of violation of social rights⁹¹

Regarding the violation of social rights, the following cases are highlighted. Case 1.073-05⁹² concerning the charge of environmental degradation and risk to human life, personal integrity and health resulting from soil contamination and consequent environmental damage to the detriment of residents of the “Barão de Mauá” (CHBM) Housing Complex, those who worked on the foundations and construction of CHBM, former CHBM residents, and anyone who is currently working or has worked at CHBM. For admissibility purposes, 531 alleged victims were identified.

According to the petitioner, the land on which the housing complex was built had been used as a clandestine industrial waste dump at least since 1973.

Even so, in 1995, authorisation was granted to COFAP and other private companies for the construction of the housing complex in that place by the Municipality of Mauá. In April 2000, when there were already residents in the housing complex, an explosion of a groundwater tank occurred due to soil contamination. It resulted in the death of one of the construction workers and serious injuries and burns in another worker. Only after this incident did state agencies report serious soil contamination and health risks to more than 5,000 residents of the housing estate. The lack of an internal response led to a complaint to the ISHR, dated 2005.

In this case, the Inter-American Commission, in its 2012 admissibility report, considered that the allegations were admissible as regards the right to life, personal integrity and court protection. In addition, the Inter-American Commission considered that the alleged lack and/or manipulation of information on environmental degradation of the land could violate the right to freedom of thought and expression.

Finally, there are also cases involving the issue of registered warrants and the effective payment of amounts owed by the State. Cases 1.050-06⁹³ (submitted in 2006, admitted in 2011), 1.140-04⁹⁴ (submitted in 2004, admitted in 2011), 341-01⁹⁵

⁸⁹ IACHR, Report of admissibility 8/12, Petition P-302-07, *Flávio Mendes Pontes and others*, Brazil, 20 March 2012.

⁹⁰ IACHR, Report 11/16, Petition 362-09, *Luíza Melinbo*, Brazil, 14 April 2016.

⁹¹ Cases P-1.073-05, 1.050-06, 11.040-04, 341-01 and 1.485-07.

⁹² IACHR, Report of admissibility 71/12, Petition P-1073-05, *Residents of the housing complex “Barão de Mauá”*, Brazil, 17 July 2012.

⁹³ IACHR, Report of admissibility 144/11, Petition 1050-06, *Pedro Stábile Neto and other workers of the Municipality of Santo André (Precatory)*, Brazil, 31 October 2011.

⁹⁴ IACHR, Report of admissibility 145/11, Petition 1140-04, *Clélia de Lourdes Goldenberg and Rita de Cassia da Rosa (Precatory)*, Brazil, 31 October 2011.

⁹⁵ IACHR, Report of admissibility 10/12, Petition 341-01, *Márcio Manoel Fraga and Nancy Victor da*

(submitted in 2001, admitted in 2012) and 1.485-07⁹⁶ (submitted in 2007, admitted in 2012) refer to the non-payment of court enforceable securities (registered warrants), even after a long term after the issuance of the securities (more than a decade). Since Brazilian law does not include effective and adequate judicial remedies to ensure the payment of registered warrants owed by the State, the exception provided for in Article 46.2 of the American Convention for its admissibility has been applied to the cases.⁹⁷

This x-ray, which is essential to the analysis of the impact of the recommendations of the Inter-American Commission on Human Rights, is made on the country's constitutionalism, which is analysed herein.

B. Case analysis: impact of recommendations of the Inter-American Commission on Human Rights in light of Brazilian experience

Initially, it is believed that case analysis may firstly disclose clarifying conclusions about the practice of advocacy of International Human Rights Law in Brazil.

To this end, the analysis of the framework of the international actions focused above will adopt as a criterion the demarcation of two distinct periods in Brazilian political history: the period concerning the repressive military regime in force in Brazil from 1964 to 1985, and the period concerning the process of democratic transition, started from 1985.⁹⁸

This classification seems to be necessary because it reflects the significant political changes that occurred in Brazil since 1985, at the beginning of the democratisation process. The transformations, as it will be seen, implied changes related to the own advocacy of the International Human Rights Law, considering that others became the violated rights and others became the social actors involved, that is, a new pattern of conflict emerged upon the democratisation of the country.

If the purpose of the analysis is to evaluate the way in which international human rights law advocacy has been exercised in Brazil, the first focus of analysis should be on the social actors involved therein. Who is proposing these international actions submitted to the IACHR?

Considering the demarcation of the two different periods, it can be observed that during the military regime, from 1964 to 1985, 90% of the communications examined were forwarded by individual or group of individuals – in only one case the communication was forwarded by non-governmental entities. In the second period, regarding the democratisation process, almost all examined cases were referred by non-governmental human rights organizations, domestic or international, and sometimes jointly by these entities.⁹⁹

These data alone illustrate the dynamics of the relationship between the country's democratization process and the greater articulation and organization of the civil society. If, on the one hand, the process of liberalisation of the authoritarian regime allowed the strengthening of civil society, which now had new actors from the creation of numerous non-governmental entities, on the other hand the reinvention of civil

Silva (Precatory), Brazil, 20 March 2012.

⁹⁶ IACHR, Report of admissibility 78/12, Petition 1485-07, *José Laurindo Soares*, Brazil, 8 November 2012.

⁹⁷ In this regard, see Admissibility Report 144/11, related to case 1050-06.

⁹⁸ Alfred Stepan *et. al*, *Democratizing Brazil: problems of transition and consolidation* (Oxford: Oxford Press, 1989).

⁹⁹ Henry J. Steiner, *Diverse partners: non-governmental organizations in the human rights movement, the report of a retreat of human rights activists* (Harvard: Harvard Law University, 1991), 65.

society contributed to the process of democratisation and the gradual formation of a civil regime. It is worthy to realize, from the period of democratisation, the important and crucial role assumed by non-governmental organizations,¹⁰⁰ regarding the defense and protection of human rights, through the advocacy of the international instruments of protection.

The second question then arises: do these international actions denounce the violation of which category of rights? What is the nature of violated rights?

Considering the same time division established for the analysis of advocacy in the first period, regarding the military regime, out of the 10 cases examined, 9 refer to cases of arbitrary detention and torture that occurred during the military authoritarian regime, while one case involves the violation of the rights of indigenous peoples. In the second period, that is, from the democratisation process that began in 1985, it is observed that 53 cases involve police violence (40%).

These data demonstrate that the democratisation process in Brazil was unable to fully interrupt the authoritarian practices of the military repressive regime, showing a reminiscent pattern of systematic violence practiced by the police, which cannot be controlled by the state apparatus. The democratic transition thus discloses marks of an authoritarian continuity.¹⁰¹ The great distinction between authoritarian practices in the military regime and in the process of democratisation lies in the fact that, in the first case, violence was directly and explicitly perpetrated by the authoritarian regime and sustained the maintenance of its own ideological apparatus. In the process of democratisation, systematic police violence presents itself as a result not of an action but of an omission by the state, when it is not able to stop the abuses perpetrated by its agents or give answers.

In addition to the cases of police violence, the remaining cases concerning the period of democratisation reflect violence committed against socially vulnerable groups, such as indigenous peoples, the black population, women, children, and adolescents.

In addition, all cases of human rights violations brought to the attention of the Inter-American Commission, either during the dictatorship or during the period of democratisation, reported violations of civil and/or political rights, without a significant number of relevant complaints related to the violation of social, economic, or cultural rights.¹⁰² As a result, the charges focused primarily on cases of violations of civil and/or political rights.

In this regard, the third question arises: how to characterise the victims of these violations of rights?

As for the victims of these violations, in the first period (from 1964 to 1985), in 90% of the cases examined, the victims were leaders and defenders, all, in general, members of the Brazilian middle class. In the the democratisation process, in 87% of the examined cases, the victims can be considered socially poor people without any prominent leadership, which includes both those who lived as bricklayers, salesmen, clerks, construction workers, mechanics or other low-income activities in Brazil, such

¹⁰⁰ Thomas Buerghental, Dinah Shelton and David Stewart, *International human rights in a nutshell* (West Academic, 1999).

¹⁰¹ Frances Hagopian, "The compromised consolidation: the political class in the Brazilian transition", in *Issues in democratic consolidation: the new South American democracies in comparative perspective*, eds. Scott Mainwaring, Guillermo O'Donnell and Samuel Vaenzuela (Notre Dame: Notre Dame University, 1992), 243, 248.

¹⁰² Ian Martin, *The new world order: opportunity or threat for human rights?* (Harvard: Harvard Law School Human Rights Program, 1993).

as those who lived in slums, streets, roads, prisons or even slave labor in the countryside, with a marked degree of vulnerability.¹⁰³

These data show that, while in the period of military authoritarianism those accused of resisting the regime were tortured or arbitrarily detained for political reasons, in the process of democratisation the pattern of conflict is oriented by another criterion. It is no longer the political criterion, but the economic criterion, with which a socio-political component is combined.¹⁰⁴

It should also be noted that 97% of the cases comprised in the period of democratisation were submitted to the Commission from 1992 on, that is, from the ratification of the American Convention on Human Rights by the Brazilian Government. Ratification is believed to have, to some extent, stimulated the filing of international actions before the Inter-American Commission, especially because, in many of the examined cases, the violations occurred years ago, and only when the Convention was ratified, they were they brought to the examination of the Commission, on the grounds that the Brazilian State was not complying with its international obligations. Moreover, if in the period from 1970 to 1992, that is, in 22 years, 11 actions were filed against Brazil, from the ratification of the American Convention in 1992, and considering the period from 1992 to 2014, in 22 years, therefore, a total of 128 actions have been filed.

It is emphasised herein that cases submitted to the Inter-American Commission have been showing a significant impact on changes in human rights laws and public policies, leading to significant internal progress.

For illustration purposes, six advances are worth being mentioned. Firstly, the cases of police violence were critical for the adoption of Law No. 9.299/96, which ordered the transfer from the Military Justice to the Common Justice of the judgment of intentional crimes against life committed by military police officers.

Secondly, Case 12.263,¹⁰⁵ concerning the murder of a student by a State Representative, was essential for the adoption of Constitutional Amendment No. 35/2001, which restricts the scope of parliamentary immunity in Brazil. Although the Amendment having been enacted before the admissibility report of the case, dated 2007 and the only one filed to this date, the report itself mentions the fact that the case was the subject of meetings of government agencies that, in conjunction with the Brazilian Congress Houses, prompted the approval of the reform of the parliamentary immunity regime in force in Brazil.

Third, Case 12.378,¹⁰⁶ claiming discrimination against adoptive mothers and their children, was also critical to the approval of Law No. 10.421/2002, which extended the right to maternity leave to mothers of adoptive children.

In fourth place, Case 12.051,¹⁰⁷ which resulted in Brazil being convicted of domestic violence suffered by the victim, resulted in the enactment of Law No.

¹⁰³ Exceptions to these cases, by showing victims of prominent social leadership or middle-class members, are cases of violence against human rights defenders (Cases 12.058, 12.397, 12.212, 12.213, 12.308 and 12.309), Case 11.287 (rural leader murder case), and Case 11.996 (Architecture student murder case).

¹⁰⁴ Álvaro Ribeiro Costa, "Anotações sobre a atual situação dos direitos humanos no Brasil", *Arquivos do Ministério da Justiça*, v. 46, no. 182 (Imprensa: Brasília, Ministério da Justiça, 1993).

¹⁰⁵ IACHR, Report of admissibility 38/07, Case 12.263, *Márcia Barbosa de Souza*, Brazil, 26 July 2007.

¹⁰⁶ IACHR, Report of admissibility 7/10, Petition 12.378, *Fátima Regina Nascimento de Oliveira* and *Maura Tatiane Ferreira Alves*, Brazil, 15 March 2010.

¹⁰⁷ IACHR, Annual Report of the Inter-American Commission on Human Rights for the year 2000, to the General Assembly, Report 54/01, Case 12.051, *Maria da Penha Maia Fernandes*, Brazil, 4 April 2009.

11.340/2006 (“Maria da Penha Law”), which creates mechanisms to curb domestic and family violence against women.¹⁰⁸

In fifth, cases involving violence against human rights defenders contributed to the adoption of the National Program for the Protection of Human Rights Defenders; and sixth, cases involving rural violence and slave labor contributed to the adoption of the National Program for the Eradication of Slave Labor and the creation of the National Commission for the Eradication of Slave Labor.

From the provisions above, the inter-American system invokes an action parameter for States, legitimising the forwarding of communications by individuals and non-governmental entities if these international standards are not respected. Therefore, the international system establishes the guardianship, supervision and monitoring of the way states guarantee internationally ensured human rights.

It was also observed that international instruments are a relevant strategy for non-governmental organizations, both domestic and international, by adding a legal language to the speech of human rights. This factor is positive, in the measure as states are called upon to respond more seriously to cases of violation of rights.

The Brazilian experience shows that international action has also helped to publicize human rights violations, which poses the risk of political and moral embarrassment to the violating state and, in such concern, emerges as a significant factor for the protection of human rights. In Kathryn Sikkink’s perception: “*without the international human rights protection regimes and their rules, as well as without the transnational networks that operate to enforce such rules, human rights transformations would not have occurred*”.¹⁰⁹

In this tone, the author adds, “*The work of NGOs makes repressive practices of States more visible and public, requiring an answer from them, which would remain silent*”.¹¹⁰ Perhaps, as James L. Cavallaro points out, this is why: “*In Brazil, the degree of impact has not varied with respect to the importance of the action of the inter-American system in a given case, but the impact has varied as a function of the media and public opinion and to the extent of the pressures suffered by the government. not Brasil*”.¹¹¹

Finally, considering the Brazilian experience, it can be stated that, with the intense involvement of non-governmental organizations, based on articulated and competent litigation strategies, international instruments are powerful mechanisms for promoting the effective strengthening of the protection of human rights in the national sphere.

3. Conclusions: challenges of the Inter-American Commission on Human Rights under the prospective view

As already discussed, the inter-American system can show the peculiarities and specificities of the emancipatory struggles for rights and justice in the Latin American region.

¹⁰⁸ The bill was a result of the work of the Inter-ministry Group created by Decree no. 5,030, of March 31, 2004. It should be noted that in the explanatory memorandum to the aforementioned bill, express reference is made to the Maria da Penha Case, in particular to the recommendations made by the Inter-American Commission.

¹⁰⁹ Stephen C. Ropp and Thomas Risse, “The power of human rights: international norms and domestic change”, in *The power of human rights: international norms and domestic change*, eds. K. Sikkink, S. C. Ropp, T. Risse (Cambridge: Cambridge University Press, 1999), 234.

¹¹⁰ Kathryn Sikkink, “Human rights, principled issue-networks, and sovereignty in Latin America”, *International Organizations*, v. 47, no. 3 (1993): 411.

¹¹¹ James L. Cavallaro, “Toward fair play: a decade of transformation and resistance in international human rights advocacy in Brazil”, *Chicago Journal of International Law (CJIL)*, v. 3, no. 2 (2002): 481.

The Inter-American Commission has been playing an outstanding role in the dissemination of regional protective parameters regarding the safeguarding of human dignity (the inter-American *corpus iuris*), which symbolises a minimum protective floor and not a maximum protective ceiling. Such protective parameters have been enabling the offsetting of national deficits, fostering progresses in legislative frameworks and public policies on human rights, as well as preventing retreats and setbacks in the rights protection regime, as well as empowering social actors in the struggle for rights and for justice.

It must be noticed that in 1978, when the American Convention on Human Rights came into force, many of the Central and South American states were governed by authoritarian regimes. Out of the 11 states that subscribed to the Convention at that time, less than half had democratically elected governments. The human rights agenda was an anti-state agenda, undertaken above all by the civil society. In that historical context, the Inter-American Commission has played an extraordinary role in conducting on site investigations, denouncing, through reports, serious and massive violations of rights during dictatorial regimes in the region, especially in the 1970s. Since then, the Commission has been a relevant actor in the democratisation process in the Americas.

Today, the emergence of democratic regimes also allowed human rights to become state policy. In light of this new context, the challenge of rethinking, reframing, and reinventing the role of the Inter-American Commission as an actor to contribute to the enhancement of human rights, democracy, the rule of law, and the culture of peace in the region is launched, by means of an articulated, integrated and coordinated action involving a greater balance between the duties of promoting, defending, and monitoring human rights.

There are seven proposals aimed at strengthening the IACHR in the contemporary order, focusing the strengthening of the degree of compliance with the recommendations of the Commission:

First, the dialogical capacity of the Inter-American Commission should be strengthened by expanding the adoption of friendly solutions. The capacity for dialogue and cooperation between the Inter-American Commission, the States, the victims, civil society organizations and other actors should be increased through mediation techniques, boosting the search for friendly solutions, which have been showing high levels of compliance with recommendations. To intensify the regional-local dialogue is a prerequisite for ensuring the highest degree of implementation of recommendations and compliance with recommendations of the inter-American system. In this regard, the IACHR Strategic Plan for the period from 2017 to 2021 establishes a program for expanding the use of friendly solutions.

Second, there is a need to strengthen dialogue with domestic institutions and other emerging actors, fostering the joint action for compliance. The driving force of the inter-American system has been the civil society organized through a transnational network, to undertake successful strategic litigation and embody international gains in the domestic scope.

Thirdly, it is necessary to encourage the creation by the States of a platform that, with methodological rigor, systematises all the recommendations of international human rights organs and, thus, allows the measure of their degrees of compliance. In such concern, the UN guide “*National Mechanisms for Reporting and Follow-up: a study of United States Human Rights Mechanisms*”, shall be highlighted, as well as to the Paraguay’s “*Simore*” system and to the observatory of international recommendations of Ecuador.

Fourth, the establishment of national mechanisms for the implementation and oversight of international human rights recommendations should be encouraged, reducing the degree of resistance to enforcement of the recommendations. In this regard, the national laws adopted by Colombia and Peru concerning the implementation of international human rights recommendations are worth highlighting.

Fifth, it is urgent to leverage international supervisory mechanisms. The on-site visits to assess the degree of compliance with international recommendations should be highlighted herein, as well as the creation of the indicator methodology to measure their degree of compliance. It is also critical to create a platform to systematise the impact of the Commission recommendations, highlighting successful experiences in the region. Noteworthy is the recent creation of the IACHR Decision Supervision Coordination in 2017 (*Coordinadora de Seguimiento de Recomendaciones*).

Sixth, to encourage constitutional opening clauses and cooperation programs to promote the culture of human rights is a task for the System. Latin American Constitutions have emerged with open constitutional clauses, highlighting the special hierarchy of human rights treaties, their automatic incorporation and the interpretative rules based on the *pro persona* principle. However, reductionist and restrictive interpretations may compromise the progress and potentiality of open clauses. In this regard, the IACHR Strategic Plan for the period from 2017 to 2021 establishes an expanded program for qualification and promotion of culture in human rights.

Seventh and lastly, it is essential to meet the requirement to foster emancipatory doctrine and case law in the field of human rights inspired by the prevalence of human dignity and the emergence of a new Public Law marked by open statehood in a multilevel legal system. The formation of a new legal culture, based on a new rationality and ideology, emerges as an imperative measure for the affirmation of a transformative regional constitutionalism.

Considering the Latin American context is marked by significant social inequality and systemic violence, it is fundamental to strengthen the capacities of the Inter-American Commission, of the States, and of the civil society for the protection and defense of human rights in the region. The examples of Brazilian success stories, although often (and most of the time) the country is marked by lack of respect and compliance with recommendations, corroborate the transformative role that the system can provide.

It is in such context that strengthening the effectiveness of the inter-American system and complying with its recommendations has the potential to cause an extraordinary impact on paving a transformative regional constitutionalism, contributing to the strengthening of human rights, democracy, and the rule of law in the most inequal and violent region in the world.

The inter-American regional system symbolises the consolidation of a “*regional constitutionalism*”, which aims at protecting and promoting human rights at the inter-American level, with an emancipatory transformative impact, having as its driving force the articulated, competent, and strategic leading role of the civil society in the struggle for rights and justice.