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THE *RIGHT TO THE TRUTH* AS AN AUTONOMOUS RIGHT UNDER THE INTER-AMERICAN HUMAN RIGHTS SYSTEM*

Eduardo Ferrer Mac-Gregor **

Abstract. *The evolution of Inter-American Court case law and the advances made by international bodies and instruments, as well as those in domestic legislation, clearly reveal that the right to the truth is now recognized as an autonomous and independent right. Although this right is not expressly included in the American Convention, it does not prevent the Inter-American Court from being able to examine any alleged violation of this right, and declaring that it has been violated, according to Article 29 of the Pact of San José. The author of this opinion considers that although the right to the truth is mainly related to the right of access to justice derived from Articles 8 and 25 of the American Convention, it should not necessarily remain subsumed in the examination of the other violations of the rights to the judicial guarantees and judicial protection that were declared in a case because this understanding encourages the distortion of the essence and intrinsic content of each right. The author considers that the Inter-American Court should reconsider its criteria regarding the fact that the right to the truth is necessarily "subsumed" in the victims' and their families' right to have the competent State bodies elucidate the violations and corresponding responsibilities, in order to proceed, when appropriate, to declare its violation as an autonomous and independent right. This would clarify the content, dimensions and true scope of the right to know the truth.*

Key Words: *Right to the truth, forced disappearance of persons, Inter-American Court of Human Rights, Inter-American Human Rights System.*

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* Concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot in the Rodríguez Vera & others Case, 2014 Inter-Am. Ct. H.R. Judges Eduardo Vio Grossi and Manuel E. Ventura Robles concurred with Judge Ferrer Mac-Gregor Poisot's Opinion.

** Inter-American Court of Human Rights Judge, Law Professor and Senior Researcher at the *[Institute for Legal Research]* of the *National Autonomous University of Mexico (UNAM).*
Email: *eferrerm@servidor.unam.mx*

Resumen. *Del avance jurisprudencial de la Corte Interamericana de Derechos Humanos y del desarrollo de los órganos e instrumentos internacionales y ordenamientos jurídicos internos, se desprende con claridad que el derecho a la verdad actualmente es reconocido como un derecho autónomo e independiente. Si bien el referido derecho no se encuentra contenido de forma expresa en la Convención Americana, ello no impide que la Corte Interamericana pueda examinar una alegada violación al respecto y declarar su violación, de conformidad con los alcances del artículo 20 del Pacto de San José. El autor considera que el derecho a la verdad si bien está relacionado principalmente con el derecho de acceso a la justicia —derivado de los artículos 8 y 25 de la Convención—, no debe necesariamente quedar subsumido en el examen realizado en las demás violaciones a los derechos referentes a las garantías judiciales y de protección judicial ya que este entendimiento propicia la desnaturalización, esencia y contenido propio de cada derecho. Lo anterior clarificaría el contenido, dimensiones y verdaderos alcances del derecho a conocer la verdad.*

Palabras Clave: *Derecho a la verdad, desaparición forzada de personas, Corte Interamericana de Derechos Humanos, Sistema Interamericano de Derechos Humanos.*

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I. Introduction

1. Unfortunately, the forced disappearance of persons is one of the egregious violations of human rights examined in the case law of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"). Its first contentious case, in 1988, dealt with the forced disappearance of Manfredo Velásquez Rodríguez in Honduras. Since then, of the 182 contentious cases that it has decided to date, the Court has heard 42 cases concerning forced disappearances.[1] Following this first case, the Inter-Amer-

[1] Velásquez Rodríguez Case, 1988 Inter-Am. Ct. H.R. (ser.C) No. 4; Godínez Cruz Case, 1989 Inter-Am.Ct.H.R. (ser.C) No. 5; Neira Alegría & Others, 1995 Inter-Am. Ct. H.R. (ser.C) No. 20; Caballero Delgado & Santana, 1995 Inter-Am. Ct. H.R. (ser.C) No. 22; Paniagua Morales & Others Case, 1998 Inter-Am. Ct. H.R. (ser.C) No. 37; Castillo Páez Case, 1997 Inter-Am. Ct. H.R. (ser.C) No. 34; Garrido & Baigorria Case, 1996 Inter-Am. Ct. H.R. (ser.C)

ican Court has emphasized that the practice of forced disappearance violates numerous provisions of the Convention and "constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. The existence of this practice, moreover, evinces a disregard of the duty to organize the State in such a manner as to guarantee the rights recognized in the Convention."[2]

2. It is within the context of case law on forced disappearances that the Court has affirmed the existence of a "right of the victim's family to know his fate and, if appropriate, where his remains are located, [which] represents a fair expectation that the State must satisfy with the means available to it"[3] since its first contentious case. The Court has also indicated that withholding the truth about the fate of a victim of a forced disappearance entails a form of cruel and inhuman treatment for the nearest relatives,[4] and that this

No. 26; Blake Case, 1998 Inter-Am. Ct. H.R. (ser.C) No. 36; Benavides Cevallos Case, 1998 Inter-Am. Ct. H.R. (ser.C) No. 38; Durand & Ugarte Case, 2000 Inter-Am. Ct. H.R. (ser.C) No. 68; El Caracazo Case, 1999 Inter-Am. Ct. H.R. (ser.C) No. 58; Trujillo Oroza Case, 2000 Inter-Am. Ct. H.R. (ser.C) No. 64; Bámaca Velásquez Case, 2000 Inter-Am. Ct. H.R. (ser.C) No. 70; 19 Tradesmen Case, 2004 Inter-Am. Ct. H.R. (ser.C) No. 109;Molina Theissen Case, 2004 Inter-Am. Ct. H.R. (ser.C) No. 106; Serrano Cruz Sisters Case, 2005 Inter-Am. Ct. H.R. (ser.C) No. 120; Mapiripán Massacre Case, 2005 Inter-Am. Ct. H.R. (ser.C) No. 134; Gómez Palomino Case, 2005 Inter-Am. Ct. H.R. (ser.C) No. 136; Blanco Romero & Others Case, 2005 Inter-Am. Ct. H.R. (ser.C) No. 138; Pueblo Bello Massacre Case, 2006 Inter-Am. Ct. H.R. (ser.C) No. 140; Goiburú & Others Case 2006 Inter-Am. Ct. H.R. (ser.C) No. 153; La Cantuta Case, 2006 Inter-Am. Ct. H.R. (ser.C) No. 162; Heliodoro Portugal Case, 2008 Inter-Am. Ct. H.R. (ser.C) No. 186; Tiu Tojín Case, 2008 Inter-Am. Ct. H.R. (ser.C) No. 190; Ticona Estrada & Others Case, 2008 Inter-Am. Ct. H.R. (ser.C) No. 191; Anzualdo Castro Case, 2009 Inter-Am. Ct. H.R. (ser.C) No. 202; Radilla Pacheco Case, 2009 Inter-Am. Ct. H.R. (ser.C) No. 209; Chitay Nech & Others Case, 2010 Inter-Am. Ct. H.R. (ser.C) No. 212; Cárdenas & Ibsen Peña Case, 2010 Inter-Am. Ct. H.R. (ser.C) No. 217; Gomes Lund & Others Case, 2010 Inter-Am. Ct. H.R. (ser.C) No. 219; Gelman Case, 2011 Inter-Am. Ct. H.R. (ser.C) No.221; Torres Millacura & Others Case, 2011 Inter-Am. Ct. H.R. (ser.C) No. 229; Contreras & Others Case, 2011 Inter-Am. Ct. H.R. (ser.C) No. 232; González Medina & Family members Case, 2012 Inter-Am. Ct. H.R. (ser.C) No. 240; Río Negro Massacres Case, 2012 Inter-Am. Ct. H.R. (ser.C) No. 250; Massacres of El Mozote & nearby places Case, 2012 Inter-Am. Ct. H.R. (ser.C) No. 252; Gudiel Álvarez & Others Case, 2012 Inter-Am. Ct. H.R. (ser.C) No. 253; García & Family members Case, 2012 Inter-Am. Ct. H.R. (ser.C) No. 258; Osorio Rivera & Family members Case, 2013 Inter-Am. Ct. H.R. (ser.C) No. 274; Rochac Hernández & Others Case, 2014 Inter-Am. Ct. H.R. (ser.C) No. 285, and Rodriguez Vera & Others Case, 2014 Inter-Am. Ct. H.R. (ser.C) No. 287.

[2] Velásquez Rodríguez Case, 1988 Inter-Am. Ct. H.R. (ser.C) No. 4, para. 158 and Osorio Rivera & Family members Case, 2013 Inter-Am. Ct. H.R. (ser.C) No. 274, para. 114.

[3] Velásquez Rodríguez Case, 1988 Inter-Am. Ct. H.R. (ser.C) No. 4, para. 181 and Rochac Hernández & Others Case, 2014 Inter-Am. Ct. H.R. (ser.C) No. 285, and Rodriguez Vera & Others Case, 2014 Inter-Am. Ct. H.R. (ser.C) No. 287, para. 140.

[4] Trujillo Oroza Case, 2002 Inter-Am. Ct. H.R. (ser.C) No. 92, para. 114 and Rochac Hernández & Others Case, 2014 Inter-Am. Ct. H.R. (ser.C) No. 285, para. 122.

violation of personal integrity may be linked to a violation of their right to know the truth.[5] The members of the disappeared person's family have the right to know the facts being investigated and that those responsible will be prosecuted and punished, as appropriate.[6]

3. This first ruling formed the basis for what is known today as "*the right to the truth" or "the right to know the truth"*. Since then, the Inter-American Court has gradually begun to recognize its existence, as well as its content and its two dimensions of application (individual and collective).

4. Thus, the Inter-American Court has considered that the relatives of victims of gross human rights violations and society as a whole have the right to know the truth, and must therefore be informed of what happened.[7] In Inter-American Court case law, the right to know the truth has been considered both a right that States must respect and ensure, and a measure of reparation that States are obligated to comply with. This right has also been recognized in several United Nations instruments and by the General Assembly of the Organization of American States.[8] In 2006, pursuant to a resolution of the Com-

[5] Anzualdo Castro Case, 2009 Inter-Am. Ct. H.R. (ser.C) No. 202, para. 113 and Gudiel Álvarez & Others Case, 2012 Inter-Am. Ct. H.R. (ser.C) No. 253, paras. 301 and 302.

[6] Blake Case, 1998 Inter-Am. Ct. H.R. (ser.C) No. 36, para. 97 and Rochac Hernández & Others Case, 2014 Inter-Am. Ct. H.R. (ser.C) No. 285, para. 140.

[7] Bámaca Velásquez Case, 2002 Inter-Am. Ct. H.R. (ser.C) No. 91, paras. 76 and 77 and García & Family members Case, 2012 Inter-Am. Ct. H.R. (ser.C) No. 258, para. 176.

[8] United Nations, High Commissioner for Human Rights, Study on the right to the truth, U.N. Doc. E/CN.4/2006/91 (2006); Organization of American States, General Assembly, Resolutions: AG/RES. 2175 (XXXVI-O/06) (2006), GA/RES. 2267 (XXXVII-O/07) (2007); GA/RES. 2406 (XXXVIII-O/08) (2008); GA/RES. 2509 (XXXIX-O/09) (2009), and GA/RES. 2595 (XL-O/10) (2010), AG/RES. 2662 (XLI-O/11) (2011), AG/RES. 2725 (XLII-O/12) (2012), AG/RES. 2800 (XLIII-O/13) (2013), GA/RES. 2822 (XLIV-O/14) (2014) in the Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher, (E/CN.4/2005/102) of 18 February 2005. Similarly, the former Commission on Human Rights of the United Nations, in the 2005 Updated Set of principles for the protection and promotion of human rights through action to combat impunity, established, inter alia, that: (i) every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes (principle 2); (ii) the State must preserve archives and other evidence concerning violations of human rights and humanitarian law and facilitate knowledge of those violations in order to preserving the collective memory from extinction and, in particular, to guard against the development of revisionist and negationist arguments (principle 3); (iii) Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate (principle 4), and (iv) States must take appropriate action, including measures necessary to ensure the independent and effective operation of the judiciary, to give effect to the right to know. Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary In any case, State must ensure the preservation of, and access to archives concerning violations of human rights and humanitarian law (principle 5). In this regard, cf. Updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1) of 8 February 2005.

mission on Human Rights, the United Nations High Commissioner for Human Rights prepared a study on the right to the truth. In this study, the High Commissioner concluded that the right to the truth is "an inalienable and autonomous right," "closely linked to the State's duty to protect and guarantee human rights and to the State's obligation to conduct effective investigations into gross human rights violations and serious violations of humanitarian law and to guarantee effective remedies and reparation;" but also, "closely linked with other rights, such as the right to an effective remedy, the right to legal and judicial protection, the right to family life, the right to an effective investigation, the right to a hearing by a competent, independent, and impartial tribunal, the right to obtain reparation, the right to be free from torture and ill-treatment, and the right to seek and impart information."[9]

5. Nevertheless, as indicated in paragraph 510 of the Judgment, in most cases, "the Court has considered that the right to the truth 'is subsumed in the right of the victim or the members of his family to obtain the elucidation of the events that violated the victim's rights and the corresponding responsibilities from the competent State organs through the investigation and prosecution established in Articles 8 and 25(1) of the Convention.'" On only one occasion, that of the case of *Gomes Lund et al. (Guerrilla de Araguaia) v. Brazil*, has the Court expressly declared a violation of the right to the truth as an autonomous right, which meant a violation of Article 13 of the American Convention in relation to Articles 1(1), 8(1) and 25 of this international treaty.[10]

6. I present this concurring opinion because I consider that in light of the present stage of Inter-American Court case law, and the advances made in international human rights law and in the laws and case law of various States Parties to the Convention concerning the right to know the truth, in this case the Court could have declared an autonomous violation of this right (as it did previously in the *case of Gomes Lund et al. v. Brazil*) rather than subsuming it in Articles 8 and 25, as it did in this judgment. Bearing in mind that 29 years have passed since the events took place and the relatives of most of those who disappeared have not received any assurance of the truth as to what happened, in this Judgment, the Inter-American Court stated that "*the State has been unable to provide a definitive and official version of what happened to the presumed victims,*" despite the investigations conducted and the measures undertaken.[11] Hence, I consider that the Court case law can evolve in such a way that

[9] United Nations, High Commissioner for Human Rights, *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 (2006), paras. 55 to 57.

[10] *G*omes Lund & Others Case, 2010 Inter-Am. Ct. H.R. (ser.C) No. 219, para. 201 and sixth operative paragraph, which establishes that: "The State is responsible for the violation of the right to freedom of thought and expression recognized in Article 13 of the American Convention on Human Rights, in relation to Articles 1(1), 8(1) and 25 of this instrument, owing to the violation of the right to seek and receive information, and also of the right to know the truth about what happened" (underlining added).

[11] Paras. 299 and 511 of the Judgment.

strengthens the full recognition of the right to know the truth, acknowledges the autonomy of this right, and establishes its content, meaning and scope with increased precision. For greater clarity, this opinion is divided into the following sections: (i) the evolution of the *right to the truth* in the case law of the Inter-American Court (paras. 7-15); (ii) the evolution of this right in other international organs and instruments and domestic legal systems (paras. 16-22), and (iii) a conclusion (paras. 23-29).

II. The Evolution of the *Right to the Truth* in the Case Law of the Inter-American Court of Human Rights

1. The case of *Castillo Páez v. Peru* in 1997 marks the first time the Inter-American Commission brought before the Court the alleged violation of the right to the. The Court indicated that this "refer[red] to the formulation of a right that does not exist in the American Convention, although it may correspond to a concept that is being developed in doctrine and case law, which has already been disposed of in this Case through the Court's decision to establish Peru's obligation to investigate the events that produced the violations of the American Convention."[12] Subsequently, in the case of *Bámaca Vélasquez v. Guatemala* in 2000, the Court recognized that the State's actions prevented the victims' next of kin from knowing the truth about the fate of the victim. However, it clarified that "the right to the truth [was] subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention."[13]

2. The following year, the State acknowledged the violation of the right to the truth in the case of *Barrios Altos v. Peru*.[14] Meanwhile, the Commission correlated the right to the truth not only to Articles 8 and 25 of the American Convention, but also to Article 13, as regards the right to seek and receive information.[15] The Court considered that the surviving victims, their families and the families of the victims who died were prevented from knowing the truth about the events that took place in Barrios Altos, but evoked the fact that this right is subsumed in the right of the victim or his relatives to obtain the elucidation of the illegal acts and the corresponding responsibilities from the State's competent organs, through the right to investigation and prosecution established in Articles 8 and 25 of the Convention.[16]

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[12] Castillo Páez Case, 1997 Inter-Am. Ct. H.R. (ser.C)No. 34, para. 86.

[13] Bámaca Vélasquez Case, 2000 Inter-Am. Ct. H.R. (ser.C) No. 70, paras. 200-201.

[14] Barrios Altos Case, 2001 Inter-Am. Ct. H.R. (ser.C) No. 75, para. 46.

[15] *Id.* para. 45.

[16] *Id.* paras. 47-49.

3. Inter-American case law reveals that the Court began to link the right to know the truth (referring to it as the "*right to know what happened*") to the State's obligation to investigate human rights violations, to punish those responsible, and to fight against impunity.[17] This idea was reinforced in the judgment on reparations and costs in the case of *Bámaca Vélasquez v. Guatemala*, which cited the work done by the United Nations on everyone's right to the truth, and recognized that this is also a right of the members of the victim's family and of society as a whole.[18] In addition, the judgment indicated that this right leads to the victims' expectation for reparation from the State.[19]

4. In 2005 and 2006, in the cases of *Blanco Romero et al. v. Venezuela*, *Servellón García et al. v. Honduras*, *the Pueblo Bello Massacre v. Colombia* and *Montero Aranguren et al. (Retén de Catia) v. Venezuela*, the Court held that the right to the truth was not "a separate right enshrined in Articles 8, 13, 25 and 1(1) of the [American] Convention," but rather that it "was subsumed in the right of the victim or his relatives to obtain the elucidation of the wrongful acts and the corresponding responsibilities from the State's competent organs, through investigation and prosecution."[20] Nevertheless, the Court reiterated that the

[17] Paniagua Morales & Others Case, 2001 Inter-Am. Ct. H.R. (ser.C) No. 76, para. 200; Villagrán Morales & Others Case, 2001 Inter-Am. Ct. H.R. (ser.C) No. 77, para. 100; Cantoral Benavides Case, 2001 Inter-Am. Ct. H.R. (ser.C) No. 88, para. 69 and Bámaca Velásquez Case, 2002 Inter-Am. Ct. H.R. (ser.C) No. 91, para. 74.

[18] Bámaca Velásquez Case, 2002 Inter-Am. Ct. H.R. (ser.C) No. 91, para. 76. The Court has ruled similarly in subsequent cases such as: Bulacio Case, 2003 Inter-Am. Ct. H.R. (ser.C) No. 100, paras. 114-115; Molina Theissen Ca, 2004. Series C No. 108; paras. 81 and 82; Case of 19 Tradesmen v. Colombia. Merits, reparations and costs. Judgment of July 5, 2004. Series C No. 109, paras. 188 and 261; Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs. Judgment of November 25, 2006. Series C No. 160, paras. 347 and 440; Case of Escué Zapata v. Colombia. Merits, reparations and costs. Judgment of July 4, 2007. Series C No. 165, para. 165; Case of González et al. ("Cotton Field") v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of November 16, 2009. Series C No. 205, para. 388; Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs. Judgment of September 1, 2010. Series C No. 217, para. 225; Case of Gelman v. Uruguay. Merits and reparations. Judgment of February 24, 2011. Series C No.221, para. 192; Case of Luna López v. Honduras. Merits, reparations and costs. Judgment of October 10, 2013. Series C No. 269, para. 156; Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of May 19, 2014. Series C No. 277, para. 250, and Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs. Judgment of October 14, 2014. Series C No. 285, para. 234.

[19] *Cf. Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 76.

[20] *Cf. Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs.* Judgment of November 28, 2005. Series C No. 138, para. 62; *Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C No. 152, para. 76; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 220, and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, para. 55.

next of kin of victims of gross human rights violations have the right to know the truth.[21]

5. In the other cases of possible violations of the right to the truth have been alleged and examined, the Court has not expressly indicated that it does not consider this right to be autonomous. However, it has stated that it considers this right subsumed in the right of the victim or his relatives to obtain the elucidation of the wrongful acts and the corresponding responsibilities from the State's competent organs through investigation and prosecution when analyzing a violation of Articles 8 and 25,[22] or under the obligation to investigate when ordered as a form of reparation.[23]

6. In 2007, in the case of *Zambrano Vélez et al. v. Ecuador*, the Court recognized the principle of complementarity between the extrajudicial truth resulting from a truth commission, and the judicial truth arising from a judicial ruling or judgment. In this decision, the Court established that "a Truth Commission […] can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society," but these "historical truths […] should not be understood as a substitute to the obligation of the

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[21] *Cf. Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs.* Judgment of November 28, 2005. Series C No. 138, para. 95. *See also, Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C No. 152, para. 195; *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 220.

[22] See, for example, *Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 166; *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 180; *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 25, 2010. Series C No. 212, para. 206, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 26, 2013. Series C No. 274, para. 220. In another series of cases the Court also indicated that it was not in order to rule on the alleged violation of Article 13 in relation to the right to the truth. *Cf. Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 147; *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, paras. 119 and 120; *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011 Series C No. 232, para. 173, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012 Series C No. 252, para. 298. Moreover in some case, the Court has established that the right to the truth is subsumed in Articles 8(1), 25 and 1(1) of the Convention, but this consideration has not been included in the specific reasoning set out in the operative paragraph. *Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, para. 291, and *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of February 27, 2012 Series C No. 240, para. 263.

[23] *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 148, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 234

State to ensure the judicial determination of individual and state responsibilities through the corresponding jurisdictional means, or as a substitute to the determination, by this Court, of any international responsibility." The Inter-American Court explicitly established that these are "determinations of the truth which are complementary between themselves, since they all have their own meaning and scope, as well as particular potentialities and limits, which depend on the context in which they take place and on the cases and particular circumstances objects of their analysis."[24] The Court has applied these criteria in later cases.[25]

7. In the case of *Anzualdo Castro v. Peru* in 2009, the Court had to decide on a specific request to declare an autonomous violation of the right to the truth. According to the representatives and the Commission that presented this request, this right was related to those contained in Articles 1(1), 8, 13 and 25 of the American Convention.[26] In this regard, the Inter-American Court reiterated that in cases of forced disappearance, the relatives of the disappeared person "are entitled to have the facts investigated and the responsible are prosecuted and punished. The Court has recognized that the right to the truth of the relatives of victims of serious human rights violations is framed within the right of access to justice. Furthermore, the Court has based the obligation to investigate into the facts as a means for redress, on the need to repair the violation of the right to know the truth in the specific case." In addition, the Court has established that "the right to know the truth represents a necessary effect for it is important that a society knows the truth about the facts of serious human rights violations[,]" "by means of the obligation to investigate human rights violations and, on the other hand, by public dissemination of the results of the criminal and investigative procedures," as well as by the establishment of "Truth Commissions, which can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society." Based on the above, the Court concluded that, owing to the passage of time "the whole truth about the facts or his whereabouts [of the victim] have not been determined. Since the moment of his disappearance, State agents have adopted measures to hide the truth of what happened […]."

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[24] *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 128.

[25] See, *inter alia*, *Case of Gudiel* Álvarez *et al. (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 298, and *Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 176.

[26] Previously, in the *Case of the La Rochela Massacre*, the representatives had presented the same arguments in relation to Article 13. However, the Court rejected this, indicating that "the right to the truth was subsumed in [the violation of] Articles 8 and 25 of the Convention." *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 147.

"The domestic criminal proceedings had not provided effective recourses to determine the fate or whereabouts of the victim, or to guarantee the right to access justice and know the truth, by means of the investigation and possible punishment of the responsible, and the full reparation of the consequences that resulted from the violations." This constituted a violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention.[27] The Court also considered that the case did not reveal specific facts that could result in a violation of Article 13 of the Convention.[28] Thus, this establishes the criterion to define a violation of this article as requiring specific circumstances and facts that violate the right to seek and receive information, and consequently, the right to the truth, and not only the right to an effective investigation.[29]

8. Along the same lines, in the case of *Gomes Lund et al. (Guerrilla de Araguaia) v. Brazil* in 2010, the Inter-American Court established that "all persons, including the next of kin of victims of serious human rights violations, have the right to know the truth."[30] However, contrary to its case law up until that time, the Court declared it a violation of the right to the truth.[31] The Court considered that the right to the truth was related to access to justice, as well as to the right to seek and receive information recognized in Article 13 of the American Convention. This conclusion was reached due to the impossibility of the relatives of victims of forced disappearance to obtain information on the military operations during which their loved ones disappeared by means of judicial actions regarding access to information.

9. In 2012, in the case of *Gudiel* Álvarez *et al. ("Diario Militar") v. Guatemala*, the Court examined the right to the truth within the context of the right of the next of kin to personal integrity. In this case, the violation of the right to know the truth and the right of access to information was alleged, owing to the discovery of a Guatemalan military intelligence document known as the "*Diario Militar,"* which contained information on the disappearance of the victims,

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[27] *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, paras. 118, 119, 168 and 169.

[28] *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 120.

[29] *Case of Anzualdo Castro v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 120.

[30] *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, paras. 200 and 201. See footnote 11 of this opinion *supra*.

[31] The operative paragraphs of the Judgment indicate that the "State is responsible for the violation of the right to freedom of thought and expression recognized in Article 13 of the American Convention on Human Rights, in relation to Articles 1(1), 8(1) and 25 of this instrument, owing to the violation of the right to seek and receive information, and also of the right to know the truth about what happened." *Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, sixth operative paragraph.

and of the Historical Archive of the National Police, both of which had been concealed from the Historical Clarification Commission (CEH) despite the Commission's numerous requests to the military and police authorities for information.[32] In that case, the Court stressed the fact that several of the family members were not allowed to know the historical truth about what happened to their loved ones through the CEH owing to the State authorities' refusal to hand over information.[33]

III. The Evolution of this Right in Other International Organs and Instruments and Domestic Legal Systems

1. As mentioned previously, various resolutions of the United Nations and the Organization of American States haves recognized the right to the truth.

2. In particular, the United Nations has recognized the existence of the right to the truth in declarations made by the General Assembly,[34] the Sec-

[32] The Court did not admit that the right of access to information (Article 13 of the Convention) had been violated, because the denials of information were not related to the specific request addressed by the presumed victims to the State authorities to obtain this information, but rather constituted ways to obstruct the investigations (insofar as they related to requests for information made to the Ministry of Defense by the State authorities in charge of the investigation). And the Court analyzed this when ruling on the investigations into the forced disappearances as a violation of Articles 8(1) and 25(1) of the American Convention. *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 269.

[33] The Court "stresse[d] that, the appearance of the *Diario Militar* in 1999 and the Historical Archive of the National Police in 2005, both through unofficial channels […], revealed that the State had withheld information from the CEH with regard to the facts of the case. This, together with the impunity that persist[ed] in this case […], allow[ed] the Court to conclude that the next of kin ha[d] been prevented from knowing the truth through either judicial or extrajudicial channels." The Court considered that these facts constituted a violation of Articles 5(1) and 5(2) to the detriment of the members of the victims' families. *Cf. Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, paras. 300 and 302. However, the Court made a distinction between this case and the *Case of García and family members v. Guatemala*, which was based on similar facts. In the latter, the Court considered that the CEH had possessed sufficient evidence to make a specific determination about Mr. García, and also, that total impunity did not exist, because two of the perpetrators had been convicted by the courts and two of the masterminds were being prosecuted. Therefore, the Court did not find it necessary to make an additional ruling on the alleged violation of the right to the truth alleged by the representatives. *Cf. Case of García and family members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 177.

[34] In some of its resolutions, the General Assembly of the United Nations has expressed profound concern for the anguish and sorrow of the families affected by forced disappearances. *Cf.* General Assembly of the United Nations. Resolutions No. 3220 (XXIX) of 6 November 1974, No. 33/173 of 20 December 1978, No. 45/165 of 18 December 1990, and No. 47/132 of 22 February 1993. It has also spoken out with regard to the importance of determining the

retary-General[35] and the Security Council,[36] as well as in numerous resolutions and reports prepared and published by UN agencies dealing in human rights.[37] Thus, the United Nations High Commissioner on Human Rights indicated that the right to the truth was an autonomous, inalienable and independent right, because "the truth is fundamental to the inherent dignity of the human person." He also asserted that:

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truth with regard to cases of genocide, war crimes, crime against humanity, and gross violations of human rights. *Cf.* General Assembly of the United Nations. Resolutions No. 55/118 of 1 March 2001, No. 57/105 of 13 February 2003, No. 57/161 of 28 January 2003 and No. 60/147 of 21 March 2006.

[35] The Secretary-General of the United Nations has recognized the existence of the right to the truth in his bulletin entitled "*Observance by United Nations forces of international humanitarian law*," establishing the rule that the United Nations will respect the right of the families to know about the fate of their sick, wounded and deceased relatives, and emphasizing the importance of the truth in transitional justice. *Cf.* United Nations, Secretary-General's Bulletin. *Observance by United Nations forces of international humanitarian law.* ST/SGB/1999/13. 6 August 1999, Section 9.8, and Report of the Secretary-General of the United Nations. *The rule of law and transitional justice in conflict and post-conflict societies.* S/2011/634. 12 October 2011.

[36] The Security Council of the United Nations has issued resolutions stressing the importance of determining the truth with regard to crimes against humanity, genocide, war crimes and gross violations of human rights. *Cf.* Security Council resolutions No. 1468 (2003) of 20 March 2003, No. 1470 (2003) of 28 March 2003, and No. 1606 (2005) of 20 June 2005.

[37] See, for example, that in 1981, the Working Group on Enforced Disappearances recognized the right of families to know the whereabouts of the victim as an autonomous right. First report of the Working Group on Enforced Disappearances. *Cf.* Report of the Working Group on Enforced Disappearances. E/CN.4/1435. 22 January 1981, para. 187. In 1995, in his eighth annual report to the Commission on Human Rights of the United Nations Economic and Social Council, the Special Rapporteur on States of Emergency concluded that the right to the truth had achieved the status of a customary norm. *Cf.* Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities. *The Administration of Justice and the Human Rights of Detainees: Question of Human Rights and States of Emergency*. E/CN.4/Sub.2/1995/20. 20 June 1995, paras. 39 and 40. In 2005, the United Nations High Commissioner on Human Rights reaffirmed the right to the truth of the victims and their family members. *Cf.* Commission on Human Rights of the United Nations. *Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia.* E/CN.4/2005/10. 28 February 2005, para. 5. The former Commission on Human Rights of the United Nations ruled on the right to the truth, emphasizing the importance of respecting and guaranteeing the right to the truth regarding the enactment of amnesty laws and the right of the next of kin of disappeared persons to know the whereabouts of their loved ones. *Cf.* Commission on Human Rights of the United Nations. Resolutions No. 1989/62 of 8 March 1989, No. 2002/60 of 25 April 2002, No. 2005/35 of 19 April 2005, and No. 2005/66 of 20 April 2005. The Human Rights Council of the United Nations has recognized the importance of respecting and ensuring the right to the truth in order to fight impunity and protect human rights, and has also stressed the importance of the international community's recognizing the right of victims, their families, and society as a whole to know the truth about gross violations of international humanitarian law and human rights. *Cf.* Human Rights Council of the United Nations. Resolutions No. 9/11 of 24 September 2008 and No. 12/12 1 October 2009.

> The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them. In cases of enforced disappearance, missing persons, children abducted or born during the captivity of a mother subjected to enforced disappearance, secret executions and secret burial place, the right to the truth also has a special dimension: to know the fate and whereabouts of the victim.[38]

3. The International Committee of the Red Cross (ICRC) has asserted that the right to the truth is a rule of international customary law applicable in both international and internal armed conflicts, so that each party to the conflict must take all feasible measures to account for the persons reported missing as a result of armed conflict and must provide their family members with any information it may have on their fate.[39]

4. Declarations have also been issued on the right to the truth at the regional level. At the 28th Summit of Heads of State held in Asunción on June 20, 2005, the States members and associated States of the Common Market of the South (MERCOSUR) adopted a declaration in which they reaffirmed the right to the truth of the victims of human rights violations and their families.[40] Meanwhile, the European Union has ruled on the right to the truth in its resolutions on missing persons,[41] the disarmament and demobilization of paramilitary groups, and within the context of peace negotiations.[42]

5. Lastly, the General Assembly of the Organization of American States (OAS) has "recognize[d] the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promoting and protecting human rights," in numerous resolutions adopted from 2006 to date, specifically on the right to the truth.[43]

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[38] *Cf.* Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 of 9 January 2006, paras. 57 and 59.

[39] *Cf.* Resolution II of the XXIV International Conference of the Red Cross and Red Crescent (Manila, 1981). See also: Rule 117 in Henckaerts, Jean Marie and Doswald-Beck, Louise. *Customary International Humanitarian Law, Volume I, Rules*, Cambridge Press University, 2005, p. 421.

[40] *Cf.* Joint communiqué of the Presidents of the States members and associated States of MERCOSUR of June 20, 2005, at the XXVIII Summit of Heads of State held in Asunción, Paraguay.

[41] *Cf.* European Parliament. Resolution on missing persons in Cyprus, of 11 January 1983.

[42] Conclusions of the Council of the European Union on Colombia, 3 October 2005, Luxemburg, para. 4.

[43] *Cf.* General Assembly of the Organization of American States, Resolutions: AG/RES. 2175 (XXXVI-O/06) of June 6, 2006, AG/RES. 2267 (XXXVII-O/07) of June 5, 2007, AG/RES. 2406 (XXXVIII-O/08) of June 3, 2008, AG/RES. 2509 (XXXIX-O/09) of June 4, 2009, AG/RES. 2595 (XL-O/10) of June 8, 2010, AG/RES. 2662 (XLI-O/11) of June 7,

6. In addition, the International Convention for the Protection of All Persons from Enforced Disappearance explicitly recognizes "the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person."[44] In addition, the Updated Set of principles for the protection and promotion of human rights through action to combat impunity recognizes and develops "the inalienable right to know the truth," as regards both the victims and their families, and society. The principles expressly establish that "[i]rrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate."[45]

7. Furthermore, the right to the truth has been recognized in the domestic law, constitutional courts and jurisdictional organs of various States Parties to the Convention.[46] Of particular importance for this case is the fact that,

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2011, AG/RES. 2725 (XLII-O/12) of June 4, 2012, AG/RES. 2800 (XLIII-O/13) of June 5, 2013, AG/RES. 2822 (XLIV-O/14) of June 4, 2014.

[44] *Cf.* International Convention for the Protection of All Persons from Enforced Disappearance, article 24. Similarly, article 32 of the Protocol Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I) recognizes the right of families to know the fate of their relatives; while the Geneva Conventions of 12 August 1949 include several provisions that impose on the parties in conflict the obligation to resolve the problem of disappeared combatants and establish a central identification mechanism. *Cf.* Protocol Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 12 August 1977, and articles 16 and 17 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949; articles 18, 19 and *ff.* of the Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, and article 15, 16 and *ff.* of the Geneva Convention (I) for the Amelioration of the Condition of the Wounded in Armies in the Field of 12 August 1949.

[45] Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add.1, of 8 February 2005, Principles 1 to 5.

[46] See, for example, *ARGENTINA*: Decision of the Federal Criminal and Correctional Chamber of the Federal Capital of September 1, 2003, in Case No. 761 "E.S.M.A., Facts reported that allegedly took place in the Naval Engineering School"; Supreme Court of Justice of the Nation. *Case of Suárez Mason, Carlos Guillermo.* Judgments 321:2031 of August 13, 1998, and Supreme Court of Justice of the Nation. *Case of the Naval Engineering School.* Judgment 311:401 of March 29, 1988; *COLOMBIA*: Constitutional Court. Cases T-249/03 of January 20, 2003, and C-228 of April 3, 2002; on the intrinsic relationship between the right to reparation and the right to the truth and justice (Judgment C-715 of 2012); the disregard of the right to the truth in norms that do not establish the loss of benefits due failure to confess all the offenses in the justice and peace proceedings (Judgment C-370 of 2006); the right to the truth and the provision of information to the relatives of a victim, as well as public access to the records in cases of final judgments in the justice and peace proceedings (Judgment C-575 of 2006); the scope, purpose, dimensions and dual connotation of the right to the truth (Judgments C-370 of 2006, C-454 of 2006, C-1033 of 2006, T-299 de 2009, C-753 of 2013, C-872 of 2003, C-579 of 2013, C-180 de 2014 and C-936 of 2010); its subjective and objective

at least as of 2002, the Colombian Constitutional Court has indicated that in cases of forced disappearance "interest exists in knowing the truth and establishing individual responsibilities,"[47] and that the right to the truth sur-

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nature (Judgment C-872 of 2003) and its basic contents (Judgment C-936 of 2010). In addition, its collective dimensions has been referred to (Judgments C-370/06 and C-454 of 2006); its relationship to the clarification of the circumstances of displacement (Judgments T-327 of 2001, T-882 of 2005, T-1076 of 2005, T-367 of 2010). Reference has also been made to guarantees that ensure its exercise (Judgment C-872 of 2003); its relationship to the participation of the victim in criminal proceedings based on enforced displacement (Judgment T-367 of 2010), and the way in which the victims of disciplinary offenses that constitute violations of international human rights law and international humanitarian law have the right to the truth and to the execution of disciplinary justice (Judgment C-666 de 2008); *Mexico*: First Chamber/Jurisprudence 40/2013. Heading: *Direct* amparo *in criminal matters. The victim of the offense is legitimated to apply for this when paragraphs on the reparation of the harm in the final judgment are contested.* 10th session, First Chamber, S.J.F. and its Gazette, Section XII, July 2013, Volume 1, p. 123. Isolated ruling. T.C.C. I.90.P.61, Heading: *Forced disappearance of persons. The fact that the district judge does not admit the application for* amparo *does not prevent the relatives of disappeared persons from exercising their right to know the truth and the progress of the investigations, by obtaining copies of the corresponding preliminary investigation.* 10th session, T.C.C., Gazette S.J.F., Section 10, September 2014, Volume III, p. 2312; and Isolated Judgment, T.C.C. XXVII.1. (VIII Region), Heading: *Reparation of the harm to the victim of the offense. Content of this fundamental right (Legislation of the state of Chiapas),* 10th session, T.C.C., S.J.F. and its Gazette, Section XXIV, September 2013, Volume 3, p. 2660; and *Peru:* Constitutional Court. *Case of Genaro Villegas Namuche.* Judgment of March 18, 2004. Case file No. 2488-2002-HC/TC.

[47] The Constitutional Court of Colombia (judgment T-249/03, paras. 15 to18), indicated that:

"The eradication of impunity for the offense of forced disappearance is in the interests of society as a whole. To satisfy this interest, it is necessary to know the whole truth about the events, and that the corresponding individual and institutional responsibilities be recognized. To this end, both the interest in knowing the truth and the attribution of individual and institutional responsibilities for the facts exceeds the sphere of the individual interest of the victims. To the contrary, they constitute real general and prevailing interests under article 1 of the Constitution.

Indeed, public awareness of the facts, the identification of individual and institutional responsibilities, and the obligation to redress the harm caused are useful mechanisms to create awareness among the public about the magnitude of the harm caused by the offense. […]

The right to the truth and to justice are rights that have a significant individual value (for the victim and his family), but under certain circumstances, they acquire a collective character. This collective character has different dimensions, reaching the level of society as a whole when the foundations of civilized society and the basic elements of the legal order —peace, human rights, and restriction and rational use of military force— are threatened and compliance with the State's basic functions is jeopardized. Peace is built on the basis of respect for human rights, control of the excessive use of force, and achievement of collective security. The fact that peace is a right and a binding obligation supposes a collective interest in knowing and preventing anything that endangers it. The proposed interpretation —the one that excludes the interest of society, because it is represented by the State— signifies an inadmissible restriction of the right to the truth and to justice, which reducing the possibilities of achieving peace in Colombia. Furthermore, it results in a disproportionate restriction of the right of the resi-

rounding the offense of forced disappearance signifies the right to know the final fate of the disappeared person.[48]

IV. Conclusion

1. The evolution of Inter-American Court case law and the advances made by international bodies and instruments, as well as those in domestic legislation, clearly reveal that the right to the truth is now recognized as an autonomous and independent right. Although this right is not expressly included in the American Convention, it does not prevent the Inter-American Court from examining any alleged violation of this right, and declaring that it has been violated. According to Article 29(c) of the Pact of San José, no provision of the Convention can be interpeted as "precluding other rights or guarantees that are inherent in the human personality, or derived from representative democracy as a form of government."[49] In this regard, it should be underscored that, as indicated in the preceding paragraph, the right to the truth has been recognized in Colombian law and is considered part of the *right to reparation, to the truth and to justice,* as a necessary corollary to achieve peace.

2. Nevertheless, the author of this opinion considers that although the right to the truth is mainly related to the right of access to justice derived from Articles 8 and 25 of the Convention, it should not necessarily remain subsumed in the examination of the other violations of the rights to judicial guarantees and judicial protection that were declared in a case[50] because this understanding encourages the distortion of the essence and intrinsic content of each right.[51] Even though the right to the truth is fundamentally contained in the right of access to justice,[52] the right to the truth may affect different

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dents of the country to achieve peace, and know that their constitutional rights are protected and that the obligations established by law are met. Lastly, it entails denying the possibility of effective participation in controlling the exercise of the State's powers."

[48] Constitutional Court of Colombia. Judgment C-370 of 2006.

[49] On the basis of this provision, violations of the right to identity —which are not explicity recognized in the Convention either— have been recognized and declared. *Cf. Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 112; *Case of Contreras et al. v. El Salvador. Merits, reparations and costs.* Judgment of August 31, 2011. Series C No. 232, para. 117, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 117.

[50] Paras. 509 to 511 of the Judgment.

[51] Something similar occurs, for example, by subsuming Article 25 (Right to judicial protection) to the consequences of the violation of Article 8(2)(h) (Right to a Fair Trial): the right to appeal the judgment before a higher court) of the American Convention. In this regard, see the "second part" of my concurring opinion the *Case of Liakat Ali Alibux v. Suriname*. *Cf. Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, second part.

[52] *Cf.* See, *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988.

rights recognized in the American Convention[53] depending on the particular context and circumstances of the case, as the Court acknowledged in the case of *Gomes Lund et al. (Guerrilla de Araguaia) v. Brazil* concerning the right of access to information (Article 13 of the Convention), and in the case of *Gudiel* Álvarez *et al. ("Diario Militar") v. Guatemala* concerning the right to personal integrity (Article 5 of the Convention).

3. Based on the above and in view of the evolutive nature of Inter-American case law on this issue and the advances made by international bodies and instruments (including the OAS General Assembly[54]) and in domestic legal systems (as in the case of Colombia),[55] I consider that the Court should reconsider its criteria regarding the fact that the right to the truth is necessarily "subsumed" in the victims' and their families' right to have the competent State bodies clarify the violations and the corresponding responsibilities in order to proceed, when appropriate, to declare its violation as an autonomous and independent right. This would clarify the content, dimensions and true scope of the right to know the truth.

4. In the instant case, after 29 years, the victims are still waiting for the events to be clarified. The State still questions the forced disappearance of most of the victims. Despite the creation of a truth commission to investigate the events, and several judicial decisions, as indicated in paragraph 510 of the Judgment,[56] there is still no official version of what happened, and

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Series C No. 4, para. 181; *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 201; *Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, para. 48; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 148; *Case of La Cantuta v. Peru. Merits, Reparations and costs.* Judgment of November 29, 2006. Series C No. 162, para. 222; *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of August 12, 2008. Series C No. 186, paras. 243 and 244, and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs.* Judgment of April 3, 2009. Series C No. 196, para. 117.

[53] In this regard, in his *Study on the right to the truth,* the United Nations High Commissioner for Human Rights pointed out that different international resolutions and instruments have recognized the right to the truth as being linked to the right to seek and receive information, the right to justice, the obligation to combat impunity for human rights violations, the right to an effective judicial remedy, and the right to privacy and family life. In addition, it has been linked to the right to integrity of the members of the victim's family (mental health), the right to obtain reparation in cases of gross human rights violations, the right not to be subjected to torture or ill-treatment and, in some circumstances, the right of children to receive special protection. *Cf.* Report of the Office of the United Nations High Commissioner for Human Rights. *Study on the right to the truth*, U.N. Doc. E/CN.4/2006/91 of 9 January 2006.

[54] See *supra* para. 20, and footnote 43 of this opinion.

[55] See *supra* para. 22, and footnotes 46 and 47 of this opinion.

[56] Specifically, when analyzing the argument concerning the violation of the right to the truth, the Court indicated: "511. In this case, even though 29 years have passed since the events, the truth about what happened to the victims in this case and their fate is still unknown. The Court also underlines that, since the events occurred a series of actions have been revealed that have facilitated the concealment of what happened and prevented or delayed its clarification

both the families of the disappeared victims, and the victims who survived the events, have been constantly faced with a denial of these events ever taking place. In addition, in the judgment, "the Court also underline[d] that, since the events occurred, a series of actions have been revealed that have facilitated the concealment of what happened and prevented or delayed its clarification by the judicial authorities and the prosecutors."[57]

5. In addition, it should be stressed that in the context of forced disappearances, the right to know the fate of the disappeared victim is an essential component of the right to the truth. The uncertainty about what happened to their loved ones is one of the main causes of mental and moral suffering of the relatives of the disappeared victims (*supra* para. 2). In this case, this uncertainty has been partially resolved for only the families of Ana Rosa Castiblanco Torres and Carlos Horacio Urán Rojas 29 years after the events. Although some investigations have been conducted recently, the Court concluded that, for many years the State had failed to carry out a genuine, coordinated and systematic investigation to discover the whereabouts of those who disappeared and clarify what happened.[58]

6. It should not be forgotten that the Judgment expressly establishes that "the State acknowledges its responsibility by omission for the failure to investigate these facts"[59] and that "despite the different investigations and judicial proceedings that have been opened, the State has been unable to provide a final and official version of what happened to the presumed victims 29 years ago, and has not provided adequate information to disprove the different indications that have emerged concerning the forced disappearance of most of the victims."[60]

7. Consequently, the author of this opinion considers that, in this judgment, the Court could have declared the autonomous violation of the right to know the truth —as it did previously in the case of *Gomes Lund et al*—.

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by the judicial authorities and the prosecutors. In addition, despite the creation of an extrajudicial commission and the efforts made by the courts to establish the truth of what occurred, the Court stresses that the conclusions of the Truth Commission's report have not been accepted by the different State organs supposedly responsible for the execution of its recommendations. In this regard, the Court recalls that the State argued before the Court that this commission was unofficial and that its report did not represent the truth of what happened (*supra* para. 80). Thus, the State's position has prevented the victims and their families from the realization of their right to the establishment of the truth by this extrajudicial commission. In the Court's opinion, a report such as that of the Truth Commission is important, but complementary, and does not substitute the State's obligation to establish the truth by means of judicial proceedings. The Court stresses that, 29 years after the events occurred, there is no official version of what happened to most of the victims in this case (underlining added).

[57] Para. 510 of the Judgment.

[58] Paras. 478 to 485 and 513 of the Judgment.

[59] Para. 299 of the Judgment.

[60] Para. 299 of the Judgment.

(Guerilla de Araguaia) v. Brazil.[61] I believe that this right can be validly violated autonomously and does not need to be subsumed in the violations of the rights contained in Articles 8 and 25 of the American Convention as declared in the judgment. The right to know the truth is now an autonomous right recognized by different international bodies and instruments and in domestic legal systems. In the future, this may lead the Inter-American Court to consider the violation of this right independently, which would in turn contribute to clarifying its content and scope.

[61] As recognized in para. 511 of the judgment in the *Case of Gomes Lund et al.*, "the Court declared an autonomous violation of the right to the truth that, owing to the specific circumstances of that case, also constituted a violation of the right of access to justice and an effective remedy, and a violation of the right to seek and receive information, recognized in Article 13 of the Convention." See also *supra* notes 10 and 31.