

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

www.lrwc.org; lrwc@portal.ca; Tel: +1 604 738 0338; Fax: +1 604 736 1175

3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Honduras: International Law Duties to Investigate Serious Human Rights Violations June 2016¹

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and others who promote human rights and the rule of law internationally by providing support to lawyers and other human rights defenders in danger because of their advocacy. LRWC is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Introduction

This summary provides a brief overview of State duties under international law to investigate and punish unlawful killings as such duties apply to Honduras, focusing on the thematic reporting and jurisprudence of the Inter-American and United Nations (UN) human rights systems.²

The Inter-American Commission on Human Rights (IACHR) reported in December 2015 that homicide rates in Honduras are among the highest in the world, with a murder rate of between 66.4 and 68 murders per 100,000 people in 2014, including many children and youth.³ In a country with a population of approximately 8.5 million people, there were 4,266 murders during the first ten months of 2015 – this is an average of almost a murder per hour, every day.

The IACHR uses the term “structural impunity” to describe the situation in which at least 80% of murders in Honduras go unpunished.⁴ The impact of this extreme level of violence is experienced particularly by “[human rights] defenders, indigenous peoples, women, children, adolescents and young people, LGBT people, migrants, *campesinos* from the Bajo Aguán,

¹ This summary was prepared by Catherine Morris, Heather Neun and Gail Davidson drawing on Matthew Stacey, “The Duty of the Philippines Government to Investigate Extra-judicial Killings,” for Lawyers’ Rights Watch Canada, 2007, http://www.lrwc.org/ws/wp-content/uploads/2012/03/LRWC.Duty_to_Investigate.Philippines.Sept_.07.pdf; “Re: Judge Baltasar Garzón: Formal Complaint for Consideration and Action from LRWC, ECCHR, ALRC, LWBC, CCR, FIDH, NLG, IADL & OMCT,” 2010, <http://www.lrwc.org/ws/wp-content/uploads/2012/03/Garzon-UA-to-SRs-LRWC.pdf>; and CEJIL, *Debida Diligencia en la Investigación de Graves Violaciones a Derechos Humanos*. Buenos Aires, Argentina (2010).

² The European human rights system has a substantial body of law on the duty to investigate, but it is not included in this paper. For more detail on the European jurisprudence, see *ibid*.

³ Inter-American Commission on Human Rights, Situation of Human Rights in Honduras, OAS: IACHR, 31 December 2015, Executive Summary, <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>, para 2.

⁴ Inter-American Commission on Human Rights, Situation of Human Rights in Honduras, OAS: IACHR, 31 December 2015, Executive Summary, <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>, para. 8.

journalists and media workers, and justice operators.”⁵ The IACHR described the situation of impunity in Bajo Aguán as “alarming.” Causal factors for the violence identified by IACHR include “an inadequate judicial response that fuels impunity, corruption, and high levels of poverty and inequality.”⁶ The IACHR found a lack of effectiveness on the State’s part in addressing human rights complaints in Bajo Aguán, “especially in conducting a proper investigation and identifying those presumed to be implicated.”⁷ Human Rights Watch’s 2014 review of investigations in this region concluded that they “do not meet minimum due diligence standards”. When carried out, investigations progress slowly and ignore the victims’ relatives, and they fail to: pursue lines of inquiry conducive to clarifying what happened; interview witnesses or perform autopsies; and secure key evidence, such as the weapon used.⁸

International Law Duties to Provide Remedies for Violations of the Right to Life

As a member of the United Nations (17 December 1945) and of the Organization of American States (1948), Honduras has agreed to respect the rights to life guaranteed by the *Universal Declaration of Human Rights* (UDHR) and the *American Declaration on the Rights and Duties of Man* (ADRDM). As a party to the UN *International Covenant on Civil and Political Rights* (ICCPR)⁹ and the *American Convention on Human Rights* (ACHR),¹⁰ Honduras has accepted the twin legal obligations imposed by those treaties to protect the right to life of all persons within its territory and to prevent, punish and remedy violations. The duty to conduct effective investigations that result in the identification and punishment of those responsible for violations is a key component of the State duty to protect the right to life. The State’s duty to investigate and prosecute serious human rights violations arises from the obligation to protect and guarantee the rights to judicial guarantees and judicial protection under Articles 1(1), 8, and 25 of the ACHR. The failure to fulfill these obligations results in impunity, defined as “the overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for those responsible for violating” ACHR-protected rights.¹¹ The UN Human Rights Committee has noted that impunity may be “an important contributing element in the recurrence of ... violations,” and has emphasized that the State obligation to provide an effective remedy pursuant to Article 2(3) of the ICCPR may in appropriate cases require guarantees of non-repetition and changes in relevant laws and practices.¹² The jurisprudence of the IACtHR has a particular emphasis on non-repetition as a remedy directed to society as a whole, including legislative and other measures towards transformation of cultures and institutions.¹³

⁵ *Ibid*, para. 3.

⁶ *Ibid*, p 11.

⁷ *Ibid*, para 171.

⁸ *Ibid*, para 173, citing Human Rights Watch, *There Are No Investigations Here: Impunity for Killings and Other Abuses in Bajo Ajuán, Honduras*, February 12, 2014.

⁹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p 171.

¹⁰ Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, available at: <http://www.refworld.org/docid/3ae6b36510.html>.

¹¹ IACtHR, *Case of Ivcher Bronstein v Peru*, Judgment of February 6, 2001. Series C No.74, para. 186.

¹² Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para 16, 18, available at: <http://www.refworld.org/docid/478b26ae2.html>.

¹³ See the jurisprudence cited in H. Sofía Galván Puente, “Legislative measures as guarantees of non-repetition: a reality in the Inter-American Court, and a possible solution for the European Court,” *Revista IIDH*. 49(2009): 69-106, available at: <http://www.corteidh.or.cr/tablas/r24578.pdf>.

The Duty to Investigate: Essential to Protection of the Right to Life

As observed by the IACtHR, “[w]hen the right to life is not respected, all the other rights lack meaning.”¹⁴ The duty to investigate is essential to protect the right to life,¹⁵ which is a non-derogable, *jus cogens* norm protected by “international and regional treaties, customary international law, and by domestic legal systems globally.”¹⁶

American Convention on Human Rights (ACHR)

Guarantees of the right to life and to remedies for violations thereof are enshrined in Articles 4.1 and 1 of the ACHR, ratified by Honduras 9 May 1977.

Article 1 Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 4 Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

The Inter-American Court of Human Rights (IACtHR) has unequivocally confirmed, on many occasions, the duty of States under the ACHR to investigate extra-judicial killings as part of the overarching duty to ensure the enjoyment of the right to life.

In the *Myrna Mack Chang*¹⁷ case, the IACtHR ruled that State parties to the ACHR have a duty to investigate violations of the “inalienable” right to life arising from their duty to protect that right. With regard to the duty to investigate extra-judicial executions, the IACtHR ruled:

156. In cases of extra-legal executions, it is essential for the States to effectively investigate deprivation of the right to life and to punish all those responsible, especially when State agents are involved, as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.

157. In this regard, safeguarding the right to life requires conducting an effective official investigation when there are persons who lost their life as a result of the use of force by agents of the State.

¹⁴ IACtHR, *Case of Myrna Mack-Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 152.

¹⁵ Inter-American Court of Human Rights (IACtHR), *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment, 5 July 2006, para 63-66, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_150_ing.pdf.

¹⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, A/HRC/32/39/Add.4, xx June 2016, available at: <http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>.

¹⁷ *Ibid.*

The IACtHR further determined that a failure to punish violations of a protected right was in itself a violation of the ACHR obligations. In *Velasquez Rodriguez*,¹⁸ the IACtHR held:

176. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.

The jurisprudence of the IACtHR makes it clear that the ACHR imposes a positive duty on ratifying States to conduct a competent and effective investigation when individuals have been killed within the State's jurisdiction. Effective investigations are necessary to protect the right to life.¹⁹ A pattern of State failure to conduct serious and effective investigations creates a climate of structural impunity incompatible with the right to life.

Under the ACHR, States have a negative obligation not to deprive persons of their lives, and a positive obligation to "adopt all appropriate measures to protect and preserve the right to life," through active protection by the State, "not only [by] its legislators, but all State institutions, and those who must protect security, be these its police forces or its armed forces." This includes the obligation to "adopt all necessary measures, not only to prevent, try, and punish deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents."²⁰ The IACtHR has also made it clear that violations of any person's rights under the ACHR "carried out by an act of public authority or by persons who use their position of authority is imputable to the State."²¹ In addition, violations carried out by private persons "can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."²²

There are five general principles that must guide an investigation to ensure effective access to justice.²³ (i) the investigation has been developed by competent authorities and professionals using appropriate procedures; (ii) the investigation is timely;²⁴ (iii) the investigation is conducted in an independent and impartial manner; (iv) the investigation is exhaustive; and (v) the investigation guarantees the respect and participation of the victims and their families at all stages of the investigation.²⁵

¹⁸ IACtHR, *Case of Velasquez Rodriguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 172.

¹⁹ *Supra* note 14, paras. 156, 157.

²⁰ *Supra* note 14, para. 153.

²¹ IACtHR, *Case of Velásquez-Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 164.

²² *Ibid*, para. 172.

²³ CEJIL. *Debida Diligencia en la Investigación de Graves Violaciones a Derechos Humanos*. Buenos Aires, Argentina (2010), at p. 22.

²⁴ The failure to immediately initiate an investigation, including the timely preservation and collection of evidence or identification of eye witnesses, represents a lack of due diligence. IACtHR. *Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 249 at para. 189.

²⁵ The IACtHR has recognized the right and central value of their participation, based on their right to access justice and ensure the State complies with its obligation to investigate, to their benefit and that of the society: *Supra* note 22 at p. 33) and IACtHR, *Case of Juan Humberto Sanchez vs. Honduras*, Preliminary Objections, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 184.

The IACtHR has also stipulated that the duty to investigate must be:

- undertaken in a serious manner and not as a mere formality preordained to be ineffective;²⁶ and
- assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation.²⁷

In complex cases, the investigation must be directed “towards clarify[ing] the structures that allowed these violations, the reasons for them, the causes, the beneficiaries and the consequences, and not merely to discover, prosecute and if applicable, punish the direct perpetrators.”²⁸

International Convention on Civil and Political Rights (ICCPR)

Honduras ratified the ICCPR²⁹ in 1997. The ICCPR imposes on State Parties the duty to investigate violations of the right to life as an integral part of the duty to protect the right to life guaranteed by Article 6.1.

6.1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In addition to guaranteeing that no one shall be arbitrarily deprived of life, the ICCPR, in Articles 1, 2 and 3, requires ratifying States to take effective measures carried out by competent authorities to remedy violations:

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

...

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

²⁶ *Ibid*, para. 177.

²⁷ *Ibid*, para. 177.

²⁸ IACtHR, *Case of Manuel Cepeda Vargas v Colombia*, Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 118.

²⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

Article 3

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The HR Committee has affirmed that Article 2.1 creates binding obligations on States to exercise due diligence to prevent, punish, investigate and redress violations of protected rights committed by State and/or private actors. Failure to take such measure can constitute violations by the State of the ICCPR. The HR Committee stated in General Comment 31:

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.³⁰

Standards for an Effective Investigation of Serious Human Rights Violations

The Inter-American human rights system has established parameters for determining whether an investigation complies with the due diligence standard, based on dozens of cases and standards developed in other systems, including the international system (elaborated below).³¹ The key elements of the due diligence standard are an investigation directed at and capable of:

1. bringing to justice all those responsible (material and intellectual authors and accomplices), including a criminal or other structure where individuals collaborate or support those directly involved,³² including State actors;
2. addressing all of the facts that constitute serious human rights violations;³³
3. using all means and necessary logistical and scientific resources to recover and process the relevant evidence,³⁴ in accordance with the particular facts and circumstances;
4. employing experts to determine the truth of the facts;³⁵
5. taking the context and peculiarities of the situation into account, including patterns of human rights violations as the *modus operandi* of certain actors,³⁶ and

³⁰ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

³¹ *Supra* note 22, p 35.

³² *Supra* note 14, para. 217.

³³ IACtHR. *Case of Penal Miguel Castro Castro v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 390.

³⁴ IACtHR. *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77.

³⁵ IACtHR. *Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 249, para. 187.

³⁶ IACtHR. *Case of Sisters Serrano Cruz v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 91.

6. testing various hypotheses through a consistent, evaluative methodology.³⁷

The latter is a requirement for an exhaustive investigation. The failure to consider more than one hypothesis, or to investigate facts from which State involvement could be inferred, breaches the due diligence standard. Further to point 3, the IACtHR has found various failings to constitute a lack of due diligence, including the failure to solicit relevant information from authorities or institutions,³⁸ not carrying out a reconstruction of the facts,³⁹ and not investigating threats and harassment of the families of the victims.⁴⁰ The assessment of context through adopting measures to reveal systematic patterns that permit human rights violations can be essential to identifying the actors involved.⁴¹

The UN has developed detailed standards for investigation of unlawful killing, including:

- *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (the “UN Investigation Principles”);⁴² and
- *Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions* (the “Minnesota Protocol”).⁴³

The UN Investigation Principles, adopted by UN ECOSOC and welcomed by the UN General Assembly in 1989, reflect a global consensus on the standards for investigations:

- thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions;
- an independent commission of inquiry for those cases in which the established investigative procedures are ineffective because of lack of expertise or impartiality, and for cases in which there are complaints from the family of the victim about these inadequacies or other substantial reasons;

³⁷ *Supra* note 22, p. 52.

³⁸ *Supra* note 36, para. 92.

³⁹ IACtHR. *Case of “Street Children” (Villagrán Morales y Otros) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 231.

⁴⁰ *Ibid*, para 231; see also *supra* note 14, para. 199.

⁴¹ IACtHR. *Case of Massacre of the Rochela v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, para 156; and IACtHR. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Application, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 108.

⁴² Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, welcomed by the General Assembly in Resolution A/RES/44/159, 15 December 1989, see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx>.

⁴³ Part III of UN Department of Political Affairs, *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, U.N. DOC. E/ST/CSDHA/.12 (1991) (Minnesota Protocol),

https://tavaana.org/sites/default/files/UN_Manual_on_the_Effective_Prevention_and_Investigation%5B1%5D.pdf.

Note that a revision of the Minnesota Protocol is currently underway in consultation with States, academia, civil society, and other interested parties. See UN Office of the High Commissioner for Human Rights, Revision of the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol), available at:

<http://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx>.

See the draft revision at:

<http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>.

- protection from violence or intimidation for complainants, witnesses, families, and investigators;
- removal from power or control over complainants, witnesses, families, or investigators of anyone potentially implicated in extra-legal, summary or arbitrary executions;
- access by families and their legal representatives to any hearing and to all relevant information, and the right to present other evidence;
- a detailed written report on the methods and findings of the investigation, made public within a reasonable time;
- government action to bring to justice persons identified by the investigation as having taken part in extra-legal, arbitrary and summary executions, through prosecutions and trials;
- responsibility of superiors, officers or other public officials for acts committed under their authority if they had a reasonable opportunity to prevent such acts; and
- fair and effective compensation for the families and dependents of victims of extra-legal, arbitrary and summary executions within a reasonable period of time.

The IACHR has established the expectation that the Minnesota Protocol be used in investigations of extra-legal killings, especially at the first stages of an investigation. In the case of *Ángel Pacheco León and family, Honduras*, the IACHR affirmed that the law requires the State to conduct an investigation competent to achieve the goal of elucidating the truth, identifying and, where applicable, punishing perpetrators.

The Court has ruled that every time the State conducts an investigation because of the alleged perpetration of an offense, it must aim at achieving a specific goal, which is to find out the truth by prosecuting, trying, and, where appropriate, punishing those responsible for the offenses. To ensure this, the investigation must be conducted by all legal means available and must be conducted with due diligence, effectively, seriously, and impartially.⁴⁴

Access to Information by Families: The Right to Truth

A current project to revise the Minnesota Protocol articulates the right of victims, including family members of deceased persons, to participate in the process of investigation. According to the draft revision:

The relatives of a deceased person must be sought and informed of the investigation. Family members should be granted legal standing and investigative mechanisms or authorities should communicate with family members in a timely manner during all phases of the investigation. Families should be invited by the investigating authorities to make suggestions and arguments, provide evidence, and assert their interests and rights throughout the process. They should be informed of, and have access to, any hearing relevant to the investigation, and they should be provided with information relevant to the investigation. In certain circumstances — for example, where family members are suspected perpetrators — these rights may be subject to restrictions, but only where, and to the extent, strictly necessary to ensure the integrity of the investigation [internal footnotes in quote omitted].⁴⁵

⁴⁴ IACHR, Report No. 49/15, Case 12.585, Merits, *Ángel Pacheco León and family, Honduras*, July 28, 2015, para. 81, available at <https://www.oas.org/en/iachr/decisions/court/2015/12585FondoEn.pdf>. See also I/A Court H.R., *Case of Kawas-Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 101.

⁴⁵ UN Office of the High Commissioner for Human Rights, Revision of the UN Manual on the Effective Prevention

The right of victims and family members to participate in and be informed about the process of investigations is rooted in the right to the truth, which is included in the right to information protected by the ICCPR Article 19, and the ACHR Article 13.⁴⁶ The right to truth includes the right of victims and their families “to know the truth about the events that led to serious violations of human rights, and the right to know the identity of those who played a role in the violations.”⁴⁷ In addition, society as a whole has the “inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent recurrence of such acts in the future.”⁴⁸

Independent Commissions of Inquiry

The UN Investigation Principles require an independent commission of inquiry in certain cases where established investigative procedures are ineffective because of lack of expertise or impartiality, and for cases in which there are complaints from the family of the victim about these inadequacies or other substantial reasons. The UN *Manual on Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions* (Minnesota Protocol)⁴⁹ provides additional guidance.

While States have the primary international law responsibility to exercise jurisdiction over serious crimes, in some circumstances, it is recognized that “an international investigation mechanism with the expertise and capacity to conduct an independent and objective investigation may be appropriate.”⁵⁰ An international investigation mechanism does not replace the State’s duty to investigate, prosecute and punish.⁵¹ Cases where the State may consent to a commission of investigation under international auspices include situations where the mechanisms of the state are in such disrepute that there is a profound lack of public confidence

and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol), para 41, available at: <http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>, citing UN Human Rights Council, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, 9 August 2012, A/HRC/21/46, para 54, available at: <http://www.refworld.org/docid/5051ba982.html>; IACtHR, Villagrán-Morales v. Guatemala, Judgment (Merits), 19 November 1999, paras 225, 227, 229, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_63_ing.pdf; Minnesota Principles, Article 15, IACtHR, Manuel Stalin Bolaños v. Ecuador, Report No. 10/95, Case 10.580, 12 September 1995, para 45, available at: <https://www.cidh.oas.org/annualrep/95eng/Ecuador10580.htm>.

⁴⁶ For more on the right to truth, see IACHR, *The Right to Truth in the Americas*, 2014, available at:

<http://www.oas.org/en/iachr/reports/pdfs/right-to-truth-en.pdf>.

⁴⁷ *Ibid*, at para 14.

⁴⁸ *Ibid*, at para 15. See also para 24, citing OAS, General Assembly, Resolution AG/RES. 2175 (XXXVI -O/06) “Right to the Truth” and UN, Commission on Human Rights, Report of the Office of the United Nations High Commissioner for Human Rights, Study on the right to the truth, E/CN.4/2006/91, January 9, 2006.

⁴⁹ UN Department of Political Affairs, *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, U.N. DOC. E/ST/CSDHA/12 (1991), https://tavaana.org/sites/default/files/UN_Manual_on_the_Effective_Prevention_and_Investigation%5B1%5D.pdf. Note that a revision of the Minnesota Protocol is currently underway in consultation with States, academia, civil society, and other interested parties. See information about the revision at UN Office of the High Commissioner for Human Rights, Revision of the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol),

<http://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx>.

See the full draft revision at

<http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>.

⁵⁰ UN Office of the High Commissioner for Human Rights, Revision of the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol), para 46, available at: <http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>.

⁵¹ *Ibid*. at para 47.

in the ability of the State to conduct an independent, impartial or thorough investigation.⁵²

Application of the Duty to Investigate to Honduras

Pursuant to Article 2 of the ACHR, the State must ensure the effective enjoyment by all of Convention rights through the adoption of internal laws and organization of the entire State apparatus. Honduras is obliged by domestic law to respect and ensure the right to life of every person within its jurisdiction. The Constitution of the Republic of Honduras affirms in Article 65 that the “right to life is inviolable.”⁵³ Article 61 guarantees to right to life.

Article 61

The Constitution guarantees to Hondurans and foreigners resident in the country, the right to the sanctity of life, to the individual security, to freedom, equality before the law and property.

Honduras is also obliged by international law to respect and ensure the right to life and to prevent and punish violations. An integral part of these twin duties is to conduct investigations of unlawful killings that are capable of determining the cause and particulars of death, identifying the perpetrator(s) and enabling the prosecutions, trials and imposition of the punishment(s) required by law. These international law duties arise from Honduras’ membership in the United Nations and the Organization of American States, ratification of the ACHR and ICCPR and from customary international law. In cases where there is no public confidence in the ability of the State to conduct a thorough, independent, impartial investigation, Honduras has a duty to appoint an independent commission of inquiry that complies with the standards established by the UN Investigation Principles. Where the State is unable to appoint a domestic Commission of Inquiry that is domestically and internationally trusted, the duty to investigate is neither abrogated nor abridged. In such a situation, it may be necessary for the State to seek the assistance of the IACHR to establish an international commission of inquiry with international experts appointed under the auspices of the IACHR. Such a Commission would be a step in the direction towards implementing the recommendations of the IACHR to adopt “urgent measures to attack the structural causes of that violence and of impunity.”⁵⁴

15 June 2016

⁵² For example, in the cases of the disappearances of 43 students from the Ayotzinapa teaching college in September 2014, Mexico consented in 2014 to the establishment of an international commission of inquiry with international experts appointed under the auspices of the the IACHR. See the tripartite agreement at “IACHR Makes Official Technical Cooperation Agreement about Ayotzinapa Students in Mexico, IACHR press release, November 18, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/136.asp. See the report (Spanish) at <http://www.oas.org/en/iachr/activities/giei.asp>.

⁵³ Constitution of Honduras – English Translation, available at <http://www.honduras.com/honduras-constitution/>.

⁵⁴ Inter-American Commission on Human Rights (IACHR), *Situation of Human Rights in Honduras*, 31 December 2015, see *A. General Recommendations*, 1. Citizen Security, para 1, available at: <http://www.refworld.org/docid/5729910b4.html> or <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>.