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Life as We Know It: The Expansion of the Right to Life Under the Jurisprudence of the Inter-American Court of Human Rights

ALEXANDRA R. HARRINGTON

I. INTRODUCTION

The idea of protecting life¹ within the context of human rights law is perhaps elemental since, as the Inter-American Court of Human Rights has explained on numerous occasions, without protecting life all other human rights protections are meaningless.² Indeed, a survey of international and regional human rights treaties and conventions demonstrates the uniformity of inclusion of the right to life, as a guaranteed right, across divergent state parties and instrument-promulgation goals.

And yet, the terms of the right to life and the construction of its meaning do vary between instruments. For example, the International Covenant on Civil and Political Rights simply states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”³ By comparison, the European Convention on Human Rights states that “[e]veryone’s right to life shall be protected by law. No one shall be arbitrarily deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”⁴ Finally, the American Convention on Human Rights states that “[e]very 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.”⁵ Of course, the meaning of these provisions depends not only on a plain text reading but also on the construction of these provisions by the appropriate international or regional body.

1. For the purposes of this article, the right to life is defined as extending to and protecting individuals from birth onward. The article does not intend to take a position as to the applicability of the right to life under the American Convention on Human Rights to the unborn.

2. *Escué-Zapata v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 165 (July 4, 2007).

3. International Covenant on Civil and Political Rights art. 6(1), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

4. European Court of Human Rights, European Convention on Human Rights art. 62(1), *opened up for signature* 1950 (entered into force on June 1, 2010).

5. Organization of American States, American Convention on Human Rights art. 4, Nov. 22, 1969, O.A.S.T.S. No. 36, OAS Off. Rec. OEA/Ser4v/II 23, doc. 21, rev. 2 (1975).

This article focuses on the Inter-American Court of Human Rights ("Court") creation of a body of jurisprudence regarding the right to life that has expanded and become increasingly nuanced throughout the Court's history. The Court is selected for analysis because, as the Court itself admits, it is at the forefront of developing human rights law.⁶ In addition, the Court offers a strong example of how the right to life can be used by a juridical body to reflect the many facets of life and to holistically incorporate these facets into jurisprudence protecting life for individuals and communities. Expanding the Court's construction of the right to life illustrates that the contours of life as we know it have changed—and will change—to ensure that they reflect and protect the intricate tapestry of human rights that are encompassed by the right to life.

Part II of this article provides background on the Inter-American human rights system, its foundational texts, and the institutional bodies that are charged with protecting human rights throughout the region. Part III then examines the right to life in the Court's jurisprudence by focusing on three main areas: 1) the textual right to life; 2) the protective construction of the right to life; and 3) the right to life and remedies. The section on the textual right to life discusses the essential elements of the right to life as established by the American Convention on Human Rights ("American Convention"). The section on the protective construction of the right to life asserts that the Court has used the right to life as a protective mechanism to expand the boundaries of more traditional constructs of the right. In particular, the Court identified vulnerable groups suffering from extreme violations of the right to life and treated these violations as the parameters of the right. Within the protective construction of the right to life are five subsections: 1) victims of forced disappearances; 2) victims of extrajudicial killings; 3) children as victims; 4) indigenous communities as victims; and 5) prison inmates as victims.

In Part IV, the article examines trends in the Court's shaping of the right to life and the state of the right to life as we currently know it in the Inter-American human rights system. Part IV also examines the potential impact of cases currently pending before the Court on future construction of the right to life. Ultimately, this article concludes with the observation that the Court's expansion of the right to life is essential for maintaining the Inter-American human rights system as a vibrant mechanism of jurisprudence on human rights.

6. *Contreras et al. v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011).

II. INTER-AMERICAN HUMAN RIGHTS SYSTEM BACKGROUND

In order to understand and chart the development of the right to life in the Inter-American context, it is essential to first understand the Inter-American human rights system itself. The Inter-American human rights system is a creation of the Organization of American States (“OAS”). As one of the oldest regional organizations in the world, the OAS has established a deeply entrenched connection between its members despite the political and societal tensions that often flare between them.⁷ Given the strength of this relationship, it is perhaps unsurprising that the OAS has created law and policy in a number of areas, ranging from human rights to the security of the environment.⁸

One of the bedrock documents for the OAS is the American Convention, often referred to as the Pact of San Jose, Costa Rica. This convention established the Inter-American human rights system as it currently exists.⁹ Although the members of the OAS made an earlier human rights statement in the American Declaration on Human Rights,¹⁰ the American Convention codified the principles in the American Declaration as a matter of law for State parties.¹¹ In addition to making these rights and duties legally binding on State parties, the American Convention established the Inter-American Commission on Human Rights (“Commission”) and the Inter-American Court of Human Rights as a bi-level system for addressing individual complaints regarding the human rights practices of State parties.¹²

Under this system, the first institution to which an individual may complain is the Commission.¹³ The complaint, which may be brought by the affected individual, his representative, a human rights group, or an affected community, must first pass an admissibility test.¹⁴ The admissibility test requires that the complainant exhaust his remedies at the domestic level,¹⁵ unless this is impossible or would result in a severe threat to the complainant.¹⁶ Second, the complainant or the person who

7. *Who We Are*, ORGANIZATION OF AMERICAN STATES, available at http://www.oas.org/en/about/who_we_are.asp (last visited Aug. 6, 2012).

8. *Id.*

9. American Convention on Human Rights, *supra* note 5.

10. O.A.S. Res. XXX, adopted by the Ninth International Conference of American States, Mar. 30–May 2, 1948, OEA/Ser. L./V/II.23/doc. 2 rev. 6 (English 1979).

11. American Convention on Human Rights, *supra* note 5.

12. *Id.* chs. VI–VIII.

13. *Id.* ch. VII.

14. *Id.* art. 44.

15. *Id.* art. 46.

16. Organization of American States, American Convention on Human Rights art. 4, Nov. 22, 1969, O.A.S.T.S. No. 36, OAS Off. Rec. OEA/Ser4v/II 23, doc. 21, rev. 2 (1975).

has suffered the harm must be a citizen of a state that has both ratified the American Convention and agreed to the jurisdiction of the Commission and of the Court.¹⁷ Third, the alleged human rights abuse must be justiciable under the American Convention.¹⁸ Fourth, the complaint must not be pending before another international human rights body.¹⁹ Finally, the allegation must not be frivolous.²⁰ If these hurdles are not met, the complaint will be dismissed.²¹ If they are met, the complaint investigation will continue and the state party will have the ability to provide the Commission with information regarding the subject of the complaint.²²

The Commission will typically issue recommendations to the involved state party regarding the steps necessary to address or otherwise remedy the complained of situation.²³ In this way, the Commission has a dual role as investigative entity and the source of some remedial authority, although this authority does not carry the same gravity as the Court.²⁴ The Commission also has the ability to refer a complaint to the Court. The Court may issue a judicial decision on the existence of a potential violation, or it may decide the appropriate reparations owed to the victim(s) of human rights violations.²⁵ At this level, the Commission will be involved in the judicial proceedings, as will the State party and the individual complainants if they wish.²⁶

The Court is tasked with evaluating the evidence presented and deciding whether a violation of the American Convention occurred.²⁷ Beyond this decision, the Court also has the ability to craft pecuniary and, increasingly, non-pecuniary remedies and awards for the victims, their families, and their communities.²⁸ As discussed below, the Court, through its decisions, has expanded the scope of the rights contained in the American Convention in order to craft a system that provides greater protections for individuals and communities as a whole.²⁹

17. *Id.* art. 44.

18. *Id.*

19. *Id.* art. 46.

20. *Id.* art. 47.

21. Organization of American States, American Convention on Human Rights art. 4, Nov. 22, 1969, O.A.S.T.S. No. 36, OAS Off. Rec. OEA/Ser4v/II 23, doc. 21, rev. 2 (1975).

22. *Id.* art. 48.

23. *Id.* arts. 48, 51.

24. *Id.* arts. 48–51.

25. *Id.* art. 48.

26. *Functions and Powers*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, <http://www.oas.org/en/iachr/mandate/functions.asp> (last visited Aug. 6, 2012).

27. American Convention on Human Rights, *supra* note, at art. 63.

28. *Id.* art. 63.

29. For an in-depth discussion of these remedies see Alexandra R. Harrington,

The Court has also become increasingly adept at crafting holistic remedies, such as the erection of statues in honor of victims and ordering State parties to make public statements of responsibility for human rights violations. These remedies address not only the financial loss involved in human rights violations, but also the larger need for society to be made aware of these violations and to come to terms with them as part of the healing process.³⁰ This has been especially important in cases of forced disappearances where the victim's family and community are typically unable to receive an answer as to the whereabouts and fate of the victim. Forced disappearances are a way of hiding human rights violations from the community and instilling fear at the same time.³¹

Before continuing on to any further analysis it must be noted that the decisions of the Court are not binding. In contrast to decisions of domestic courts, they cannot automatically be enforced against the State party in the domestic realm.³² However, the Court's decisions hold a great deal of weight at the international and domestic level and have resulted in many important changes to domestic law and human rights practices.³³ In addition, the Court's decisions and findings are important sources of validation and identity for the many marginalized groups, such as indigenous communities and incarcerated children, which have brought successful claims before the Court.³⁴

III. THE RIGHT TO LIFE IN THE INTER-AMERICAN COURT'S JURISPRUDENCE

Throughout its jurisprudential history, the Court has used multiple visions of the right to life in order to weave an expansive and meaningful application of the right. In order to understand this jurisprudence, this Part is broken into three sections: 1) the textual right to life; 2) the protective construction of the right to life; and 3) the right to life and remedies—so that the full application and construction of the right to life can be appreciated.

A. The Textual Right to Life

The American Convention articulates the right to life as follows:

Institutionalizing Human Rights in Latin America: The Role of the Inter-American Court of Human Rights System, TEMP. INT'L & COMP. L. J. (forthcoming).

30. *See id.*

31. *See id.*

32. American Convention on Human Rights art. 62(3), *supra* note 5.

33. *See* Harrington, *Institutionalizing Human Rights in Latin America*, *supra* note 29.

34. *See id.*

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.³⁵

The remainder of the right to life provision in the American Convention specifically targets the death penalty, focusing on the conditions surrounding its use, with the ultimate goal of abolishing the death penalty within State penal systems.³⁶ While this is certainly an important issue at the domestic and international level, the focus of this article is solely on section 1 of the right to life provision since the Court has steadily expanded it.

Facially, the terms of the right to life are rather nebulous. The right can be construed very narrowly to apply solely in the criminal context, or it can be construed more broadly to protect the right to life in a societal context.³⁷ It is within the latter context that the Court has expanded the right to life, and the understanding of what life is, in order to protect individuals and communities as well as to protect the sanctity of life as holistic concept.

B. Protective Construction of the Right to Life

As a threshold matter, the Court has consistently found that acts such as the imposition of the death penalty and certain human rights abuses that occur in the accepted penal law context are violations of the right to life.³⁸ In this sense, the Court has endorsed and upheld the standard way in which many courts, particularly human rights courts, apply the right to life.³⁹

However, early in its jurisprudence the Court went beyond this traditional construction and began to expand the right beyond the criminal context.⁴⁰ Perhaps the most important explanation of the right

35. American Convention on Human Rights art. 4(1), *supra* note 5.

36. *See generally id.* art. 4.

37. *See generally id.*

38. *See* Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94 (June 21, 2002); *Fermin Ramirez v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 126 (June 20, 2005); *Raxcacó-Reyes v. Guatemala*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 133 (Sept. 15, 2005); *Boyce et al. v. Barbados*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169 (Nov. 20, 2007); *Dacosta-Cadogan v. Barbados*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 204 (Sept. 24, 2009).

39. *See id.*

40. *See Myrna Mack-Chang v. Guatemala*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101 (Nov. 25, 2003); *Yakye Axa Indigenous Community v. Paraguay*,

to life in the Inter-American human rights system was offered by the Court in the *Mack Chang* case,⁴¹ in which it explained that “the right to life plays a fundamental role in the American Convention because it is a prior condition for the realization of the other rights. When the right to life is not respected, all other rights lack meaning.”⁴² This revolutionary pronouncement allowed the Court to significantly expand the place of the right to life within its jurisprudence and within the construct of the Inter-American human rights system as a whole.

As a corollary, the Court has created both positive and negative State responsibilities in terms of implementing and upholding the right to life within the domestic context. Specifically, the Court has explained that the right to life requires not only that no person be arbitrarily deprived of her life (negative obligation), but also that the States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.⁴³

The duality of the right to life has become essential to the Court in its analysis of cases involving the right to life throughout a wide range of policy areas. Overall, the idea of the right to life as the cornerstone of human rights protections has translated into several particular policy areas that address the vulnerable and societally marginalized—particularly the below-discussed groups.

1. Victims of Forced Disappearances

Throughout the history of the Court and its jurisprudence, the practice of forced disappearances was, and continues to be, systematically used by many State parties as a way to silence political, social or other dissent,⁴⁴ target and harm certain, particularly vulnerable, groups;⁴⁵ stamp out political insurrections and perceived disloyalty to the governing regime;⁴⁶ and generally intimidate the larger community

Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005).

41. *See* Myrna Mack-Chang, Inter-Am. Ct. H.R. No. 101, *supra* note 40, at 92.

42. *Id.*

43. *Id.* at 92–93.

44. *See, e.g.*, *La Cantuta v. Peru*. Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006); *Contreras et al. v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011).

45. *See, e.g.*, *Chitay Nech et al. v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212 (May 25, 2010); *Escué-Zapata v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 165 (July 4, 2007).

46. *See, e.g.*, *Ibsen-Cárdenas and Ibsen-Peña v. Bolivia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217 (Sept. 1, 2010); *Gomes-Lund et al. (Guerrilha de*

from which the person was disappeared.⁴⁷ The hallmarks of forced disappearances are uncertainty as to: the location of the person disappeared, whether the person is still alive, and whether the person has been or is being subjected to torture.⁴⁸

These elements of forced disappearances are certainly damaging to the victim, but they also have direct and devastating effects on the victim's family and community.⁴⁹ More than conjecture or supposition, the Court uses the familial, community-based damages and negative impacts of forced disappearances to justify the imposition of non-pecuniary remedies. These remedies include physical and mental health services for family members scarred by the disappearance,⁵⁰ and educational opportunities for family members forced to leave school as a result of economic and physical hardship after the victim was disappeared.⁵¹ Additionally, the Court has noted the direct and stigmatizing impact on indigenous communities, where members—particularly leaders or activists connected to them—have been disappeared, because of the overall vulnerability of these communities in law and society.⁵² Thus, in addition to the victim himself, forced disappearances impact the family of the victim and the community in which the victim lived.⁵³

Given the reality of the impact of forced disappearances, it is perhaps unsurprising that the Court has regularly found the practice itself to constitute a violation of the victim's right to life. More than that, however, the Court has extended the relationship between forced disappearances and the right to life, holding that the right does not end

Araguaia) v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010); González-Medina and relatives v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 240 (Feb. 27, 2012).

47. See, e.g., 19 Tradesmen v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109 (July 5, 2004).

48. See, e.g., *id.*; La Cantuta v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162 (Nov. 29, 2006); Escué-Zapata v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 165 (July 4, 2007); Contreras et al. v. El Salvador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 232 (Aug. 31, 2011); Chitay Nech, *supra* note 45; Ibsen-Cárdenas and Ibsen-Peña v. Bolivia, Merits, Reparations and Costs, *supra* note 45; Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010); González-Medina and Relatives v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, *supra* note 46.

49. Harrington, *supra* note 29, at 15.

50. *Id.* at 23–24, 28–29.

51. *Id.* at 26.

52. *Id.* at 17.

53. See *id.*

with the death of the disappeared individual victim.⁵⁴ For example, the Court has established that practices such as hiding the bodies of those who have been disappeared and then killed to constitute a violation of the right to life. This is especially so where hiding involved dismemberment and burial with the purpose of ensuring that the family could not find the victim.⁵⁵

As a corollary to this, the Court has ordered that the bodies of the disappeared be exhumed by the State and returned to their families based on the finding that secreting bodies away was part of the ongoing violation of the right to life.⁵⁶ In this situation, it was not sufficient for the State to admit that the disappeared victim had been killed in order to attempt a remedy of the violation.⁵⁷ Instead, the State was required to physically return the remains to the family for proper burial, thereby expanding the right to life to include the honoring of the extinguished life with dignity in death.⁵⁸

A good example of this is the *Cotton Field* case from the area of Ciudad Juarez, Mexico.⁵⁹ In that case, there was an established pattern of violence against women and girls and a persistent failure to investigate or to prevent this type of violence.⁶⁰ The police and prosecution within the Ciudad Juarez area acted—or failed to act—in a way which allowed the victims to suffer sexual violence, torture and death while they were disappeared.⁶¹ In essence, the Court found that the State authorities fostered a culture of impunity for acts of violence against women and girls that caused the victims to suffer a violation of their right to life.

Once a deceased victim's remains were found, the investigation system in use in Ciudad Juarez failed the victims and their families. The Court took particular exception to the practice of State actors impugning the victims and threatening their families in order to convince them not to pursue the case further.⁶² These actions amounted to a continuing violation of the right to life that began with the disappearance of the

54. 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs, *supra* note 47, ¶¶ 154–56.

55. *Id.*

56. *Las Palmeras v. Colombia*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 90 (Dec. 6, 2001); *Ibsen-Cárdenas and Ibsen-Peña v. Bolivia*, Merits, Reparations and Costs, *supra* note 45, at ¶ 242.

57. *Id.*

58. *Id.*

59. *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009).

60. *See generally id.*

61. *See id.*

62. *See id.*

victims.⁶³ Further, the Court asserted that the failure of the State to ensure a vigorous prosecution of those alleged to be responsible was also violation of the victim's right to life.⁶⁴

The Court's handling of forced disappearance within the frame of the right to life can be seen as asserting that respect for the right to life is an inferential part of the right itself. The Court's jurisprudence also evidences that respect for the right to life continues to exist and be justiciable even after the victim has perished. This link is also supported throughout the development of the Court's jurisprudence in other areas. It affirms the assertion that the Court has evolved an understanding of life as we know it that is far more holistic than a facial reading of the American Convention might suggest.

Recent cases decided by the Court have established a near presumption of state actor or quasi-state actor involvement in forced disappearances. These cases provide detailed descriptions of the regimes under which the alleged disappearances occurred, such as in Bolivia,⁶⁵ the Dominican Republic,⁶⁶ El Salvador⁶⁷ and Uruguay.⁶⁸ Forced disappearances were a typical state practice and these cases provide detailed descriptions of the forms of torture used on those who were disappeared and held in secret confinement by the particular regime.⁶⁹

2. Victims of Extra-judicial Killings

In the context of Court jurisprudence, the term "extra-judicial killing" refers to the process of state actors (or imputed/quasi-state actors) killing individuals without a trial or other hallmarks of legitimate judicial process, regardless of whether judicially sanctioned imposition of the death penalty is legally permitted in the state in question.⁷⁰ Extra-judicial killings have often been, and continue to be, used to target or send a message to a particular group, community, or constituency.⁷¹ In many instances, however, they have been carried out

63. *See id.* ¶ 388.

64. *See* González et al. ("Cotton Field") v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009).

65. *See* Ibsen-Cardenas and Ibsen Pena, *supra* note 46, ¶¶ 50–56.

66. *See* Gonzalez-Medina, *supra* note 46, ¶¶ 137–44.

67. *See* Contreras, *supra* note 44, ¶¶ 40–55.

68. *See* Gelman v. Uruguay, Merits, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 388 (Feb. 24, 2011).

69. *See* Ibsen-Cardenas and Ibsen Pena, *supra* note 46, ¶ 54.

70. *See id.* ¶¶ 49–56; Gonzalez-Medina, *supra* note 46, ¶¶ 139–44; Contreras, *supra* note 44, ¶¶ 40–55; Gelman, *supra* note 68, ¶¶ 44–63.

71. Aloboetoe et al. v. Suriname, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 11, ¶¶

randomly and arbitrarily.⁷² The victims of these killings range from those who seemingly did nothing wrong other than be in a particular place at a particular time, to human rights campaigners or indigenous community leaders because of the state perception that they constituted a threat to its established order.⁷³ What all these victims have in common is that they were killed as a result of some form of concerted action on the part of the state or state sponsored actors.

As with forced disappearances, the Court, perhaps unsurprisingly, has found that the act of extra-judicial killing is a violation of the right to life.⁷⁴ There are three primary phases at which the violation of the right to life occurs in the context of extra-judicial killings. The first phase is in the planning of the killing; for example, stalking the victim, or determining the areas in which the victim or members of a targeted group might be vulnerable.⁷⁵ The second phase is the actual act of killing the victim, regardless of the method or manner used for this purpose.⁷⁶ Thus, both the killing of a disappeared person and the killing of a targeted person in broad daylight would fall into this phase. And the third phase—following the death of the victim, is the act of covering up the state's involvement in the death.⁷⁷ This phase can involve any number of state actors or quasi-state actors who planned the killing as part of an overarching attempt to silence a particular victim, as in the *Myrna Mack Chang* case.⁷⁸ As with the Court's construction of violations of the right to life in the context of forced disappearances, this phase extends beyond the death of the victim and emphasizes respect for the victim post-mortem⁷⁹.

In the context of extra-judicial killings, the Court has established

2–4 (Dec. 4, 1991); *Mack Chang*, *supra* note 40, ¶¶ 134.8–134.13; *Escué-Zapata*, *supra* note 48, ¶¶ 47–53; *Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196 (Apr. 3, 2009); *Chitay Nech*, *supra* note 45; *Gomes-Lund*, *supra* note 46; *Family Barrios v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 237 (Nov. 24, 2011).

72. See *Gómez-Paquiyaury Brothers v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110 (July 8, 2004).

73. See *id.*; *Aloeboetoe*, *supra* note 71; *Mack Chang*, *supra* note 40; *Escué-Zapata*, *supra* note 48; *Kawa-Fernandez*, *supra* note 71; *Gomes-Lund*, *supra* note 46; *Family Barrios*, *supra* note 71.

74. See generally *Aloeboetoe*, *supra* note 71; *Mack Chang*, *supra* note 40; *Escué-Zapata*, *supra* note 48; *Kawa-Fernandez*, *supra* note 71; *Gomes-Lund*, *supra* note 46; *Family Barrios*, *supra* note 71.

75. The Court set out these phases in the *Mack Chang* case and then affirmed them in subsequent cases. See *Mack Chang*, *supra* note 40; *Kawas-Fernandez*, *supra* note 71.

76. See *Mack Chang*, *supra* note 40.

77. See *id.*

78. See *id.*

79. See *id.*

that the ultimate responsibility for the preservation of the right to life lies with the State and all of its actors, including police forces, military groups, and para-military groups where appropriate.⁸⁰ The Court has concomitantly asserted that States are required to extend the terms of their criminal laws to these actors and agents in order to stop the potential for impunity.⁸¹

Further, the Court has been highly critical of police investigatory practices when extra-judicial killings have been committed. The Court noted that these practices often involve shoddy forensic investigatory standards and a failure to properly document the type and nature of the abuses committed against the victims prior to and including the fatal act.⁸² These investigatory failures—whether the result of a cover-up or lack of resources—constitute an additional element of the violation of the victim's right to life even though the violations occurred post-mortem.⁸³

3. Children as Victims

Children are an extremely vulnerable group within the Inter-American human rights system, regardless of where they live.⁸⁴ This is especially true given that many children in this region are quite poor, do not live in a regular familial setting, live on the margins of societal acceptance and inclusion, and thus are unable to avail themselves of social or legal protections even where they do exist.⁸⁵ Indeed, even in instances where children and young adults live with their families, the families are often unable to protect the lives of these children unless they pay bribes or offer other inducements to state actors, especially in the juvenile detention setting.⁸⁶

The Court has dealt with several cases involving children during the course of its jurisprudence. In these cases, the Court has consistently found that States have a greater obligation to respect children's right to

80. 19 *Tradesmen v. Colombia*, Merits, Reparations and Costs, *supra* note 47, ¶¶ 152–55.

81. *See id.* ¶¶ 256–63.

82. *See Servellón-García v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, ¶ 2 (Sept. 21, 2006).

83. *See id.* ¶¶ 192–96.

84. *Id.* ¶¶ 105–06; *see* Laurence Burgogue-Larsen and Amaya Ubeda de Torres, THE INTER-AMERICAN COURT OF HUMAN RIGHTS, CARE LAW AND COMMENTARY (Rosalins Greenstein trans.) 399, para. 16.09 (2011).

85. For an in-depth discussion of the issues facing children in Latin America, *see* Inter-American Commission on Human Rights, *The Rights of the Child in the Inter-American Human Rights System 2nd ed.*, OEA/Ser.L/V/II.133 Doc. 34 (Oct. 29, 2008).

86. *See* “Juvenile Reeducation Institute” v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 38(b) (Sept. 2, 2004).

life due to the quintessential vulnerabilities of childhood and to the existence of international protections for children, such as the Convention on the Rights of the Child, which nearly all state parties have signed onto as a matter of law.⁸⁷

Although the Court's jurisprudence related to children is not as copious as that relating to forced disappearances and extra-judicial killings, it is essential to understanding the growth of right to life in the Inter-American context. Children, as vulnerable and marginalized members of society, must be given protections and allowed to live unharmed within society. Protections must include not only the state protecting children from society as a whole but also the state protecting children from the state itself. This relates to the expansion of the right to life to include respect for life as well as protection of life in the criminal context. Understanding this distinction is critical to the next section of this Part addressing indigenous communities. Respect for life is at the heart of most issues relating to these communities, which are typically marginalized within the mainstream of law and society and, thus, often viewed as less important members of the state community.

An interesting sub-set of the rights of children in the Court's right to life jurisprudence is typified by the *Gelman v Uruguay* case.⁸⁸ In that case, a young married couple was disappeared by the regime in Uruguay while Mrs. Gelman was in the later stages of pregnancy.⁸⁹ After she delivered a baby girl, the baby was adopted out to members of the regime.⁹⁰ Following the birth, Mrs. Gelman's fate became a mystery, while it was established that Mr. Gelman died.⁹¹ Many years later, the baby's paternal grandfather located her and was able to confirm her real identity.⁹² Ms. Gelman and her paternal grandfather brought a complaint that ultimately reached the Court, alleging several violations of the American Convention including the violation of Mrs. Gelman's right to life.⁹³ The Court agreed with Ms. Gelman, finding that there had been a violation of her mother's right to life and also confirmed the State's pattern of abducting children from their "subversive" parents as a recognized state practice.⁹⁴

87. See "Street Children" (Villagrán-Morales et al.) v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 146–47, 185 (Nov. 19, 1999); Gómez-Paquiyaury, *supra* note 72, ¶¶ 162–70; Servellon-García, *supra* note 82, at ¶¶ 113, 116.

88. See *Gelman*, *supra* note 68, ¶¶ 102, 121–132.

89. See *id.* ¶¶ 2, 80.

90. See *id.* ¶ 88.

91. See *id.* ¶¶ 83–84, 89, 96.

92. See *id.* ¶¶ 108–11.

93. See *id.* ¶ 119.

94. See *Gelman*, *supra* note 68, ¶¶ 44–47, 60.

The Court's decision in *Gelman* was an important step for abducted children towards international recognition of violations of the right to life suffered by their parents. These children are being given a voice with which to indict the regime that destroyed their families.

Conversely, *Contreras et al. v. El Salvador* addressed claims brought by parents and family members of *children* who were disappeared in a concerted campaign of abductions of the children of subversives in El Salvador between 1981 and 1983.⁹⁵ At the time of the case, one of these children had been found alive and the rest were still disappeared.⁹⁶ The Court found that this violated the children's right to life due to the stated assumption that those who were long disappeared were dead.⁹⁷ Further, in *Contreras*, the Court explicitly stated that, while all forced disappearances created a situation of vulnerability in which the right to life could be implicated,

[t]his situation is accentuated in the presence of a systematic pattern of human rights violations and when children are involved, as in this case, given that the illegal removal of their biological parents also jeopardizes the life, survival and development of the children, the latter understood in its broadest sense to include its physical, mental, spiritual, moral, psychological, and social aspects.⁹⁸

4. Indigenous Communities

Indigenous communities have suffered many human rights violations in the OAS region as a matter of historical and modern day practice.⁹⁹ The cases brought to the Court on behalf of these communities have tended to focus on issues involving the targeting of the indigenous community's land and resources for development by the State, without the meaningful input or consent of the community itself,¹⁰⁰ the failure of the State to provide basic services, such as access to health care to members of the community,¹⁰¹ and the targeting of

95. See *Contreras*, *supra* note 44, ¶ 2.

96. See *id.* ¶¶ 90–94.

97. See *id.*

98. *Id.* ¶ 90.

99. See generally LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, THE INTER-AMERICAN COURT OF HUMAN RIGHTS, CASE LAW AND COMMENTARY (Rosalind Greenstein trans., 2011) 500.

100. See *Pueblo Indígena Kichwa de Sarayaku v. Ecuador*, Fondo y reparaciones, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245 (June 27, 2012).

101. See *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125 (June 17, 2005); *Sahoyamaya Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C)

entire communities, or those advocating for the community, for either their claimed political affiliations or simply for their indigenous status.¹⁰² In all of these scenarios, the Court has found the right to life to be implicated. This is perhaps not surprising in the context of jurisprudence regarding violence against members of indigenous communities. However, the Court's extension of the right to life into these other areas is groundbreaking and noteworthy in the discussion of the overall parameters of the right to life.

In the *Yakye Axa Community* case, the Court established that the right to life “encompasses not only the right of every human being not to be arbitrarily deprived of his or her life but also the right not to be denied the conditions required to ensure a decent existence.”¹⁰³ This concept of a “decent existence” is deeply connected to the idea of dignity on behalf of the individual and the community, and requires the State to ensure that conditions exist in which dignity is protected, preserved, and promoted.¹⁰⁴ Dignity, as a subset of the right to life, is broadly applicable and the Court is adamant that it applies to indigenous communities and community members regardless of their social status, economic status, or isolation from the larger national community.¹⁰⁵

The Court also places the burden on the State to take “positive, concrete measures geared towards fulfillment of the right to a decent life for indigenous communities—especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority within the understanding of the right to life and what it entails.”¹⁰⁶ The *Yakye Axa Community* case and its holdings were revolutionary in that they mark the first time that the Court explained the right to life in such an expansive way, extending well beyond the scope of protection from violent state action.¹⁰⁷

Further, in *Yakye Axa Community*, the Court explicitly linked the right to life with the right to health, the right to food, and the right to access clean water.¹⁰⁸ All of these rights are implicated in the idea of

No. 146 (Mar. 29, 2006); *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214 (Aug. 24, 2010).

102. See Mack Chang, *supra* note 41; Escue-Zapata, *supra* note 48; Chitay Nech, *supra* note 45.

103. *Yakya Axa Indigenous Community*, *supra* note 101, ¶ 157.

104. *Id.* ¶¶ 161–62.

105. *Id.*

106. *Id.* ¶ 162.

107. See, e.g., Burgorgue-Larsen & de torres, *supra* note 99, at 509; see also Keener, *infra* note 151, at 596–97.

108. *Yakya Axa Indigenous Community*, *supra* note 101, ¶ 167.

the right to a decent living.¹⁰⁹ The Court also linked these rights to the right to cultural identity and education, especially for indigenous communities that derive so much of their identity from cultural practices and beliefs.¹¹⁰

The *Yakye Axa Community* case was followed by other cases involving indigenous communities that have endorsed and furthered the Court's ruling and expanded the contours of the right to life even further. In *Sawhoyamaxa Community*, for example, the Court unequivocally stated that:

the states must adopt any measures that may be necessary to create an adequate statutory framework to discourage any threat to the right to life; to establish an effective system of administration of justice able to investigate, punish and repair any deprivation of lives by state agents, or by individuals; and to protect the right of not being prevented from access to conditions that may guarantee a decent life, which entails the adoption of positive measures to prevent the breach of such right.¹¹¹

The *Sawhoyamaxa* Court went on to add those who have been excluded from society in general and those who are extremely poor to the list of those who require special assistance ensuring that their right to life is respected by the national community and the State at large.¹¹²

Despite these protections, the Court has been reluctant to hold the State responsible for violations of the right to life in instances where members of an indigenous community have died due to the inability to access health care, food, and clean water without a significant causal connection.¹¹³ In these instances, the Court reasoned that it was impossible to establish whether the deaths of these community members were the direct result of State inaction.¹¹⁴

There are, however, some exceptions to this reasoning. In *Sawhoyamaxa Community*, for example, the Court found that conditions in the community were so egregious that the State should have foreseen that some community members would die as a result.¹¹⁵ In order to evaluate whether deprivations of these components of the right to life are sufficiently deplorable, the Court has established a state actor

109. *Id.*

110. *Id.*

111. *Sawhoyamaxa Community*, *supra* note 101, ¶ 153.

112. *Id.* ¶ 154.

113. *Id.* ¶ 155.

114. *Id.* ¶¶ 156–58.

115. *Id.* ¶¶ 158–59.

foreseeability and knowledge requirement.¹¹⁶ This entails the state party having reasonable *knowledge* of the situation giving rise to the potential violation—such as the provision of insufficient water resources to sustain the community—and it being *foreseeable* that this situation would result in conditions that amount to a violation of the right to life.¹¹⁷ The Court’s rationale for developing this standard was to ensure that an onerous burden was not placed on the State such that it would be responsible for every loss of life, while at the same time ensuring that States acted in a way in compliance with the essential aspects of the right to life for all members of society, especially those identified as vulnerable.¹¹⁸

Later, the Court would go further in *Xakmok Kasek Community* by explaining that it would evaluate the claims brought by the Xakmok Kasek Community against the State of Paraguay using a standard that balanced the ways in which the State sought to protect the Xakmok Kasek Community against the State’s “duty to guarantee the right to life of the members of the Xákmok Kásek Community.”¹¹⁹ This determination focused on two sub-categories of the right to life—the right to a dignified existence, and the State’s international responsibility for the social situation, which the Xakmok Kasek Community alleged caused its members’ deaths.¹²⁰

In order to make a determination as to the right to a dignified existence, the Court looked at the ability of the Xakmok Kasek Community to access water and the quality of the water itself,¹²¹ its access to food—including the nutritional quality and quantity of food provided by the State,¹²² its access to permanent healthcare services,¹²³ and its access to education in appropriate educational facilities.¹²⁴ Overall, the Court agreed with Xakmok Kasek Community members who stated that, in light of their state-dependent existence due to their disassociation from their traditional lands, Paraguay had not guaranteed the right to a dignified existence as part of the right to life under the American Convention.¹²⁵

116. Sawhoyamaya Community, *supra* note 101, ¶ 155.

117. *Id.*

118. *Id.*

119. *See* Xakmok Kasek Community, *supra* note 101, ¶ 193.

120. *See id.*

121. *Id.* ¶¶ 195–96.

122. *Id.* ¶¶ 197–202.

123. *Id.* ¶¶ 203–08.

124. *Id.* ¶¶ 209–17.

125. Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 215 (Aug. 24, 2010).

In order to determine State responsibility for the deaths of Xakmok Kasek Community members, the Court observed that the decision would be made on a historical basis.¹²⁶ Current measures taken by the State would not, on their own, be sufficient to avoid responsibility for violations of the right to life.¹²⁷ State culpability for deaths of Xakmok Kasek Community members would stem from a perspective that allows for the consideration of factors such as 1) the situation of extreme and particular vulnerability within the community and for the victims, 2) the cause of death of the victims, and 3) the corresponding causal link between them to be connected, without placing on the State the undue burden of overcoming an indeterminate or unknown risk.¹²⁸

The Court then analyzed the deaths that the Xakmok Kasek Community claimed were attributable to the State's violation of the right to life. It found that these violations did in fact occur with regard to medical care provided to ill members of the Xakmok Kasek Community, mainly infants and children.¹²⁹ What is particularly notable is that the Court went beyond the idea of general rights to food, water and health and included access to food, access to acceptable quality water, and access to health services as part of the right to a dignified existence.¹³⁰

However, it should be noted that where the indigenous community's primary right to life claims are based on the deprivation of property rights, rather than the deprivation of resources, the Court has been reluctant to find violations of the right to life per se.¹³¹ Instead, the Court has historically relied on the property rights protections of the American Convention to find the State in violation and attempted to craft meaningful remedies for the affected indigenous communities.¹³² While the *Xakmok Kasek Community* case is of interest for many reasons, it is important to developing an understanding of the right to life because it illustrates how the Court extended the parameters of the right to life while also ensuring that States are not categorically imputed with knowledge—and therefore responsibility—without evidence of a causal relationship.

The Court's latest decision involving indigenous communities,

126. *Id.* ¶ 227.

127. *Id.*

128. *Id.*

129. *Id.* ¶ 234.

130. *Id.* ¶ 259.

131. *See* *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).

132. *See id.*

Pueblo Indigena Kichwa de Sarayaku v. Ecuador, featured arguments that the State generally violated the right to life of the Pueblo Indigena Kichwa de Sarayaku by allowing explosives to be used as part of the land-clearing phase of a contested oil exploration project, and noted several specific instances of deaths allegedly due to these measures.¹³³ However, the Court again attempted to temper the parameters of its positive right to life jurisdiction by reiterating that the provision should be made

“when the authorities knew or should have known about the existence of a situation of real and immediate risk to the life of an individual or group of specific individuals, and did not take the necessary measures within the scope of their authority which could reasonably be expected to prevent or avoid such risk.”¹³⁴

In order to decide the issues facing it, the Court examined the actions of the oil company that planted the explosives in and around the Pueblo Indigena Kichwa de Sarayaku’s lands and the State’s compliance with an earlier order to cease this conduct during the pendency of the case.¹³⁵ Ultimately, the Court found that the State had placed the lives of the Pueblo Indigena Kichwa de Sarayaku members in jeopardy by allowing these actions to continue, which was a violation of the Pueblo Indigena Kichwa de Sarayaku’s right to life along with other property rights.¹³⁶

5. Prison Inmates as Victims

The Court’s jurisprudence on prison inmates is rather thin; nevertheless it does establish that there is higher burden on the State to protect those who are incarcerated because the State has assumed the role of guarantor for their safety and survival.¹³⁷ This includes adducing a state requirement to protect the inmate’s right to life, particularly where the inmate is an incarcerated child.¹³⁸ As the Court stated in *Juvenile Re-education Institute v. Paraguay*:

133. See Pueblo Indigena, Inter-Am. Ct. H.R. No. 245, *supra* note 100.

134. *Id.* ¶ 245.

135. *Id.* ¶ 248.

136. *Id.* ¶ 249.

137. See “Juvenile Reeducation Institute” v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, *supra* note 86, ¶¶ 152–55; Pacheco Teruel et al. v. Honduras, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 241, ¶¶ 67–69 (Apr. 27, 2012).

138. See “Juvenile Reeducation Institute” v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, *supra* note 86, ¶¶ 161–62.

[I]n the case of the right to life, when the person the State deprives of his or her liberty is a child . . . it has the same obligations it has regarding to any person, yet compounded by the added obligation established in Article 19 of the American Convention. On the one hand, it must be all the more diligent and responsible in its role as guarantor and must take special measures based on the principle of the best interests of the child. On the other hand, to protect a child's life, the State must be particularly attentive to that child's living conditions while deprived of his or her liberty, as the child's detention or imprisonment does not deny the child his or her right to life or restrict that right.¹³⁹

C. The Right to Life and Reparations

Just as the Court has established a broad and more encompassing definition of the right to life and its parameters, the Court has also established a widely encompassing standard for how to award reparations for victims of human rights abuses, particularly the right to life.

Perhaps the standard form of reparation for any human rights violation takes the form of pecuniary awards.¹⁴⁰ The Court has established that there is a place for awarding pecuniary damages in instances where the right to life has been violated because it is impossible to restore the life of the victims in these instances.¹⁴¹ In deciding the amount of pecuniary damages to award, the Court has included lost wages over the expected wage-earning life of the victim and other indirect financial losses.¹⁴²

When calculating pecuniary damages, the Court has taken a more holistic view of the potential class of award recipients, particularly with respect to members of indigenous communities that have a different familial structure.¹⁴³ While the Court has required that there be a definitive cut-off point for awardees after a certain degree of removal from the victim, it has traditionally allowed local custom—including

139. *Id.* ¶ 160.

140. *See, e.g.*, Chitay Nech, Inter-Am. Ct. H.R. No. 212, *supra* note 45, ¶¶ 69–71; Contreras, Inter-Am. Ct. H.R. No. 232, ¶¶ 222–25; Escué-Zapata, Inter-Am. Ct. H.R. No. 165, ¶¶ 132–46.

141. Aloboetoe, *supra* note 71, ¶ 46 (“[I]n matters involving violations of the right to life . . . reparation must of necessity be in the form of pecuniary compensation, given the nature of the right violated . . . insofar as the right to life is concerned, it is impossible to reinstate the enjoyment of that right to the victims. In such cases, reparation must take other, alternative forms, such as pecuniary compensation. This compensation refers primarily to actual damages suffered.”).

142. *See id.* ¶¶ 89–92.

143. *See id.* ¶¶ 63–64.

practices of indigenous communities—to be used in calculating the damages awarded.¹⁴⁴ This can be seen as an expansion of the understanding of life in the Inter-American human rights system because it evaluates the impact of the victim's life in the context of her identity and role in a larger community, rather than a formulaic view of the victim's life based solely on majoritarian community structures.

The Court has routinely awarded non-pecuniary—or, moral—damages as reparations in cases involving violations of the right to life.¹⁴⁵ In addition to the monetary aspects of non-pecuniary damage awards, the Court has been creative in crafting remedies that seek to honor the life of the victim and to commemorate the suffering to which the victim was subjected. Examples of this include the use of public monuments commemorating the victim, especially the use of plaques that indicate the exact spot where the victim was either disappeared or murdered, and the use of video documentaries that explain and honor the victim's life and work, which is often the very reason that the victim was targeted.¹⁴⁶

IV. LIFE AS WE KNOW IT NOW AND IN THE FUTURE

A. Life as We Know It Now

From the fairly simplistic notion of a protection from the deprivation of an individual's life by a state actor in the penal context, the right to life in the Inter-American human rights system has rapidly expanded in scope through the jurisprudence of the Court. As discussed above, the Court has increasingly used the right to life as a tool to address many forms of state action—or lack thereof—which has formed the crux of many human rights violations taken by States against individuals outside of the penal context. Indeed, even where the Court has addressed violations of the right to life in the context of prison inmates, it has expanded the scope of the right to life to include a State responsibility to guarantee the inmate's right to life as well as associated protections, such as adequate housing and medical assistance.¹⁴⁷

As a threshold matter, the Court has provided insight on the responsibilities and duties of states under the concept of protecting the right to life by establishing both negative and positive elements for the right. The negative aspect of the right requires that the State ensure that

144. *See id.* ¶¶ 82–84, 96–98.

145. For a discussion of these forms of reparations see Harrington, *supra* note 29.

146. *See id.*

147. "Juvenile Reeducation Institute," *supra* note 86, ¶¶ 155, 159, 170.

individuals are not arbitrarily deprived of their lives. The positive aspect of the right is “that the States adopt all appropriate measures to protect and preserve the right to life.”¹⁴⁸ Further, the Court has extended state responsibility beyond standard state actors and to the acts of local officials as well as quasi-state actors such as paramilitary organizations.¹⁴⁹

Both individually and collectively, these negative and positive aspects of the right to life have served as the guides within which the Court has begun to fashion the contours of the right. This is particularly important in terms of the positive aspect of the right to life, since this is the aspect that the Court often uses to justify the inclusion of non-penal protections, such as access to adequate food and healthcare services for indigenous communities.¹⁵⁰ The ability to use this aspect of the right to life in a creative manner has allowed the Court to move further into the realm of what constitutes the essential materials for and needs of life.¹⁵¹

This movement has emboldened individuals, communities and those who represent them, as well as the Commission, to bring complaints that at first might seem outside the scope of the right to life. It has provided room to explore the legal parameters of the right to life and established the right to life as a thick area of jurisprudence at the Court level. This was seen above by the coupling of issues relating to the right to life and the rights of the child within the American Convention and Inter-American human rights system, as the rights of the child jurisprudence is arguably much thinner and less nuanced.¹⁵²

The Court has recognized two forms of violent state action against individuals—or communities—which rise to the level of violations of the right to life: the use of forced disappearances and the use of extra-judicial killings by state actors or quasi-state actors.¹⁵³ These two forms of violation have been constant throughout the Court’s jurisprudence; however, over time the Court has established a near presumption that

148. Mack Chang, *supra* note 41, ¶¶ 92–93.

149. *See generally id.* *See also* Mapiripan Massacre: "Mapiripan Massacre" v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 197 (Sept. 15, 2005); Ituango Massacre: Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 125 (July 1, 2006) (describing the paramilitary groups' involvement in the massacre).

150. Yakye Axa, *supra* note 101, ¶ 221.

151. Steven R. Keener & Javier Vasquez, *A Life Worth Living: Enforcement of the Right to Health Through the Right to Life in the Inter-American Court of Human Rights*, 40 COLUM. HUM. RTS. L. REV. 595, 597 (2008).

152. *See* "Juvenile Reeducation Institute," *supra* note 86, ¶ 172.

153. *See, e.g.,* Chitay Nech et al. v. Guatemala, *supra* note 45, ¶ 96; "Mapiripan Massacre" v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶¶ 157–62 (Sept. 15, 2005).

forced disappearance will equate to extra-judicial killing where the fate of the disappeared person is unknown and the state cannot, or will not, provide information on this.¹⁵⁴ Combined with Court presumptions regarding the occurrence of forced disappearances and extra-judicial killings under certain regimes, in certain States, and at certain times, these near-presumptions create a situation in which victims and the Commission have a stronger ability to adequately prove the existence of one or both of these crimes—even where information on individual cases is not readily available.

The importance of this combination can be seen in Court cases stating that forced disappearances are violations of the right to life because there is no evidence to support the fact that the disappeared person might still be alive.¹⁵⁵ This combination is also important in the sphere of extra-judicial killings because these acts have historically been carried out by unknown state actors or quasi-state actors, thus raising the possibility that the victim's representatives would be unable to make the causal connection to the state that is needed to effectively assert state responsibility and find justice for the murdered individual(s).¹⁵⁶

Of particular jurisprudential importance is that the right to life, according to the Court, does not end with the life of the victim himself. The Court has established that the right to life continues to be violated when the remains of victims of forced disappearance and subsequent extra-judicial killings are intentionally hidden from society—and particularly from the victim's family—for any period of time.¹⁵⁷ Stressing the importance of this ongoing violation, in these situations, the Court has routinely ordered the implicated State to locate and return the remains of disappeared persons to their families, thereby preserving the dignity of the victim and his life.¹⁵⁸

In the context of extra-judicial killings, the Court has created three phases in which the right to life can be violated: 1) the phase in which the murder is planned; 2) the phase in which the murder is carried out; and 3) the phase in which the implicated state actors or quasi-state actors attempt to cover-up the murder.¹⁵⁹ Thus, the right to life can

154. See *Godínez-Cruz v. Honduras*, Merits. Judgment, Inter-Am. Ct. H.R. (ser.C) No. 5, at ¶ 165 (Jan. 20, 1989).

155. See *id.*; see also *Molina-Theissen v. Guatemala*, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 91(a) (July 3, 2004).

156. See *Mack Chang*, *supra* note 41, ¶¶ 273–75.

157. See *id.*

158. See *Contreras et al. v. El Salvadore*, *supra* note 6, ¶ 201.

159. See *Mack Chang*, *supra* note 41, ¶¶ 141, 145, 149.

continue to be violated after the murder of the individual when the subsequent acts form a nexus with the murder.

Throughout its jurisprudence, the Court has expanded the parameters of the right to life in relationship to particularly vulnerable groups within society, particularly children, women, and indigenous communities.¹⁶⁰ The Court has mirrored its phases of right to life violations in the extra-judicial killing context where women and girls have been subject to sustained disappearance and murder by non-state actors because the state was found not to have acted effectively at the time that the victims were reported missing, during the investigation into their deaths, and in the prosecution of those who allegedly committed crimes against the victims. Each of these phases was implicated as a separate violation of the right to life.¹⁶¹

Children have been identified as being particularly vulnerable to state actions overall and particularly to actions that effect their lives.¹⁶² In this way, the Court has expanded the concept of the right to life to take into account the vulnerability of, and need to respect, the lives of children as well as the simple need to preserve their lives against arbitrary punishment.¹⁶³ Further, children have been acknowledged as suffering right to life violations where they were abducted from their families as part of a concerted campaign to remove the children of "subversives" from their parents.¹⁶⁴ Although some of these children have been located and reunited with their family members, complaints regarding those who have not yet been found have generated violations of the right to life based on the already established connection between forced disappearance and death.¹⁶⁵ The Court has also allowed a found abducted child to bring a complaint regarding the fate of her mother as a violation of the mother's right to life which, this article asserts, is a validation of the life of the child as part of the family from which she was abducted.¹⁶⁶

Perhaps the most innovative area of the Court's right to life jurisprudence involves the duties and responsibilities that a State owes to indigenous communities located within its territory. Certainly, the

160. See, e.g., *The Rights of the Child in the Inter-American Human Rights System*, *supra* note 85, at 44.

161. Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, (Nov. 16, 2009).

162. See Harrington, *supra* note 29.

163. See "Juvenile Reeducation Institute," *supra* note 86, ¶¶ 147, 160, 161.

164. Gelman v. Uruguay, *supra* note 68, ¶ 130.

165. *Id.* ¶ 158.

166. See *id.* ¶¶ 96, 130–32.

Court's jurisprudence and expanded parameters regarding forced disappearances and extra-judicial killings are applicable to these communities due to the many acts of violence which have been committed against members of these communities by state or quasi-state actors.¹⁶⁷ What is more novel, however, is the way in which the Court has established the rights that indigenous communities possess as part of the bundle of rights that fall within the ambit of the right to life overall.

Some observers have explained the development of the rights that compose this bundle—and the attendant duties and responsibilities owed by the State—as the Court incorporating economic, social and cultural rights into the right to life.¹⁶⁸ This conclusion is understandable and notable; nevertheless, it does not fully reflect the impact of the Court's jurisprudence in this area because it seeks to create a dichotomy between the rights that are in this bundle, namely between those that are civil and political, and those that are economic, social, and cultural.¹⁶⁹

Rather than as a dichotomy, it is better to understand the Court's jurisprudence as a cohesive acceptance of the rights, duties, and responsibilities surrounding indigenous communities. This underscores the interconnectedness of all of these rights, duties, and responsibilities in the same way that the community functions as a societal unit. Seen this way, each right is recognizable as a thread in the tapestry that is the right to life. Just as the loss of a thread will unravel a tapestry, so too will the enjoyment of the right to life unravel when one of its threads is broken.

For example, the Court has recognized that the right to life includes the right to a decent existence, which includes State recognition of individual dignity. Thus far, the Court has found that this right includes the right to health—encompassing the ability to physically access healthcare services—the right to food, and the right of

167. See *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001); *Case of the Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, (ser. C) No. 124 (June 15, 2005); *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, (ser. C) No. 125 (June 17, 2005); *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment, (ser. C) No. 146 (Mar. 29, 2006).

168. See Jo M. Pasqualucci, *The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System*, 31 HASTINGS INT'L & COMP. L. REV. 1 (2008); Monica Ferial Tinta, *Justiciability of Economic, Social, and Cultural Rights in the Inter-American System of Protection of Human Rights: Beyond Traditional Paradigms and Notions*, 29 HUM. RTS. Q. 431 (2007).

169. See *id.*

access to clean water.¹⁷⁰ The Court has also made direct links between the right to life and the rights to education and cultural identity.¹⁷¹ These are all elements that allow the community to exist and flourish alongside protections against physical violence and forced disappearance.

In its latest piece of jurisprudence regarding indigenous communities, the Court established that the right to life includes protection from State and private action, done with the permission of the State, which results in harm to an indigenous community.¹⁷² Specifically, the Court looked at the harm that resulted from the use of explosives for land clearing when the State had knowledge of the dangers to the community and failed to protect against them.¹⁷³ By expanding the articulated parameters of the right to life under the American Convention, the Court recognized the potential damages to the entire community—physically and economically—that stemmed from these measures.¹⁷⁴ Again, the tapestry is unraveling because of pulled threads.

B. Pending Cases and Future Jurisprudence

In recent years, the Commission has submitted a number of cases to the Court that arguably present the Court with opportunities to further refine the parameters of the right to life under the American Convention. Given the evolution of the right to life as charted in this article, it is important to examine these new cases in order to understand where the next contours of the right to life might be developed.

Some cases raise issues of forced disappearance and extra-judicial killings that are sadly similar to the facts of many of the Court's previous cases.¹⁷⁵ *Maria Isabel Veliz Franco v. Guatemala* presents a situation factually similar to the *Cotton Field* case from Mexico. It involves the disappearance and murder of a girl in an area of Guatemala where there is an alleged pattern of violence against women and a culture of impunity as a result.¹⁷⁶ *Veliz Franco* presented the Court with

170. Yakyé Axa Indigenous Community, *supra* note 101.

171. *Id.*

172. Pueblo Indígena, Inter-Am. Ct. H.R. No. 245, *supra* note 100, ¶¶ 244–45.

173. *Id.* ¶¶ 244–46.

174. *Id.* ¶ 246.

175. See *Mendoza v. Ecuador*, Preliminary Objection, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 247, ¶¶ 28–30 (Sept. 3, 2011); *Joe Luis Castillo González et al. v. Venezuela*, Case 12.605, Inter-Am. Comm'n H.R., Report No. 120/10, OEA/Ser.L/V (2011).

176. *Franco v. Guatemala*, Admissibility Report, Report No. 92/06, Inter-Am. Comm'n H.R., Case No. 12.578 (Oct. 21, 2006).

the opportunity to further enunciate the right to life as it applies to women and girls in the face of the failure of the *Cotton Field* decision. In *Veliz Franco*, the Court could set a meaningful precedent by condemning the violence and discrimination against women and girls either in Mexico—the state implicated in the *Cotton Field* decision—or other states within the Inter-American human rights system.¹⁷⁷ It could also have resulted in the Court re-addressing the role of systematic tolerance of violations of the right to life, allowing future violations to occur.

In *Eduardo Nicolás Cruz Sánchez et al (Chavin de Huántar Operation) v. Peru*, the Court was asked to examine a case of extrajudicial killing.¹⁷⁸ This killing involved a terrorist group widely recognized as a state threat by the state military forces, in the aftermath of a military operation to free hostages taken by members of the group.¹⁷⁹ The deceased was one of the hostages taken.¹⁸⁰ Many novel legal issues are presented in *Cruz Sanchez*, and the balancing of the right to life with state interests in security, and indeed the interests of those who were being held hostage by the deceased, ranks highly among them.

A number of cases referred by the Commission relate to massacres by state actors or quasi-state actors. These cases present the Court the opportunity to create quasi-presumptions regarding the political and military climate existing in the implicated States during specific periods. In *Nadege Dorzama et al, Massacre of Guayubin v. Dominican Republic*, the Commission referred a complaint alleging that Haitian state actors used excessive force against the Haitian claimants because of their Haitian identity.¹⁸¹ This case will require the Court to address assertions regarding the use of force and the right to life as well as, arguably, the connection between the right to life and violent state actions that are targeted against a particular nationality and ethnic group.¹⁸²

Some of these cases relate to massacres of populations in areas that

177. See Press Release 60/12, Inter-Am. Comm'n H.R., IACHR Takes Case on Guatemala to the IA Court HR (June 7, 2012); González et al. (“Cotton Field”) v. Mexico, *supra* note 59, at ¶ 2.

178. Eduardo Nicolás Cruz Sánchez et al. (Chavin de Huántar Operation) v. Peru, Admissibility Report, Report No. 13/04, Inter-Am. Comm'n H.R., Case No. 12.444 (Feb. 27, 2004).

179. *Id.*

180. *Id.*

181. See *Nadege Dorzama et al. v. Dominican Republic, Merits, Reparation, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251 (Oct. 24, 2012).*

182. See *id.*

the State targeted because they were near suspected anti-government force strongholds.¹⁸³

Other cases relate to specific targeting of certain indigenous community groups—especially women and children for forced disappearance, grotesque torture, and extra-judicial killings, largely due to allegations that these communities in some way had ties to anti-government groups.¹⁸⁴ The Court will be called upon to address these massacres under its already-established right to life jurisprudence, and again will have to examine the issue of State attempts to secure the population against militant groups and the legitimacy of these claims.

Additionally, in *Community of Rio Negro of the Maya Achi People and Its Members v. Guatemala*, the Court will address the Commission's assertions that Guatemala's violations of the right to life against community members were so egregious and targeted toward the decimation of the particular community that they rose to the level of genocide.¹⁸⁵ This determination will doubtless provide new contours to the right to life under the American Convention regardless of the Court's decision. On the one hand, a finding that genocide did indeed occur will vastly expand the boundaries of the right to life within the Inter-American human rights system. On the other hand, a finding that the acts did not rise to the level of genocide will ensure that the right to life within the Inter-American human rights system will remain relatively static within the face of grave massacres. Either way, the right to life, and the Inter-American human rights system generally, will be impacted in a meaningful way.

While it is impossible to predict the Court's decisions in any of these pending cases, they all represent important opportunities for the Court to solidify, reinforce, and expand its right to life jurisprudence. Although the content of the Court's future jurisprudence is unknown, it is certain that this jurisprudence will further the understanding of the right to life as we know it.

183. See *Santo Domingo Massacre v. Colombia*, Admissibility Report, Report No. 25/03, Inter-Am. Comm'n H.R., Case No. 12.416 (Mar. 6, 2003); *El Mozote Massacre v. El Salvador*, Admissibility Report, Report No. 24/06, Inter-Am. Comm'n H.R. Case No. 10.720 (Mar. 2, 2006).

184. See *José Miguels Gudiel Álvarez and Others ("Diario Militar") v. Guatemala*, Admissibility Report, Report No. 116/10, Inter-Am. Comm'n H.R., Case No. 12.590 (Oct. 22, 2010); *Edgar Fernando García v. Guatemala*, Admissibility Report, Report No. 91/06, Inter-Am. Comm'n H.R., Case No. 12.343 (Oct. 21, 2006).

185. See *Community Masacres de Rio Negro v. Guatemala*, Preliminary Exceptions, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 250 (Sept. 4, 2012).

V. CONCLUSION

Throughout its history, the Court has steadily developed jurisprudence in connection with the right to life. This development has resulted in the Court fashioning an understanding of the right to life that is protective and inclusive, going beyond protections in the penal context to afford protections to those who are frequently victimized within the State and regarded as voiceless within society. In so doing, the Court has provided a vision of the right to life that is uniquely holistic and can be developed in the future in order to validate the many facets of life. Thus, the Court, in expanding the jurisprudence relating to and boundaries of the right to life, has given us the current understanding of life as we know it, and has highlighted the evolving nature of the right to life as an inclusive and comprehensive tool.