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## **BULLETIN No 4**

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# PRESENTATION

Over its 35 years of operation, the Inter-American Court has accompanied the peoples of the Americas in the transformation of their social, political and institutional realities. During this time, it has decided more than 200 cases, delivered almost 300 judgments, issued over 20 advisory opinions, and provided prompt protection to individuals and groups of individuals by means of its preventive function.

Nevertheless, we are aware that the work of the Inter-American Court does not end when an order, a judgment, or an advisory opinion has been emitted. The effective protection of human rights is only achieved by a dynamic dialogue with national institutions, particularly those of a jurisdictional nature. In this context, it is the national actors who, through jurisprudential dialogue and a satisfactory control of conventionality – all within the framework of their competences – ensure that the decisions of the Inter-American Court have real effect. In this way, a dynamic and complementary control of the treaty-based obligation to respect and ensure human rights is being exercised in an increasingly vigorous manner in conjunction with the domestic authorities.

In this spirit and with this encouragement, the Inter-American Court has been decisively fostering jurisprudential dialogue to ensure that inter-American justice is truly and effectively accessible. Every individual in the Americas should be aware of, take ownership of, and demand the human rights recognized in the American Convention or in the interpretations that the Inter-American Court makes of this instrument. Accordingly, we are now publishing these bulletins as an important effort to disseminate the Court's rulings periodically and, above all, to allow more people to get to know the work and the decisions of the Inter-American Court. Thus, these bulletins, which will be published every six months in Spanish, English and Portuguese, should become a useful tool for researchers, students, human rights defenders, and all those who would like to find out about the impact of the Court's work, and about the innovative human rights standards that the Court is constantly developing.

This fourth edition covers the rulings made by this Court between September and December 2015. During this period, the Court delivered twelve judgments on preliminary objections, merits and reparations, and also adopted fourteen orders on monitoring compliance with judgment and ten on provisional measures.

The issues dealt with by the Court in its decisions required it to refer to problems that it has already tackled in its case law and that continue to be relevant for the exercise of human rights on our continent. In particular, the cases decided by the Court referred to issues such as enforced disappearance of persons, arbitrary detention and torture, and collective ownership, and other rights of indigenous peoples such as

prior consultation. An innovation in the Court's case law related to discrimination against a child with HIV, which resulted in the violation of her right to education. In this case, for the first time, the Court exercised its competence to examine the violation of this right under Article 19(6) of the Protocol of San Salvador.

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We trust that this fourth bulletin will help publicize the Court's case law throughout the region.

**Roberto F. Caldas**  
**President of the Inter-American Court**

<sup>1</sup> This document has been prepared jointly by Elizabeth Salmón, Director of IDEHPUCP, Cristina Blanco Coordinator of the Academic and Research Area, and Renata Bregaglio, Senior Researcher of the Institute.

# NUMBER OF CASES HEARD BY THE COURT, BY STATE<sup>1</sup>

State	Cases
Argentina	17
Barbados	2
Bolivia	4
Brazil	5
Chile	8
Colombia	15
Costa Rica	2
Dominican Republic	4
Ecuador	17
El Salvador	6
Guatemala	20
Haiti	2
Honduras	12
Mexico	8
Nicaragua	3
Paraguay	7
Panama	5
Peru	37
Suriname	6
Trinidad and Tobago	2
Uruguay	2
Venezuela	19

# I. CONTENTIOUS CASES

## Case of Gonzales Lluy et al. v. Ecuador (discrimination against a child with HIV/right to education)

On September 1, 2015, the Inter-American Court delivered judgment in the *Case of Gonzales Lluy et al. v. Ecuador*, declaring that the State of Ecuador had incurred international responsibility for diverse human rights violations committed against Talía Gabriela Gonzales Lluy, who was three years old when she was infected with HIV on receiving a transfusion of blood that had not undergone the corresponding serological tests. Her mother, Teresa Lluy, subsequently filed diverse civil and criminal actions seeking the punishment of those responsible for Talía's infection, and payment of damages; however, the actions were unsuccessful. When she was five years old, Talía was enrolled in a public school which she attended normally for two months, until the Principal found out that she had HIV and decided to terminate her attendance. In February 2000, Teresa Lluy filed an application for constitutional protection (*amparo*) against the Ministry of Education and Culture, the school Principal and Talía's teacher based on the presumed deprivation of the right to education. That same month, the Third District Contentious Court declared the application for *amparo* inadmissible, considering that there was a conflict of interests between the individual rights of Talía and the interests of the other students; a conflict in which the societal or collective interests should prevail. According to statements made by Talía and her family, they were forced to move frequently due to the exclusion and rejection they suffered owing to Talía's condition.

In this case, the State submitted two arguments which it referred to as preliminary objections relating to: (i) the alleged partial lack of competence of the Court to examine facts outside the factual framework and the presumed violation of rights other than those established by the Commission in its reports, and (ii) the alleged failure to exhaust domestic remedies. The first argument was examined as a preliminary consideration because the Court considered that it related to the factual framework of the case. With regard to the second argument, the Court observed that an objection was filed during the admissibility proceedings before the Commission in relation to some of the remedies. Nevertheless, before the Court, the State had also argued that the petitioners had not filed an appeal against the decision on the application for constitutional protection; therefore, this aspect was time-barred. Regarding the remedy of recusal of the judges, as well as the action for damages against them, and the remedy of cassation, the Court found that, owing to their nature, in this specific case, those remedies would have been neither

<sup>1</sup> These are cases that were submitted to the contentious jurisdiction of the Court by the Inter-American Commission or by a State and in which a final judgment or decision had been delivered at December 31, 2015.

adequate nor effective to determine responsibilities for the facts surrounding the infection of Talía with HIV, or to determine an appropriate reparation. In the case of the civil action seeking compensation for non-pecuniary damage, the Court considered that this was inappropriate to obtain compensation for all the harm caused to Talía. Lastly, regarding the private criminal charges, the Court noted that this was not an appropriate and effective remedy that the presumed victims should have exhausted in order to elucidate the facts of the case. Consequently, it rejected this preliminary objection.

The Court referred to two preliminary considerations. The first related to the State's argument that the Commission had not ruled on presumed violations of Articles 2, 24 and 26 of the American Convention, and thus it was not admissible for the Court to examine the merits of rights that were not part of the original factual framework of the case. The Court determined that the Commission had referred explicitly to the presumed discrimination and that Talía had been prevented from attending primary school owing to her illness, and also to the supposed discrimination that her direct family had suffered; therefore it rejected the argument. The second referred to the determination of the presumed victims. The State indicated that, in the recommendations contained in its reports on admissibility and merits, the Commission had established that the State should only make reparation to Talía Gonzales Lluy and her mother. Accordingly, it asserted that it was not possible to incorporate individuals who had not been named as beneficiaries of an eventual reparation and therefore asked the Court not to consider Iván Lluy as a presumed victim. The Court observed that the Commission had explicitly mentioned Iván Lluy throughout the Merits Report and in its conclusions. Consequently, the Court found that he had been identified as a presumed victim pursuant to Article 50 of the Convention and Article 35(1) of the Court's Rules of Procedure.

Regarding the merits of the matter, the Court referred, first, to the rights to life and to personal integrity. It recalled that the State had a monitoring and supervision obligation and that, even when health care services were provided by a private entity, the State maintained the obligation to provide public services and to protect the respective public right. In this case, the Court considered that the irregularities and the precarious operating conditions of the Blood Bank that provided the blood for Talía revealed the possible consequences of the State's failure to comply with its monitoring and supervision obligation. This serious omission by the State allowed blood that had not undergone the most basic safety testing, such as for HIV, to be delivered to Talía, and this resulted in her infection and the consequent permanent impairment of her health. This harm to her health constituted a violation of the right to life, in view of the risk of death that the victim had sometimes faced, and could face in the future.

The Court also referred to the availability, accessibility, acceptability and quality of health care in the context of the rights to life and to personal integrity. In particular, it considered that the International Guidelines on HIV/AIDS and Human Rights of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) were an authorized reference to clarify the State's international obligations in this regard. Based on the guidelines contained in this instrument, the Court observed that access to antiretroviral medicines was only one of



the elements of an effective response for persons living with HIV.

In this regard, the Court considered that those living with HIV required a comprehensive approach that included a continuum of prevention, treatment, care and support. A response limited to access to antiretroviral drugs and other medicines did not comply with the obligations of prevention, treatment, care and support arising from the right to the highest attainable standard of health. Those aspects of the quality of health were related to the State obligation to create safe environments, especially for young girls, expanding good quality youth-friendly information and sexual health education and counselling services, strengthening reproductive and sexual health programmes, and involving families and young people in planning, implementing and evaluating HIV and AIDS prevention and care programs.

In view of the fact that the negligence that led to the infection can be attributed to the State, Ecuador was responsible for the violation of the obligation to monitor and supervise the provision of health care services, within the framework of the right to personal integrity and of the obligation not to endanger life, which violated Articles 4 and 5 of the American Convention in relation to Article 1(1) of that instrument.

The Court also emphasized the constant situation of vulnerability of Teresa and Iván Lluy, because they were discriminated against, isolated from society, and in a precarious financial situation. Added to this, Talía's infection had a significant effect on the whole family, because Teresa and Iván had to devote most of their physical, material and financial efforts to trying to ensure Talía's survival and a decent life for her. All of this, gave rise to a permanent situation of anguish, uncertainty and insecurity in the life of Talía, Teresa and Iván Lluy. Despite their situation of special vulnerability, the State had not taken the necessary measures to ensure Talía and her family access to their rights without discrimination; hence, the State's acts and omissions constituted discriminatory treatment. Consequently, the Court concluded that the State was responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Teresa Lluy and Iván Lluy

With regard to the right to education, the Court recalled that this was contained in Article 13 of the Protocol of San Salvador and that it had competence to decide on contentious cases concerning this right based on Article 19(6) of the Protocol. The Court also noted that, historically, persons with HIV had been discriminated against owing to different social and cultural beliefs that had stigmatized the illness. Thus, the fact that a person was living with HIV/AIDS, or even the mere assumption that he or she had HIV/AIDS, could create social and attitudinal barriers to that person having equal access to all his or her rights. The Court considered that the relationship between this type of barrier and a person's health status justified the use of the social model of disability as a relevant approach to assess the scope of some of the rights involved in this case. It indicated that although living with HIV was not per se a situation of disability, in some circumstances, the attitudinal barriers faced by those living with HIV meant that the surrounding circumstances placed them in a situation of disability.

Taking the above into account, the Court clarified some elements of the right to education of those living with medical conditions that could result in disability such as HIV/AIDS. In particular, it considered that there were three obligations inherent in the right to education in the case of persons living with HIV/AIDS: (i) the right to have timely, prejudice-free information on HIV/AIDS; (ii) the prohibition to deny access to educational establishments to persons with HIV/AIDS, and (iii) the right that education should promote their inclusion and non-discrimination by their social milieu.

Regarding the dispute concerning the way in which Talía was suspended from school, the Court indicated that this decision constituted a difference in treatment based on her condition. To determine whether that difference in treatment constituted discrimination, the Court examined the justification provided by the State. If a difference in treatment were stipulated on the basis of a medical condition or illness that difference in treatment must be made based on medical criteria and the real health status of the person concerned in each specific case, and evaluating the real and proven harm or risks, and not the speculative or imaginary ones. Therefore, speculations, presumptions, stereotypes or general consideration on persons with HIV/AIDS or any other type of illness were inadmissible, even if those prejudices were concealed by reasons that appeared to be legitimate, such as the protection of the right to life or public health.

On verifying that the difference in treatment was based on a prohibited category, the State had the obligation to demonstrate that the decision did not have a discriminatory purpose or effect. The Court concluded that the real and significant risk of infection that would have jeopardized the health of Talía's companions was extremely small. In the context of an assessment of the need and strict proportionality of the measure, the Court emphasized that the means chosen had constituted the most harmful and disproportionate of those available to meet the objective of protecting the integrity of the other children at the school. Although the judgment of the domestic court was intended to protect Talía's classmates, the reasoning provided in the decision did not prove that the decision was appropriate to achieve this objective. In this case, the decision had used abstract, stereotyped arguments to justify a decision that was extreme and unnecessary; thus, the decision constituted discriminatory treatment against Talía.

In addition, the Court noted that this treatment also revealed that the educational environment did not demonstrate any adaptability to Talía's situation by adopting the biosafety or similar measures that should exist in any educational establishment for the general prevention of the transmission of illnesses. The Court determined that, in Talía's case, numerous factors of vulnerability and risk of discrimination intersected associated with her condition as a minor, a female, a person living in poverty, and a person living with HIV. In this regard, the Court noted that certain groups of women endured discrimination throughout their life based on more than one factor combined with their gender, which increased their risk of suffering acts of violence and other violations of their human rights. It noted that discrimination based on race, ethnicity, national origin, ability, socio-economic class, sexual orientation, gender identity, religion, culture, tradition and other realities often intensified acts of violence against women. In the case of women with HIV/AIDS, the gender perspective provided a way of understanding living with the illness in the context of the roles

and expectations that had an impact on behaviors. The discrimination experienced by Talía was caused not only by numerous factors, but also arose from a specific form of discrimination that resulted from the intersection of those factors. Based on the foregoing, the Court concluded that the Ecuadorian State had violated the right to education contained in Article 13 of the Protocol of San Salvador, in relation to Articles 19 and 1(1) of the American Convention to the detriment of Talía Gonzales Lluy.

Regarding judicial guarantees and judicial protection, the Court concluded that, taking into account that there was an obligation to act with exceptional due diligence considering Talía's situation, Ecuador had violated the judicial guarantee of a reasonable time as regards the criminal proceedings. The Court also indicated that, in this case, there was insufficient evidence to allow it to conclude that the existence of the need for a prior judgment under Ecuadorian law constituted, in itself, a violation of judicial guarantees, because insufficient arguments and evidence had been presented to allow the Court to affirm that the remedy filed by Teresa Lluy was the result of a lack of clarity in Ecuador's laws. Lastly, the Court considered that it did not have any evidence to support the argument presented regarding the lack of judicial protection for Talía during the processing of the amparo, the criminal proceedings or the civil action. Thus, it concluded that it was unable to conclude that there had been a violation of the guarantee of judicial protection.

In relation to reparations, among others, the Court ordered the State to provide Talía Gonzales Lluy immediately with free medical and psychological or psychiatric treatment through its public health institutions or specialized health care personnel, in a timely, appropriate and effective manner, including the provision, also free of charge, of the medicines that she might eventually require based on her ailments. It also ordered the State to award Talía a grant to continue her university studies, and to provide her with decent housing within one year. In addition, it established that the State should implement a program to train health officials on best practices and rights of patients with HIV.

## **Case of the Campesino Community of Santa Bárbara v. Peru** (enforced disappearances)

On September 1, 2015, the Court delivered judgment declaring the State of Peru internationally responsible for the enforced disappearance of several individuals. As noted by the Court, these events took place during the Peruvian armed conflict and the systematic practice of human rights violations, including extrajudicial executions and the enforced disappearance of those suspected of belonging to illegal armed groups. In this context, in June 1991, an extension of the state of emergency was decreed in the department of Huancavelica and the Armed Forces took control of internal order.

In July 1991, in execution of the "Apolonia Plan of Operation," a military operation designed to combat subversion in Huancavelica, two patrols entered Rodeopampa, a Santa Barbara community, "to capture and/or kill" terrorists operating in the area. The soldiers broke into the homes, forcing those inside out into

the open, and set fire to the buildings; they then seized the livestock and the possessions of the inhabitants. They detained 14 members of the community, including three girls and four boys, one elderly man, five women, one of whom was six months pregnant, and one adult male. The detainees were subjected to different forms of ill-treatment, and taken to an abandoned mine. The same day, Elihoref Huamaní Vergara was intercepted by members of the Army, who made him join the group that was being taken to the mine. On the way, the detainees were beaten and obliged to walk for several hours, without food or water, while roped together. When they reached the mine, the soldiers forced the 15 detainees to enter, and shot and massacred them. Subsequently, the soldiers detonated dynamite in the mine, destroying the bodies.

Various complaints were filed in July and August 1991. In July 1991, a procedure was conducted to remove the human remains and the evidence found in the mine. No further procedures were carried out with regard to the evidence and remains that had been found and the whereabouts of this material is currently unknown. Proceedings were opened under both the military and the ordinary jurisdiction, as well as an interlocutory proceeding on the respective competence which was decided in favor of the ordinary jurisdiction. In 1995, the Amnesty Law was applied in both jurisdictions and, following the delivery of the judgments of the Inter-American Court in the Case of Barrios Altos v. Peru, both proceedings were re-opened. There is no record of subsequent actions in the military jurisdiction. However, in the ordinary jurisdiction, it is on record that, in October 2006, the National Criminal Chamber of Lima assumed the hearing of the case. In February 2012 and May 2013, this National Criminal Chamber and the Transitory Criminal Chamber of the Supreme Court handed down their respective judgments. The facts were classified as a crime against humanity and the corresponding criminal proceedings are not subject to the statute of limitations. Oscar Alberto Carrera Gonzales was convicted of aggravated homicide and a warrant was issued for the capture of the other men who had been indicted. At the same time, in August 2011, the Fourth Supra-provincial Criminal Court of Lima opened an investigation against Simón Fidel Breña Palante and, in February 2013, the National Criminal Chamber of the Supreme Court declared the extinguishment of the proceedings against him.

The Court considered that the State had made a partial acknowledgement of the facts and of international responsibility, but the dispute remained with regard to factual matters and legal claims that had not been acknowledged by the State. It also decided two preliminary objections filed by the State. First, it rejected the objection of failure to exhaust domestic remedies, because it considered that: (i) this was not compatible with the partial acknowledgement of responsibility, and (ii) Peru had failed to specify why the remedies and proceedings mentioned in its briefs would be adequate, appropriate and effective. Second, the Court rejected the objection of lack of competence *ratione materiae* in relation to the Inter-American Convention on Forced Disappearance, considering that the argument that what occurred in this case could constitute an enforced disappearance was sufficient to enable the Court to exercise its competence to examine a possible violation of that Convention.

Regarding the merits of the matter, the Court referred, first, to facts relating to enforced disappearance

of persons. In particular, it recalled that the enforced disappearance of persons was a violation of human rights constituted by three concurrent elements: (a) the deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or the whereabouts of the person concerned. In addition, it reiterated its case law that enforced disappearance was a multi-faceted offense and also stressed the continuing or permanent nature of the offense, in which the disappearance begins with the deprivation of liberty of the individual and the subsequent absence of information regarding his fate, and subsists while the whereabouts of the disappeared person remain unknown or until his remains have been found and his identity verified. While the disappearance persists, States have the obligation to investigate it and, eventually, to punish those responsible, pursuant to the obligations arising from the American Convention and, in particular, from the Inter-American Convention on Forced Disappearance of Persons.

The Court also recalled that, according to the definition in the Inter-American Convention on Forced Disappearance of Persons and the Court's case law, "one of the characteristics of enforced disappearance, contrary to extrajudicial execution, is that it includes the State's refusal to acknowledge that the victim is under its control and to provide information in this regard so as to produce uncertainty regarding his whereabouts and whether he is alive or dead, in order to intimidate and to withhold rights."

The acts that constitute enforced disappearance are of a permanent nature while the victim's whereabouts are unknown, or until his remains are found. However, particularly with regard to the latter aspect, the Court has repeatedly indicated that it is not a matter of merely finding the remains of a specific person but, logically, this must be accompanied by tests or analyses to prove that the remains really correspond to that person. An enforced disappearance is constituted by multiple acts that, combined towards a single objective, violate permanently, while they subsist, different rights protected by the Convention. Therefore, the examination of a possible enforced disappearance must be consequent with the complex violation of human rights that it involves and should not focus in an isolated, divided and fragmented manner only on the detention, the possible torture, or the risk of loss of life.

In this case, the Court concluded that the 15 victims had been forcibly disappeared due to: (i) the refusal of the authorities to acknowledge the detention of the victims during the first few days; (ii) the modus operandi used in the destruction of evidence; (iii) the uncertainty surrounding the evidence collected in July 1991; (iv) the registration of the death certificates, and (v) the procedures to find, recover, and eventually identify the osseous human remains that were recovered. Although the Court found that the domestic judgments were an important factor, it considered that it was not in order to admit the State's argument concerning the principle of subsidiarity and complementarity of the inter-American jurisdiction, because the forensic investigation was characterized by an evident lack of rigor and due diligence. Thus, in this case, the enforced disappearance of the victims persists up until the present time. Consequently, the Court concluded that the State had violated the rights recognized in Articles 7, 5(1), 5(2), 4(1), and 3 of the American Convention, in relation to Article 1(1) of that instrument, of the said 15 persons, and in

relation to Article 19 of the Convention of the seven children. It also concluded that these violations also occurred in relation to Article I(a) and II of the Inter-American Convention on Forced Disappearance of Persons, as of March 15, 2002, the date on which that treaty entered into force for Peru.

Regarding the right to property, the Court reiterated its case law to the effect that it has developed a broad concept of property, which encompasses, among other matters, the use and enjoyment of “possessions”, defined as material objects that may be owned, as well as any right that may form part of a person’s assets. This concept includes all movable and immovable property, tangible and intangible assets, and any other intangible object that may have a value. With regard to private and family life, it recalled that there was a private sphere that must remain exempt and immune from abusive or arbitrary interference or aggression by third parties or the public authorities. Thus, the domicile and private and family life are intrinsically linked, because the domicile becomes a space in which private and family life can be conducted freely. In this case, the Court concluded that soldiers had set fire to the homes of the two families that were mentioned and taken their livestock in violation of Article 21 of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of those who lived in the Community of Santa Bárbara at the time of the events, which also constituted abusive and arbitrary interference in their home and their private life, in violation of Article 11(2) of the Convention, in relation to Article 1(1) of that instrument.

With regard to the rights to judicial guarantees and judicial protection, the Court recalled that, under the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations, and these must be substantiated in accordance with the rules of due process of law. It also recalled that, starting with its first judgment, the Court had underlined the importance of the State’s obligation to investigate and to punish human rights violations, which was particularly important in view of the egregious nature of the crimes committed and the nature of the rights harmed.

In this specific case, the Court determined that: (i) there had been a lack of due diligence in the first measures taken to investigate the case; (ii) the application for habeas corpus filed by Elihoref Huamani Vergara’s father was not effective because the decision denying it was issued four days after it had been filed and no records exist of any procedure conducted by the court; State agents obstructed the investigation on several occasions, such as by applying the military jurisdiction and Amnesty Law No. 26, 479; (iv) there was a lack of due diligence in the proceedings re-opened following the judgments of the Inter-American Court in the Barrios Altos case, and (v) the right to know the truth of the family members of the disappeared victims was violated. Based on the foregoing, the Court found that the State had violated, to the detriment of the forcibly disappeared victims and their next of kin, Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of that instrument, as well as in relation to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons following its entry into force for Peru.

Furthermore, the Court applied the *juris tantum* presumption concerning the harm to the mental and moral integrity of the family members in cases of enforced disappearance, and concluded that the State had violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of that instrument, of the family members of the 15 victims of enforced disappearance.

Regarding reparations, among others, the Court ordered the State to conduct the necessary investigations to determine, prosecute and punish, as appropriate, those responsible for the violations declared in its judgment; to take any necessary actions to exhume and to identify the human remains found in the mine, a place that should be protected in order to preserve it; to provide two of the victims with ten alpacas each, or their equivalent market value, and to provide each one with adequate housing under its existing housing programs.

## **Case of Omar Humberto Maldonado Vargas et al. v. Chile (denial of justice to victims of torture under the military dictatorship)**

On September 2, 2015, the Inter-American Court delivered judgment in the Case of Omar Humberto Maldonado Vargas et al. v. Chile. The facts of the case related to the installation of a military regime that overthrew the Government of President Salvador Allende by a coup d'état in September 1973 and lasted until democracy was restored in March 1990. During those years, the State implemented a policy of widespread repression against those the regime considered to be members of the opposition. Some detainees were tried by courts martial, while others were incarcerated but never brought to trial. The courts martial were responsible for trying offenses under the military jurisdiction by brief summary proceedings in single instance, and were characterized by numerous irregularities and violations of due process.

The victims in this case were twelve individuals, eleven of whom, at the time of their arrest and trial before courts martial, were members of the Chilean Air Force, while one was a civilian employee of the Air Force. Regarding the detention conditions of each of them, the evidence reveals that the victims suffered ill-treatment and were tortured to make them confess. The twelve victims were tried before courts martial in the case ROL 1-73, which was opened in September 1973 and ended in September 1974 and April 1975 with two final convictions. The victims remained deprived of liberty for up to five years and, subsequently, the sentences were commuted to banishment or exile.

In September 2001, an appeal was filed before the Supreme Court of Chile requesting a review of the judgements that had been handed down, considering that those convicted had been subjected to cruel treatment, torture and abuse during the processing of case ROL 1-73. The Supreme Court of Chile decided that the appeal for review leading to annulment and then cassation was inadmissible because it lacked competence in relation to the rulings of the courts martial. The victims filed an appeal for reconsideration of the original judgment, which the Supreme Court also denied. In 2005, the Chilean Constitution was

amended by Law No. 20,050, and this granted the Supreme Court competence in matters examined by the courts martial. In 2011, individuals other than the victims, who had also been tried and convicted by courts martial in case ROL 1-73, filed an appeal for review which was rejected by Supreme Court.

Two criminal investigations were opened with regard to the acts of torture suffered by the victims: (a) one under case ROL 1058-2001, opened in April 2001, and (b) a second under case ROL 179-2013, opened on August 28, 2013. The first investigation culminated in April 2007 with a judgment convicting two individuals for the crime of unnecessary severity or torture causing serious injuries. In the case of the second one, several investigation procedures were ordered by the State authorities and it remains open.

Regarding the merits of the matter, the Court declared the State responsible for the delay in initiating the investigation into the acts of torture, because case ROL 179-2013 was opened approximately 12 years after the State became aware of the facts. Consequently, the State was found responsible for the violation of Article 8(1) of the American Convention, in relation to Article 1(1) of that instrument, and Articles 1, 6 and 8 of the Inter-American Convention against Torture, to the detriment of the aforementioned victims. As regards case ROL 1058-2001, the Court determined that this referred to acts of torture suffered by eight of the victims. The Court concluded that the State was not responsible for an excessive delay in initiating an investigation into the acts of torture suffered by those eight persons.

In relation to due diligence in the conduct of the investigations, among other matters, the Court analyzed the arguments concerning the impact on the investigations in case 1058-2001 of the confidentiality of the Valech Commission's files. In particular, it referred to access to information in the hands of the State contained in the files, recalling that, in cases involving human rights violations, State authorities could not use mechanisms such as state secrets or the confidentiality of the information, the public interest or national security, in order not to provide information requested by the administrative or judicial authorities in charge of pending investigations or proceedings. The Court also noted that those precedents did not refer specifically to the archives of truth commissions responsible for seeking the extrajudicial truth about egregious human rights violations, so that they were not applicable to these. In this specific circumstance, the Court found it pertinent to determine whether the restriction of access to the information contained in Valech Commission's files was contrary to the Convention. To this end, it analyzed whether the restriction: (i) was legal; (ii) fulfilled a legitimate purpose; (iii) was necessary, and (iv) was strictly proportionate. The Court found that those elements were complied with in this specific case and therefore concluded that the Valech Commission's refusal to provide information to the Ninth Court did not constitute an unlawful restriction of access to information.

Based on the above, the Court considered that the State was not responsible for the violation of the rights contained in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of that instrument and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, of the twelve presumed victims in this case.



Furthermore, regarding the right to judicial protection and the obligation to adopt domestic legal provisions owing to the alleged absence of an appropriate and effective remedy of review, the Court considered that the facts of the case referred to a situation that could be divided into two stages: (a) before the constitutional amendment that granted competence to the Supreme Court to examine judgments related to rulings of the courts martial, and (b) after the said amendment of the Constitution. Regarding the initial stage, the Court considered that it was not possible for the presumed victims to obtain a review of the sentences delivered against them, so that the State was responsible for the violation of Articles 25(1) and 2 of the Convention to the detriment of the twelve victims in this case. As regards the second stage, it concluded that those convicted by the courts martial during the dictatorship still had no adequate and effective remedy to review their sentences, so that the State was responsible for violating the obligation contained in Article 2 of the Convention in relation to Article 25 of that instrument, to the detriment of the twelve victims in this case, owing to the lack of an adequate and effective remedy to review the sentences handed down by the courts martial.

Regarding reparations, the Court ordered the State to provide the victims in this case with a rapid and effective mechanism for the review and annulment of the sentences delivered against them in the above-mentioned case. This mechanism should also be made available to the other persons who were convicted by courts martial during the Chilean military dictatorship. The Court also ordered the State to continue the investigation into the facts of this case, and to conclude it within a reasonable time.

## **Case of Galindo Cárdenas et al. v. Peru (arbitrary detention/torture)**

On October 2, 2015, the Inter-American Court delivered judgment declaring the international responsibility of the State of Peru in the Case of Galindo Cárdenas et al. v. Peru. In particular, the facts of the case refer to the deprivation of liberty, in October 1994, of Luis Antonio Galindo Cárdenas, a provisional member of the Superior Court of Huánuco. Mr. Galindo was detained in the Yanac military barracks and remained there for at least 30 days. The victim was released in November 1994 and, in March 1995, the Superior Prosecutor issued a decision ordering that the case against him be archived. During his detention, neither Mr. Galindo nor his family filed any remedy. Following his release, he filed several petitions before the State authorities indicating that he had been incarcerated in a military base where he had suffered psychological torture and been held in solitary confinement. Nevertheless, the State only started to investigate the facts in September 2012.

The State submitted two preliminary objections relating to: (i) the failure to exhaust domestic remedies, and (ii) the expiration of the deadline for the filing of the initial petition. Regarding the first objection, the State indicated that Mr. Galindo had not filed an application for habeas corpus. The Court understood

that the arguments concerning the formal legal validity of this remedy did not reveal that it would have been effective in this case. The Court also indicated that, even though, in general, it might be true that the exhaustion of one domestic remedy exempted the victim from exhausting other remedies, that could not automatically exclude the Court from analyzing the State's arguments concerning the different remedies that were admissible, especially when there was a difference between the object and purpose of the domestic remedy filed or implemented and the one referred to by the State. In particular, the Court considered that the fact that the alleged human rights violations were linked to an offense that should have been prosecuted, *ex officio*, did not, in itself, exempt the Court from the need to assess the State's arguments concerning other domestic remedies, because, even if they were considered pertinent formal obligations of the State, in each case, it was necessary to assess whether, by using available remedies, the victim could and did enable the State to resolve the matter itself. Regarding the second objection, the Court concluded that it was not pertinent since the six-month time limit for filing a petition was only applicable in cases in which there had been a final decision and, in this case, there was no dispute as to the fact that there had been no decision of that type.

Regarding the merits of the matter, first, the Court analyzed the violation of the right to personal liberty. In this regard, it determined that the deprivation of Mr. Galindo's liberty was unlawful, because, as the State itself had indicated, there was no record of his arrest or his release. Moreover, the Court concluded that the detention was also arbitrary because the existence of any act that would have provided sufficient grounds for the presumptive purpose, appropriateness, necessity and proportionality of the deprivation of Mr. Galindo's liberty had not been proved. As regards the obligation to inform the detainee of the reasons for his detention and to respect the right of defense, the Court reiterated that it must be possible to exercise the right of defense from the moment an individual was accused of being a possible perpetrator or participant in a wrongful act, and this only ended when the proceedings terminated. That right obliged the State to treat the individual as a true subject of the proceedings at all times, in the broadest sense of this concept, and not merely as an object of them. Thus, preventing a person from exercising his right of defense from the moment the investigation against him is opened and the authorities order or execute acts that have an impact on his rights entails empowering the investigative authority of the State to the detriment of the fundamental rights of the person investigated. The Court also determined that no act had been committed that would have justified the need to deprive Mr. Galindo of his liberty, and he had not requested this measure. In addition, the evidence did not show that, when Mr. Galindo was arrested, he was informed of the reasons, either orally or in writing. Therefore, it could not be understood that he had been duly advised of the reasons for the deprivation of his liberty. Consequently, the Court concluded that the Peruvian State was responsible for the violation of paragraphs 1 to 6 of Article 7, and of subparagraphs (b) and (c) of Article 8(2) of the Convention.

With regard to the right to personal integrity, the Court reiterated that Article 5(1) of the Convention established the right to physical, mental and moral integrity in general terms. Meanwhile, Article 5(2) established, more specifically, the absolute prohibition to subject someone to torture or cruel, inhuman

or degrading treatment or punishment, as well as the right of all persons deprived of liberty to be treated with respect for the inherent dignity of the human being. It indicated that any violation of Article 5(2) of the American Convention resulted necessarily in the violation of Article 5(1) of that instrument. In this case, the Court considered that the State was responsible for the violation of Article 5(1) of the Convention because Mr. Galindo had alleged that he had suffered intimidation, pressure and “softening up” throughout the time he was detained. Consequently, in this case, the Court found that the circumstances narrated by Mr. Galindo, as well as the uncertainty about the possible duration of the deprivation of his liberty and about what could happen to him, had an impact on his mental and moral integrity.

The Court also concluded that the State had violated the right of access to justice of Luis Antonio Galindo Cárdenas recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, because it had verified that it was not until September 2012 that the State took any action to investigate the “psychological torture” denounced by the victim.

Regarding reparations, among others, the Court ordered the State to continue the investigation into the facts, and to conclude this within a reasonable time, in order to elucidate the facts and, if applicable, to identify, prosecute and punish those responsible, as appropriate, and to provide free psychological and/or psychiatric treatment to Luis Antonio Galindo Cárdenas and the members of his family through its health institutions.

## **Case of López Lone et al. v. Honduras (removal of judges)**

On October 5, 2015, the Inter-American Court delivered judgment declaring that the State of Honduras was responsible for the violation of various rights contained in the American Convention during the disciplinary proceedings conducted against the judges, Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, and also the magistrate Tirza del Carmen Flores Lanza. As a result of these proceedings, the four judges were removed, and three of them dismissed from the Judiciary. These disciplinary proceedings were instituted based on conduct of the victims in defense of democracy and the rule of law in the context of the June 2009 coup d'état in Honduras.

The State filed a preliminary objection based on the presumed failure to exhaust two domestic remedies: the contentious administrative remedy and the application for constitutional protection (amparo). Regarding the first remedy, the Court rejected the State's argument because Honduras had referred to this remedy for the first time before the Court, so that it was not filed at the proper procedural opportunity. In the case of the remedy of amparo, the Court noted that article 31 of the Internal Regulations of the Council of the Judicial Service prohibited filing remedies against the Council's decisions. Even though the State argued that this rule had been tacitly abrogated by the Constitution, the Court concluded that, in view of the uncertainty resulted from the existence of the rule, the presumed victims could not be required to exhaust the remedy of amparo.

With regard to the merits of the matter, the Court stressed, first, that representative democracy was a pillar of the whole system that the American Convention forms part of, and constituted a principle reaffirmed by the States of the Americas in the OAS Charter. It also affirmed that, under the inter-American system, the relationship between human rights, representative democracy and, in particular, political rights had been enshrined in the Inter-American Democratic Charter. The Court emphasized that this instrument referred to the peoples' right to democracy, and underscored the importance, in a representative democracy, of the permanent participation of the citizenry within the legal and constitutional order in force, and referred to access to power and its exercise in accordance with the rule of law as one of the constituent elements of representative democracy. The Court underlined that the facts of this case occurred during a serious democratic crisis involving the rupture of the rule of law, as a result of which the Permanent Council convened the OAS General Assembly urgently pursuant to article 20 of the Inter-American Democratic Charter. It also recalled that, subsequently, for the first time since the adoption of the Democratic Charter, the General Assembly decided to suspend Honduras from exercising its right to participate in the OAS, pursuant to article 21 of that Charter.

The Court determined that the events that occurred in Honduras following June 28, 2009, constituted an internationally wrongful act. During that situation of the de facto government's international illegitimacy, disciplinary proceedings were instituted against the victims for conduct that constituted actions against the coup d'état and in favor of the rule of law and democracy. In addition, the Court recognized the relationship that existed between political rights, freedom of expression, the right of assembly, and freedom of association, and that those rights, together, made the democratic process possible. It also indicated that manifestations and expressions in favor of democracy should be provided with the greatest possible protection and, depending on the circumstances, could be linked to all or some of the said rights. Furthermore, it considered that the right to defend democracy constituted a specific embodiment of the right to take part in public affairs and also included the concurrent exercise of other rights such as freedom of expression and the right of assembly. According to the Court, the effective exercise of political rights constituted an end in itself and, also, an essential means that democratic societies had to ensure the other rights. Consequently, the State must guarantee conditions and mechanisms for the said political rights to be exercised effectively, respecting the principle of equality and non-discrimination.

The Court also considered that, from this perspective, the right to defend democracy constituted a specific embodiment of the right to take part in public affairs and included the concurrent exercise of other rights such as freedom of expression and the right of assembly. Nevertheless, it observed that, according to the Convention itself, the right to participate in government, freedom of expression, and the right of assembly were not absolute rights and could be subject to restrictions. It also noted that, to date, it had never ruled on those rights in the context of individuals who exercised jurisdictional functions, as in this case.

In this regard, it affirmed that, under normal conditions of the rule of law, judges could be subject to

diverse restrictions in order to protect independence and impartiality in the exercise of justice. However, it noted that the State powers to regulate or restrict those rights was not discretionary and must be interpreted restrictively; thus they could not prevent judges from taking part in any type of discussion of a political nature. Thus, the Court indicated that, in times of grave crises in democracy, such as in this case, the rules that normally restricted the right of judges to participate in politics were not applicable with regard to actions in defense of the democratic order. It would be contrary to the very independence of the powers of the State, as well as to the State's international obligations deriving from its participation in the OAS, if judges could not speak out against a coup d'état. Furthermore, the Court considered that the mere fact of instituting disciplinary proceedings against the judges owing to their actions against the coup d'état and in favor of the rule of law could have had an intimidating effect and, thus, constituted an undue restriction of their rights.

Specifically, as regards the victims in this case, the Court considered that: (i) the disciplinary proceedings instituted against Mr. López Lone based on his participation in a protest meeting against the coup d'état and his subsequent removal, and against Mr. Chévez de la Rocha owing to his presumed participation in, and subsequent arrest during, a demonstration against the coup d'état, and to comments he made to colleagues from the Judiciary, as well as his refusal to reincorporate his position as judge, constituted a violation of their freedom of expression, right of assembly, and political rights recognized in Articles 13(1), 15 and 23 of the Convention, in relation to Article 1(1) of that instrument; (ii) the disciplinary proceedings against Ms. Flores Lanza, based on the exercise of an application for amparo, the filing of a complaint, and the comments on the actions of other jurisdictional organs, as well as her subsequent dismissal, and the opening of disciplinary proceedings against Mr. Barrios Maldonado based on a newspaper article with his opinion on the coup d'état, constituted a violation of their freedom of expression and their political rights, recognized in Articles 13(1) and 23 of the Convention, in relation to Article 1(1) of that instrument. The Court also indicated that the dismissal of Mr. López Lone, Mr. Chévez de la Rocha and Ms. Flores Lanza affected their membership in the Asociación de Jueces por la Democracia (AJD) and, therefore, also constituted an undue restriction of their right to freedom of association. Consequently, the Court concluded that the State had violated Article 16 of the Convention, in relation to Article 1(1) of that instrument, to the detriment of these three victims. In the case of Mr. Barrios Maldonado, the Court considered that, since his dismissal had not been implemented, his freedom of association had not been restricted.

Furthermore, the Court indicated that judges, contrary to other public officials, had specific guarantees owing to the necessary independence of the Judiciary, which the Court has understood as "essential for the exercise of the judicial function." In this regard, it indicated that: (i) respect for judicial guarantees entailed respecting judicial independence; (ii) the dimensions of judicial independence resulted in the judge's subjective right to his removal from office depending exclusively on the permitted causes, either by means of a procedure that complied with judicial guarantees, or because his mandate had terminated, and (iii) when a judge's tenure was affected arbitrarily, the right to judicial independence recognized in Article 8(1) of the American Convention was violated, in conjunction with the right of access to, and

permanence in, public office, under general conditions of equality established in Article 23(1)(c) of the American Convention. The Court emphasized that the arbitrary removal of judges, especially professional judges with no prior disciplinary offenses, owing to their actions against the coup d'état, and the actions of the Supreme Court in this regard, constituted an attack on judicial independence and affected the democratic order.

Taking into account the standards indicated above, the Court concluded that: (i) the disciplinary proceedings to which the victims were subjected were not instituted lawfully; (ii) the Council of the Judicial Service did not have competence and lacked the necessary independence to decide appeals against the dismissal decisions of the Supreme Court of Justice; (iii) the composition of the Council of the Judicial Service when deciding the appeals filed by the victims did not ensure its impartiality adequately, and (iv) the Supreme Court of Justice did not provide objective guarantees of impartiality to rule on the presumed disciplinary offenses of the victims, insofar as all those offenses related to conducts associated with the coup d'état. Based on the foregoing, the Court concluded that the State had violated Article 8(1) of the Convention, in relation to Articles 1(1) and 2 of that instrument, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado. Furthermore, the Court determined that the dismissal of the victims, by means of a procedure that was not established lawfully and that did not respect the guarantees of competence, independence and impartiality, had had an undue impact on the right to remain in functions under equal conditions of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Alonso Chévez de la Rocha, in violation of Article 23(1)(c) of the American Convention.

Regarding the right to judicial protection, the Court recalled that it was unclear whether the remedy of amparo was available to contest the decisions of the Council of the Judicial Service owing to article 31 of the Council's Internal Regulations that made it impossible to file ordinary or special appeals against such decisions. Despite this, the Court noted that, even if that remedy had been available owing to the constitutional norm alleged by the State, the context in which the facts of this case took place and the characteristics of the proceedings that should have been followed revealed that it would not have been effective. Therefore, the Court found that the State had violated Article 25(1) of the Convention, in relation to Article 1(1) of that instrument, to the detriment of Adán Guillermo López Lone, Ramón Enrique Barrios Maldonado, Luis Alfonso Chévez de la Rocha and Tirza del Carmen Flores Lanza.

As regards the principle of legality, the Court examined this in relation to: (i) the penalties imposed on the victims, and (ii) wrongful conducts under the disciplinary norms in Honduras. Regarding the first element, it considered that, bearing in mind that dismissal or removal from office was the most restrictive and severe measure that could be taken in disciplinary matters, the possibility of applying it should be predictable and respect the principle of extreme seriousness. The Court concluded that the disciplinary norms applicable to the cases of the victims granted an excessive margin of discretion to the judge in establishing the penalty of dismissal. With regard to the second element, the Court underlined that the

victims were sanctioned by numerous norms, without any possibility of determining clearly the normative causes or wrongful conduct for which they were dismissed, owing to the absence of adequate motivation of the decisions. In addition, it recalled that Article 9 of the American Convention, which established the principle of legality, was applicable to matters relating to administrative sanctions because, as in the case of criminal sanctions, administrative sanctions were an expression of the State's punitive powers and, at times, of a similar nature to criminal sanctions because they both entailed impairment, deprivation or alteration of human rights. In this case, the Court found that it was not possible to make a detailed analysis of the requirement of the substantive legality of the norms that, supposedly, were not complied with. Nevertheless, the Court noted that the domestic authorities resorted to disciplinary grounds that used indeterminate concepts, and indicated that the laws did not provide objective bases or criteria to delimit the scope of the disciplinary offenses, and the judge's remit did not allow him to establish the grounds that would have limited the eventual arbitrariness in their application. Consequently, the Court concluded that the State had violated the principle of legality recognized in Article 9 of the Convention, in relation to Articles 1(1) and 2 of that instrument.

As regards reparations, the Court ordered the State to reincorporate Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Chévez de la Rocha in functions similar to those they had held at the time of the facts, with remuneration, social benefits, and rank equal to that which would correspond to them today if they had been reincorporated immediately. If this reincorporation was not possible, the State must pay them the amounts established in the judgment.

## **Case of Ruano Torres et al. v. El Salvador (right of defense)**

On October 5, 2015, the Inter-American Court delivered judgment in the Case of Ruano Torres et al. v. El Salvador. The facts of this case referred to the indictment, detention and subsequent sentencing of José Agapito Ruano Torres for the offense of abduction committed on August 22, 2000, with serious doubt about whether he really was the person known as El Chopo, who was alleged to have taken part in the perpetration of the offense. Nevertheless, this case did refer to the guilt or innocence of Mr. Ruano Torres or any of the other individuals who were tried together with him, but rather to the conformity of the criminal proceedings and of the actions of certain public officials involved in the case with the American Convention.

During the processing of the case before the Inter-American Court, the State of El Salvador made an acknowledgement of international responsibility that included the acceptance of all the facts. In addition, the State indicated that it acknowledged "the conclusions contained in the Merits Report issued by the Commission as regards the violations that were established to the detriment of José Agapito Ruano Torres and his family."

In its analysis of the merits of the matter, the Court proceeded to clarify the human rights violations

covered by the State's acknowledgement of responsibility. In this regard, the Court admitted the State's acknowledgement of responsibility because the acts executed by the police authorities when detaining Mr. Ruano Torres constituted torture. Therefore, it declared that the State had violated Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of José Agapito Ruano Torres. In addition, the Court recalled that, pursuant to Article 1(1) of the American Convention, the obligation to ensure the rights recognized in Article 5(1) and 5(2) of the American Convention entailed the State's duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment. The Court determined that, even though the authorities were informed of those acts, they did not open, ex officio and immediately, an impartial, independent and thorough investigation that would have ensured obtaining and preserving evidence promptly and that would have established what happened to Mr. Ruano Torres. Therefore, the Court admitted the State's acknowledgement of responsibility regarding the fact that an investigation into the acts of torture and ill-treatment to which Mr. Ruano Torres was subjected was not opened ex officio and immediately, and thus it had failed to comply with the obligation to ensure the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of José Agapito Ruano Torres.

In addition, the Court observed that Commission's determinations with regard to the presumption of innocence referred to two interrelated aspects, namely: (i) the individualization and identification of a person before implicating them in a criminal investigation and proceeding, and (ii) the onus probandi and the evidence based on which a conviction was handed down in this case. Regarding the first aspect, the Court considered that the case related to a situation in which there were reasonable arguments concerning the non-participation of one of the accused in the wrongful act, because he was not the person known by the above-mentioned alias, so that respect for, and the guarantee of, the presumption of innocence should have prevailed. Regarding the second aspect, the Court noted that the conviction was based mainly on the testimony of a co-accused, without any other corroborating element, and considered that this violated the presumption of innocence. It also observed that the other element assessed by the domestic court was the statement made by the victim of the offense and the positive identification of Mr. Ruano Torres. The State acknowledged that the identification procedure had been carried out irregularly, because the prosecutor had pointed out Mr. Ruano Torres so that the victim could identify him, and false names had been entered into the record. Based on this and on the State's acknowledgement of responsibility, the Court found the State internationally responsible for the violation of Article 8(2) of the American Convention which recognized the presumption of innocence, in relation to Article 1(1) of that instrument. The Court also found that Article 25(1) of the Convention had been violated, because the appeals for review had not constituted an effective remedy to rectify the human rights violations and, in particular, to ensure respect for the presumption of innocence and the right of defense.

In addition, the Court admitted the State's acknowledgement of responsibility for the fact that the deprivation of liberty of José Agapito Ruano Torres had become arbitrary, in violation of Article 7(3) of the Convention, because the judgment was based on criminal proceedings that violated judicial



guarantees in the terms described in the judgment. As regards Article 7(6), the application for habeas corpus was ineffective, because the court did not conduct the basic procedures to determine whether the detention had been arbitrary. The Court also recalled that any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily resulted in the violation of Article 7(1) of that instrument, as requested by the representatives. Accordingly, in this case the Court also declared a violation of Article 7(1) of the Convention. Consequently, the Court found that the State had violated the right to personal liberty recognized in Article 7(1), 7(3) and 7(6) of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of José Agapito Ruano Torres.

Regarding the right of defense, the Court affirmed that this was a crucial component of due process that obliged the State to treat the individual at all times as a true subject of the proceedings, in the broadest sense of the concept, and not merely as an object of the proceedings. It also observed that, in criminal proceedings, the right of defense had two aspects: on the one hand, the actions of the accused himself, in particular the possibility of providing a statement regarding the facts attributed to him and, on the other hand, a technical defense exercised by a lawyer who could advise the accused of his rights and duties, and exercise, *inter alia*, a control of legality in the production of evidence.

Furthermore, the Court observed that the American Convention surrounded the exercise of the right to both a substantive defense and a technical defense with specific guarantees. Regarding the latter, it noted that, in criminal cases, Article 8(2) of the Convention established the inalienable right to be assisted by counsel, owing to the importance of the rights involved and to the intention of ensuring both equality of arms and absolute respect for the presumption of innocence. The requirement to have a lawyer who exercised the technical defense in order to be adequately represented in the proceedings meant that assistance by a State-appointed lawyer was not limited to those cases in which there was a lack of resources.

The Court also considered that appointing a public defender merely to comply with a procedural formality would be tantamount to not having a technical defense; thus, it was imperative that the defender act diligently. The Court considered that, in order to analyze whether the State had violated the right of defense, it needed to assess whether the act or omission of the public defender constituted inexcusable negligence or a manifest error in the exercise of the defense that had or may have had a decisive negative impact on the interests of the accused. In this regard, it concluded that Mr. Ruano's public defender incurred in omissions that harmed his rights and interests and left him in a situation of vulnerability, constituting a violation of the inalienable right to be assisted by counsel. In addition, it found that the State's international responsibility could be engaged owing to the response provided by the courts, because it was evident that the public defender acted without due diligence, and the judicial authorities had an obligation of protection or control. In sum, the Court considered that the evident errors in the action of the public defenders and the absence of an adequate and effective response by the judicial authorities placed Mr. Ruano in a situation of total vulnerability. On this basis, the Court concluded that the State was responsible

for the violation of Articles 8(1), 8(2)(d) and 8(e) of the American Convention, in relation to Article 1(1) of that instrument.

As regards the personal integrity of his family members, the Court determined that the wife and two-year old son of Mr. Ruano Torres witnessed the torture he endured and, subsequently, suffered psychological aftereffects owing to this situation. Furthermore, the evidence revealed that his wife suffered physical and mental ailments owing to the circumstances of her husband's arrest and his subsequent arbitrary deprivation of liberty, and also an impact on her daily life because she had to bring up her children and look after them without her husband's support. In addition, the Court considered that the relationship between Pedro Torres Hércules and José Agapito Ruano Torres had been proved, and also the significant involvement of Pedro Torres Hércules in the search to obtain justice for his cousin, and the problems he suffered owing to the arbitrary deprivation of liberty and the prison conditions endured by his cousin. Consequently, the Court declared that the State had violated the right recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of María Maribel Guevara de Ruano, Oscar Manuel Ruano Guevara, Keily Lisbeth Ruano Guevara and Pedro Torres Hércules.

Regarding reparations, among others, the Court ordered the State to initiate and conduct effectively, within a reasonable time, the investigation and the criminal proceedings for the acts perpetrated against José Agapito Ruano Torres that violated Article 5(2) of the Convention, in order to determine the eventual criminal responsibilities and apply the legal penalties and consequences, as appropriate, and to determine, through the competent public institutions, the possible responsibilities of the officials of the public defense service who contributed, by their actions, to the violation of the rights of José Agapito Ruano Torres, and apply the legal consequences, as appropriate.

## **Case of the Garífuna Community of Punta Piedra and its members v. Honduras (collective property / prior consultation)**

On October 8, 2015, the Inter-American Court delivered judgment in the case of the Garífuna Community of Punta Piedra and its members v. Honduras. The facts related to the Punta Piedra Garífuna Community located in the municipality of Iriona, department of Colón, bordering the Caribbean Sea. The Court determined that, in 1993, the State had awarded the Community title to ownership of an area of 800 hectares and that, subsequently, the Community had requested that the title be expanded to an area of 3,000 hectares. However, the State only delimited and granted title to an additional 1,513 hectares, expressly excluding 46 hectares belonging to other persons who held land titles in the area. Thus, when granting the expanded property title, the areas occupied and exploited by persons outside the Community were excluded, and the State reserved the right to dispose of them and award them to the occupants who met the legal requirements. Over the following years the State did not comply with its obligation to reclaim this land by paying for the improvements made by the inhabitants of the village of Río Miel and

failed to relocate them. Then, in June 2007, Félix Ordóñez Suazo, a member of the Community who had filed complaints against the inhabitants of Río Miel was shot and killed. Also, in April and October 2010, the Community, through its representatives, filed three complaints before the pertinent authorities. As a supervening fact, the Court determined that, in December 2014, the Caxina S.A. mining company obtained a 10-year non-metal mining exploration concession over 800 hectares, which included land that was part of the two property titles granted to the Community.

The State presented two preliminary objections relating to the failure to exhaust domestic remedies, which the Court rejected. In its partial acknowledgment the State recognized that it had “not ensured the peaceful ownership [of the Community’s territory] by reclaiming the land,” and that “when granting property title with full ownership to the Punta Piedra Garífuna Community through the National Agrarian Institute (INA), it had failed to reclaim the area occupied by the inhabitants of the village of Río Miel, [so that] the title was flawed as regards ownership of the land.” The Court found that this acknowledgement had legal consequences that resulted in the violation of the right to property of the Punta Piedra Community. The Court then analyzed the following preliminary considerations: (a) the State’s alleged failure to consider the Garífuna Community of Punta Piedra as an original people, and (b) aspects of the factual framework related to the Sierra Río Tinto National Park, the Los Chorros hydroelectric project, the petroleum exploration activities of the BG Group, and the new Fishing Law.

Regarding the merits of the matter, the Court referred to the right to collective property and analyzed the international standards concerning the obligation to guarantee the effective use and enjoyment of the right to indigenous or tribal property, determining that different measures could be taken to implement this guarantee, including reclaiming the land. For the purposes of this case, the Court understood that reclaiming the land consisted in a process that entailed the State’s obligation to remove any type of interference in the territory in question. In particular, by according full possession to the legitimate owner and, if appropriate and as agreed, by the payment of improvements and the relocation of third parties occupying the land. Thus, the Court noted that the State had been aware that third parties occupied the area, at least since 1999, but had not acted with due diligence to protect the territory and to achieve a final solution. The Court concluded that the State’s failure to guarantee the use and enjoyment of the territory of the Punta Piedra Community for more than 15 years, by reclaiming it, had led to significant frictions. It therefore found that Honduras had violated Article 21 of the American Convention to the detriment of the Community of Punta Piedra and its members.

With regard to the obligation to adopt domestic legal provisions in relation to the laws in force at the time of the facts, the Court found that, in this case, since the dispute stemmed mainly from the expansion of the land title, the express references to article 345 of the Constitution, to international obligations such as article 14 of ILO Convention 169, and to the creation of the Ad-hoc Inter-institutional Commissions, represented a sufficient State protection structure to safeguard and ensure the right to property of the Punta Piedra Community. Regarding the laws in force currently, although the representatives and the

Commission pointed out that some articles of the Property Law could be ambiguous or inconsistent, the Court noted that no provision of that law had been applied in this specific case, and it was not in order for the Court to rule in abstracto. Consequently, for the purposes of this case, no direct violation had been proved in either the substantive or the procedural laws that were applicable as regards Article 2 of the American Convention, in relation to Articles 1(1), 21 and 25 of that instrument.

Regarding the right to consultation and cultural identity, the Court considered that consultations should be conducted prior to any exploration project that could affect the traditional territory of indigenous or tribal communities. Thus, the Court found that, owing to the purpose of the concession awarded, it could have a direct impact on the Community's territory, so that prior consultation with the Community was required. Consequently, the Court determined that the State had not conducted an adequate and effective process that would have ensured the right to consultation of the Garífuna Community of Punta Piedra in relation to the exploration project on their territory. In addition, domestic laws were imprecise as regards the initial consultation stages, because the mining regulations indicated that the consultation should take place during the phase immediately prior to the authorization of mining exploitation, which meant that there had been no prior consultation. Based on the foregoing, the Court concluded that the State had violated Article 21 of the Convention, and also Articles 1(1) and 2 of that instrument and the right to cultural identity, to the detriment of the Community of Punta Piedra and its members.

With regard to the right to life of Félix Ordóñez, the Court found that, prior to his death, there was insufficient evidence to determine that the State was or should have been specifically aware of a situation of real risk. Therefore, failure to comply with the obligation to guarantee rights, in the terms of Article 4(1) of the American Convention had not been proved. As regards the complaint filed in relation to the death of Mr. Ordóñez, the Court verified that there was a failure to collect essential evidence when the investigation was opened, and that no relevant judicial procedures had been carried out subsequently. The Court considered that these omissions and irregularities revealed a lack of diligence by the State during the investigation and criminal proceedings in the case. Similarly, the Court concluded that the reasonable time had not been complied with because, more than eight years after the events, the case remained at the investigation stage. This violated Articles 8(1) and 25(1) of the American Convention, to the detriment of Félix Ordóñez Suazo.

In relation to the complaints of usurpation and threats in 2010, the Court concluded that the State had violated the principle of due diligence, because it had not conducted relevant procedures to clarify the facts and determine the corresponding responsibilities. It had also violated the principle of a reasonable time because, more than five years after the said complaints had been filed, neither the investigations nor the proceedings initiated by the Punta Piedra Community had concluded. Accordingly, the Court found that the State had violated the rights recognized in Articles 8 and 25 of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of the Garífuna Community of Punta Piedra and its members.

Regarding reparations, among others, the Court ordered the State to guarantee the use and enjoyment of the traditional lands over which it had granted title to the Garífuna Community of Punta Piedra, by reclaiming them, and to ensure the cessation of any activity of the Punta Piedra II exploration project that had not been previously consulted with the Community.

## **Case of the Garífuna Community of Triunfo de la Cruz and its members v. Honduras (collective ownership / prior consultation)**

On October 8, 2015, the Inter-American Court delivered judgment and declared that the State of Honduras was internationally responsible for the violation of various rights recognized in the American Convention to the detriment of the Garífuna Community of Triunfo de la Cruz and its members. The facts of the case related to the Triunfo de la Cruz Garífuna Community located in the department of Atlántida, municipality of Tela, Honduras, bordering on the Caribbean Sea. Starting in 1950, Honduras began to grant property titles to the Community and it is on record that the latter filed requests for land ownership in 1946, 1969, 1997, 1998 and 2001. To date, “full ownership” has been granted over a total of 615 hectares and 28.71 centiares, and “guaranteed occupancy” over 128.40 hectares.

The Court determined that diverse problems had arisen concerning the territory of the Garífuna Community of Triunfo de la Cruz and its members relating to: (i) the expansion of the urban area of the municipality of Tela in 1989 to cover part of the land claimed as traditional territory and recognized as such by the State; (ii) the sale, between 1993 and 1995, to a private company and to third parties for a tourism project of approximately 44 hectares of land that the State had recognized as traditional territory and that was also part of the area granted to the Community with the guarantee that they could occupy it; (iii) the transfer, in 1997, of 22.81 manzanas located in the territory claimed by the Community to the Municipal Employees and Workers Union by the Tela Municipal Corporation; (iv) the establishment of a protected area, the Punto Izopo National Park, and (v) the development of other tourism projects in the area recognized as the Community’s traditional territory. Furthermore, the facts of the case also referred to several administrative and judicial proceedings filed by representatives of the Community related to requests for title to different territories, to the sale and award to third parties of the Community’s traditional lands, and to investigations into presumed threats and the deaths of four members of the Triunfo de la Cruz Community.

Regarding the merits of the matter, the Court referred to the right to collective property. In this regard, it considered that it lacked sufficient evidence to determine the real extension of the Community’s traditional territory. However, in order to analyze the international responsibility of the State, it should be considered that the traditional territory covered at least: (i) the territories that had been granted to the Community with full ownership and with guaranteed occupancy, and (ii) the territories that the State itself had recognized in the domestic sphere as the Community’s traditional territory. The Court also recalled its

case law with regard to the communal ownership of indigenous lands and, in light of this, declared that the State was responsible for having violated the right to collective property contained in Article 21 of the Convention, in relation to Article 1(1) of that instrument, to the detriment of the Garífuna Community of Triunfo de la Cruz and its members. Furthermore, it established that the State had: (i) failed to comply with its obligation to delimit and demarcate approximately 380 hectares of territory that had been awarded to the Community with the right of use (ejido) in 1950 and with full ownership in 1993, and (ii) failed to demarcate, delimit and grant title to a lot of approximately 408 hectares that had been recognized as traditional territory of the Triunfo de la Cruz Community.

The Court also found that, in this case, the State had not implemented an adequate and effective procedure that would guarantee the Community's right to consultation, through its own institutions and representatives, at any stage of the planning and execution of the tourism projects, or the adoption of the decree establishing the Punta Izopo protected area and the approval of its management plan in relation to the part that overlapped the Community's lands. The Court indicated that, as of March 28, 1996, Honduras had assumed the international commitment to guarantee the right to consultation upon ratifying ILO Convention No. 169. Therefore, the Court concluded that the State had violated Article 21, in relation to Article 1(1) of the Convention, because it had not conducted a prior consultation procedure or an environmental impact assessment, and had not established that it was necessary to share the benefits of the said projects with the Community, as appropriate and in accordance with international standards, all to the detriment of the Garífuna Community of Triunfo de la Cruz and its members.

The Court did not rule on the State's alleged violation of the right to life of Messrs. Brega, Castillo and Morales, members of the Community, because it did not have evidence to establish whether the State had been or should have been aware of a situation of real and imminent risk with regard to these three individuals. With regard to Mr. Álvarez Roche, the Court established that, although it was possible to infer that there had been a real and imminent risk to his life in 1994, and that the State was aware of this, it had insufficient evidence to prove that the risk persisted for three years up until his death.

With regard to the alleged ineffectiveness of the remedies to obtain recognition of communal ownership, the Court concluded that three of the requests filed by the Community for title to different territories went unanswered by the State authorities and therefore declared the violation of Article 8(1) of the Convention. Regarding the other requests, it determined that they were answered within four years at the most, a time it considered reasonable. The Court considered that the State was responsible for the violation of Article 8(1) of the Convention owing to its decision on the request for full ownership filed in August 1997 that did not take into account the traditional nature of one of the lots in question. As regards the other administrative and judicial actions in relation to the sale and award of traditional lands to third parties, it considered that the State had not provided a response within a reasonable time and, consequently, found it responsible for the violation of the rights contained in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of that instrument. Lastly, it found that the State was responsible for the violation of the

said articles because it had failed to comply with its obligation to investigate the facts denounced by the Community.

Regarding reparations, among others, the Court ordered the State to grant a collective property title to a lot that the State had recognized as traditional territory of the Triunfo de la Cruz Community, which should be duly delimited and demarcated; to open, within a reasonable time, the investigation into the death of Jesús Álvarez and of Óscar Brega, Jorge Castillo Jiménez and Julio Alberto Morales, in order to determine the eventual criminal responsibilities and apply the legal sanctions and consequences, as appropriate; to guarantee free access to, use and enjoyment of collective ownership by the Triunfo de la Cruz Community of that part of their territory that overlapped an area of the Punta Izopo National Park, and to establish adequate mechanisms to regulate its property registration system.

## **Case of García Ibarra et al. v. Ecuador (deprivation of life by a police agent)**

On November 17, 2015, the Inter-American Court delivered judgment declaring that the State of Ecuador was responsible for the violation of the right to life of José Luis García Ibarra, who was 16 years of age when he was deprived of his life by an agent of the Ecuadorian National Police in the city of Esmeraldas on September 15, 1992. The domestic investigation and criminal proceedings culminated more than nine years after they were instituted with the conviction of this police agent to 18 months' imprisonment for the crime of "unintentional" homicide.

The State filed three preliminary objections. In the first, it argued that the Court would be acting as a "fourth instance," because the domestic jurisdiction had tried the perpetrator and sentenced him to 18 months' imprisonment. The Court considered that the arguments presented by the State related to the alleged violation of the rights established in Articles 4(1), 8(1) and 25 of the Convention, and therefore found that this objection was inadmissible. In the second and third preliminary objections, the State argued that the Commission's report was null and void, and that its actions had violated the principle of legality for the following reasons: (i) insufficient grounds for the violations declared in its report, which the Court rejected considering that the report included the Commission's reasoning; (ii) failure to notify the dissenting vote on the report by three Commissioners, an argument that was rejected, considering that it did not constitute a serious flaw in the procedure; (iii) failure to justify the accumulation of the reports on admissibility and merits, which the Court categorized as a procedural action by the Commission in application of a rule of procedure that was in force at the time, without the State having proved how this might have prejudiced it, and (iv) alleged considerations made by the IACHR that corresponded to the domestic courts; an argument rejected by the Court considering that this would not impede it from exercising its competence. Consequently, it declared the second and third preliminary objections inadmissible.

Regarding the merits of the matter, the Court referred to the violation of the right to life and the obligation to protect children. In particular, it noted that it was an undisputed fact that the José Luis García Ibarra had been deprived of his life by the said police agent, who had killed the adolescent with his official weapon, without any record that the latter had put up any resistance or taken any action against the life or integrity of the police agent or of third parties. Consequently, the Court indicated that, in order to determine the State's responsibility, it was necessary to examine the circumstances in which the lethal use of force occurred in light of the obligation to respect and to ensure the right to life. Thus, it observed that the final conclusion of the domestic criminal proceedings indicated that the death was the result of the police agent's negligence, which was sufficient to engage the State's responsibility. Therefore, the Court found that the State was responsible for the arbitrary deprivation of the life of José Luis García Ibarra in the terms of Article 4(1) of the Convention. In view of the fact that the victim was an adolescent at the time of his death, the violation of his right to life was also constituted in relation to Articles 1(1) and 19 of the American Convention.

With regard to judicial guarantees and judicial protection, the Court indicated, first, that, in this case, it was necessary to assess due diligence in the investigation in relation to the need to determine the truth of the two versions of what happened that were examined. Thus, it observed that, during the criminal proceedings, basic procedures were not carried out to determine which version was true and therefore concluded that the State was responsible for the lack of due diligence in the investigation. Second, the Court found it relevant that, in a single jurisdictional act, the criminal court had delivered a judgment that contained a different vote by each of its three members, the meaning and scope of which was contradictory. Given the irregular and "sui generis" way in which the proceedings were decided, the Court considered that the criminal proceedings were not the proper way to discover what really happened by an appropriate assessment of the two theories concerning the manner and circumstances in which José Luis García Ibarra was deprived of his life. Lastly, regarding the "reasonable time" of the total duration of the criminal proceedings, the Court determined that the case could not be considered complex in any way; that it was not a case in which there were numerous victims or perpetrators, and that it did not involve legal aspects and discussions that would justify a delay of more than nine years. The Court therefore found that the State had failed to comply with the principle of a reasonable time. Based on the foregoing, the Court concluded that the State had violated Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of Pura Vicenta Ibarra Ponce and Alfonso Alfredo García Macías, and of Ana Lucía, Lorena Monserrate, Luis Alfonso, Santo Gonzalo, Juan Carlos and Alfredo Vicente, all of them García Ibarra.

The Court established that its judgment constituted per se a form of reparation. It also ordered the State to publish the judgment and its official summary, and to pay the sums indicated in the judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses.



## **Case of Velásquez Paiz et al. v. Guatemala** (torture and sexual violence against a woman / diligence in the investigation of acts of violence against women)

On November 19, 2015, the Inter-American Court delivered judgment declaring that Guatemala was internationally responsible for the violation of various rights recognized in the American Convention owing to the disappearance and subsequent death of Claudina Isabel Velásquez Paiz.

First, the Court decided the two preliminary objections filed by the State. In particular, the Court rejected the objection of lack of material competence concerning Article 7 of the Convention of Belém do Pará because Guatemala had ratified that Convention without any reservations or limitations, and reiterated its consistent case law in relation to the competence that Article 12 of that Convention grants the Court. Second, it rejected the objection of failure to exhaust domestic remedies, because it considered that, although the State had filed this preliminary objection at the proper procedural opportunity, the initial petition in the case had cited Article 46(2) of the American Convention to indicate that it was not necessary to exhaust the domestic remedies before lodging the petition and presented the corresponding arguments. In addition, the State failed to mention the domestic remedies that had not been exhausted or prove that those available would have been adequate and effective.

Regarding the facts, the Court determined that they took place in a context of an increase in homicidal violence against women in Guatemala and indicated that, on August 12, 2005, Claudina Velásquez, 19 years of age, went out at around 8.30 a.m. accompanied by her brother. That evening, she advised her family that she was at a party and, having made and received various calls on her mobile telephone, at around 11.45 p.m. her family had a last telephone call with her and then lost contact. Her parents began to look for her when, at 2 a.m., they were advised that she could be in danger. At around 2.50 or 2.55 a.m., they called the National Civil Police (PNC) and, in response, a patrol car arrived. When the police agents had been informed by the victim's parents that they were searching for their daughter, the police told them that nothing more could be done, that they would continue their patrol, and that the parents should wait at least 24 hours before reporting that Claudina was missing. At around 5 a.m., the Guatemalan Voluntary Fire Service received an anonymous call reporting that a corpse had been found.

The parents of Claudina Velásquez found out that her corpse had been found by a telephone call from a friend. They went to the morgue where the forensic medicine service handed over the corpse to them. Since no one had taken Claudina's fingerprints at the site where her body was found or at the Judiciary's morgue, the assistant prosecutor and the criminal investigation experts from the Public Prosecution Service went to the place where the wake was being held and, despite the opposition of her family members, took her fingerprints threatening them with obstruction of justice. There is no record that the PNC and the Public Prosecution Service investigators took any action in response to the reports of the disappearance

of Claudina Velásquez. The criminal investigation was not opened following the reports of the victim's disappearance, but rather following the finding of her lifeless body.

The analysis of the merits of this case was divided into three sections. First, the Court referred to the rights to life and personal integrity, in relation to Articles 1(1) and 2 of the American Convention and Article 7 of the Convention of Belém do Pará. In this regard, it reiterated its consistent case law that a State cannot be held responsible for all human rights violations committed amongst private individuals under its jurisdiction. Thus, in order to establish non-compliance with the obligation to prevent violations of the rights to life and personal integrity, it must be verified that: (i) the State authorities knew, or should have known, of the existence of a real and imminent risk to the life and/or personal integrity of a specific individual or group of individuals, and (b) the said authorities failed to take the necessary measures, within their terms of reference, that could reasonably be expected to prevent or to avoid that risk. In addition, the Court reiterated that, in a known context of an increase of homicidal violence against women, an obligation of strict due diligence arose towards reports of missing women as regards searching for them during the first hours and days, and, since this obligation of means was extremely rigorous, it required search activities to be carried out exhaustively.

On this basis, the Court examined the State's obligation of prevention at two moments: (a) before Claudina's disappearance and in the context of the general obligation to prevent homicide and the disappearance of women, and (b) before the discovery of the body and in the context of the specific obligation to prevent violations of her rights to integrity and life. Regarding the first moment, the Court considered that, at the time of the events, the State had implemented actions designed to tackle the problem of violence against women; however, these measures were insufficient because the resources assigned were inadequate, there was a lack of inter-institutional coordination, and there was no comprehensive protection strategy.

In relation to the second moment, the Court recalled that it had repeatedly considered that, in a context of violence against women, when a woman was reported missing, an obligation of rigorous due diligence arose as regard searching for her during the initial hours and days. Since this obligation of means was rigorous, it required exhaustive search activities. In particular, the prompt and immediate action of police, prosecution and judicial authorities was essential ordering the necessary and timely measures to discover the victim's whereabouts. Appropriate procedures should exist for such cases, including an effective investigation from the onset. The authorities should presume that the missing person was still alive until the uncertainty about their fate ended. Regarding this specific case, the Court determined that the State was aware that there was a real and imminent danger that Claudina could have been sexually assaulted, subjected to ill-treatment and/or murdered from the time her parent telephoned the PNC, and that, at 3 a.m. on the day of her disappearance the police were advised by Claudina's parents that they were searching for their daughter. The Court determined that, although police agents came to the house shortly after Claudina's parents had telephoned them, they merely indicated that they would continue their patrol and that her parents should wait before filing a report. Given the context of violence against women

that the State was aware of, the response of the State authorities was clearly insufficient in view of the possibility that the victim's life and personal integrity were in danger.

Furthermore, the Court emphasized that gender stereotypes referred to preconceived attributes, conducts, characteristics or roles that were or should be played by men and women respectively, and that it was possible to associate the subordination of women with practices based on socially-dominant and socially-persistent gender stereotypes. Thus, the establishment and use of such stereotypes became a cause and consequence of gender-based violence against women. According to the expert opinions received, the Court noted that, in this case, the authorities' investigative actions into the violent death of Claudina Velásquez were influenced by gender stereotypes, because they considered that "her profile corresponded to that of a gang member or a prostitute," "whose death need not be investigated." The Court affirmed that it recognized, observed and rejected the gender stereotype by which, in cases of violence against women, the victims were said to have the profile of a gang member and/or prostitute and/or "hussy," and such violence was not considered sufficiently important to investigate; moreover, it was considered that the women were responsible for being attacked or deserved it. Thus, the Court affirmed its rejection of any State practice that justified violence against women and blamed them for it, because value judgments of this kind revealed a discretionary and discriminatory criteria based on the origin, condition and/or behavior of the victim, merely because she was a woman. Consequently, the Court considered that gender stereotypes were incompatible with international human rights law, and measures must be taken to eradicate them when they occurred.

Based on the above, the Court considered that the State had not proved that it had implemented the necessary measures, pursuant to Article 2 of the American Convention and Article 7 of the Convention of Belém do Pará. In addition, it concluded that the Guatemalan authorities did not act with the required due diligence to prevent the violence suffered by Claudina Velásquez and her death, and did not act as could reasonably be expected based on the context of the case and the circumstances of the fact reported. Consequently, it found that the State had violated the rights to life and to personal integrity recognized in Articles 4(1) and 5(1) of the American Convention, in relation to Articles 1(1) and 2 of that instrument, as well as Article 7 of the Convention of Belém do Pará.

Regarding the rights to judicial guarantees, judicial protection, and equality before the law, the Court recalled that, in cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are supplemented and reinforced for the States parties to the Convention of Belém do Pará by the obligations derived from this specific inter-American treaty. It reiterated that the obligation to investigate had additional implications when a woman was murdered, or suffered ill-treatment or impairment of her personal liberty in a general context of violence against women. In that situation, the State authorities had the obligation to investigate *ex officio* the possible gender-based discriminatory connotations of an act of violence perpetrated against a woman, especially when there were specific indications of sexual violence or evidence of cruelty against the body of the woman (for example,

mutilation), or when such acts took place in a context of violence against women in a specific country or region. Moreover, the criminal investigation should include a gender perspective and be conducted by officials trained in similar cases and in dealing with victims of gender-based discrimination and violence.

In this case, the Court observed that the criminal investigation was not opened following the reports that Claudina Velásquez was missing, but rather following the discovery of her body. It then noted various irregularities in the investigation following the discovery of the victim's body and during the subsequent actions by State officials. It also analyzed the lack of due diligence in relation to the logical lines of investigation, the collection of evidence and performance of tests, and the reasonable time. In addition, it examined the discrimination owing to the application of stereotypes, and an investigation without a gender perspective in the case of Claudina Velásquez. On this aspect, it determined that gender stereotypes were reiterated by various State agents during the investigation. The Court noted that the attitude assumed by the authorities during the investigation was not an isolated factor, because it accorded with the context of the "propensity of the investigators to discredit victims and blame them for their lifestyle, or clothes," and their inquiries into aspects relating to the personal relationships and sexuality of the victims, as well as with the impunity of violent acts involving the death of women.

In the Court's opinion, there were three fundamental consequences of the absence of a gender perspective in the criminal investigation, namely: (a) it rendered the circumstances prior to death invisible, even though the evidence indicated the existence of an act of violence before death; (b) it rendered the way in which death occurred invisible, even though the evidence pointed to the presumed perpetration of an act of violence following death, and (c) it rendered the possible sexual violence invisible. Consequently, the Court considered that, in this case, the State had failed to comply with its obligation to investigate the violent death of Claudina Velásquez as a possible manifestation of gender-based violence and with a gender perspective, and revealed a form of gender-based discrimination in access to justice. Based on the foregoing, the State had violated the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, and the right to equality before the law recognized in Article 24 of the Convention, in relation to Articles 1(1) and 2 of that instrument, and to Article 7 of the Convention of Belém do Pará, to the detriment of the next of kin of Claudina Velásquez.

The Court also concluded that the State had violated the personal integrity of the next of kin of Claudina Velásquez owing to the manner in which the case was investigated; in particular, the way in which the agents of the Public Prosecution Service burst into the victim's wake, the classification of the victim as a person whose death did not warrant an investigation, and the irregularities and deficiencies throughout the investigation, in which Mr. Velásquez Durán played a particularly active role. All of this constituted a violation of Article 5(1) of the American Convention, in relation to Article 1(1), to the detriment of the next of kin. Lastly, the Court determined that the care taken with a person's mortal remains was a form of respecting the right to human dignity and that they should be treated with respect in the presence of family members owing to their significance for the latter. Therefore, when the officials of the Public

Prosecution Service went to the funeral home where a wake was being held for Claudina Velásquez, and insisted on taking her fingerprints using threats, they interrupted a painful and intimate moment in order to handle the mortal remains of Claudina Velásquez, violating the right to respect for her honor and the recognition of her dignity, in violation of Article 11 of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of her family.

Regarding reparations, among others, the Court ordered the State to conduct the investigation effectively and, where applicable, to open the corresponding criminal proceedings to identify, prosecute and punish those responsible for the ill-treatment and deprivation of the life of Claudina Isabel Velásquez Paiz, as appropriate. Furthermore, based on the pertinent disciplinary regulations, the State should examine the possible procedural and investigative irregularities related to this case and penalize the conduct of the respective public servants, as appropriate.

## **Case of Quispialaya Vilcapoma v. Peru (ill-treatment under a military discipline regime)**

On November 23, 2015, the Inter-American Court delivered judgment in the Case of Quispialaya Vilcapoma v. Peru, declaring that the Peruvian State was internationally responsible for the violation of the right to personal integrity, and the rights to judicial guarantees and to judicial protection of Valdemir Quispialaya Vilcapoma and Victoria Vilcapoma Taquia.

In this case, the State presented two preliminary objections with regard to the failure to exhaust domestic remedies: (a) because an appeal had not been filed against the decision of the First Provincial Prosecutor of Huancayo, and (b) as regards the application for a disability pension submitted by Mr. Quispialaya. Regarding the first objection, the Court determined that, even though the State had presented an objection based on failure to exhaust domestic remedies during the admissibility stage of the petition before the Commission, the remedy alleged on that occasion differed from the one alleged in the proceedings before the Court; therefore, the Court rejected this objection. Regarding the second objection, the Court determined that the State's argument referred to a measure of reparation requested by the representatives; thus it was not possible to analyze this objection because the dispute in question could not be decided at a preliminary stage, but depended directly on the merits of the matter. In addition, the Court considered that the State's argument was time-barred, because it was not submitted at the proper procedural moment. Consequently, the Court rejected the objection regarding the application for a disability pension.

Regarding the facts, the Court considered that they occurred in a context of physical and psychological ill-treatment during military service resulting from a deep-rooted culture of violence and abuse in the application of military discipline and authority. In this specific case, the Court determined that, in January 2001, Valdemir Quispialaya Vilcapoma was undergoing target practice when NCO Juan Hilaquita Quispe

began to admonish him to improve his aim and struck him on the forehead and in the right eye with the butt of a FAL rifle. As a result of the attack, Mr. Quispialaya suffered constant headaches and fever. Accordingly, in June 2001, he went to the clinic to receive treatment. Mr. Quispialaya stated that he did not denounce the facts on that occasion because Mr. Hilaquita had threatened him and because he was afraid of reprisals. In September 2002, the Ophthalmology Department of the Central Military Hospital found that Mr. Quispialaya was suffering from the aftereffects of a very advanced form of a severe traumatic injury, and would never recover the vision in his right eye. Furthermore, Mr. Quispialaya's mental health had also been affected by the violent incident.

In July 2001, an administrative investigation was opened in the military jurisdiction. Also, in February 2002, Mr. Quispialaya's mother denounced NCO Hilaquita before the Prosecutor General for the possible perpetration of acts of physical and mental torture. However, in September 2002, the Public Prosecution Service filed criminal charges for the offense of serious injuries, arguing that there were no grounds for bringing criminal charges for torture. Also, in November 2002, the Military Prosecutor filed a complaint against the NCO for the presumed offense of abuse of authority. Following a jurisdictional dispute filed by the military judge, the Permanent Criminal Chamber of the Supreme Court decided in favor of the military jurisdiction. In December 2006, the Constitutional Court determined that the military jurisdiction should not hear cases relating to ordinary crimes penalized under the Criminal Code. Consequently, the Permanent Court Martial of the Army's Second Judicial District declared all the previous proceedings null and void and ordered that the case be archived. Then, in October 2008, the Provincial Prosecutor decided that there were no grounds to file charges because Mr. Quispialaya could not be located. The case remained archived until February 2015, when the Third Provincial Criminal Prosecutor of Huancayo ordered ex officio that an investigation be opened into the presumed perpetration of a crime against humanity: torture.

With regard to the merits of the matter, the Court considered, first, that the State's position and obligation as guarantor with regard to persons deprived of liberty also applied to members of the armed forces on active service confined to barracks. Thus, in relation to such individuals who were in a special situation of subjection, the State had the obligation to: (i) safeguard the health and welfare of soldiers on active service; (ii) ensure that the manner and method of training did not exceed the inevitable level of suffering inherent in this situation, and (iii) provide a satisfactory and convincing explanation about the health problems of individuals undergoing military service. Consequently, the Court concluded that a presumption existed that the State was responsible for the harm to personal integrity of anyone under the authority and control of State officials, as during military service.

Regarding the attack on Valdemir Quispialaya, the Court took into consideration the abusive exercise of military authority, the violence of the conduct, his situation of helplessness when the attack occurred, his well-founded fear, the threats he underwent not to denounce what had happened, the medical reports available in the case file, and the expert psychological appraisal provided to the Court. Based on this,

it found that the attack suffered during target practice at the shooting range represented a violation of Articles 5(1) and 5(2) of the American Convention and non-compliance with Article 6 of the Inter-American Convention against Torture, all of which prohibit acts or torture and cruel, inhuman or degrading treatment or punishment.

Regarding the incompatibility of the military jurisdiction to try human rights violations, the Court considered that the appropriate means to investigate and, as appropriate, prosecute and punish those responsible for the facts of this case, would be a criminal action in the ordinary jurisdiction. It also included several considerations concerning the intervention of the ordinary jurisdiction in the investigation of the facts, and concluded that the State had revealed a lack of diligence in the investigation of a violation of personal integrity, and this represented a violation of the rights to judicial guarantees and to judicial protection. It also considered that the State had exceeded a reasonable time to conduct an independent and impartial investigation in violation of Article 8(1) of the Convention, in relation to Article 1(1) of that instrument.

With regard to the obligation to adopt domestic legal provisions, the Court considered that a literal reading of Article 6 of the Inter-American Convention against Torture revealed a difference in the response required to the offense of torture as compared to other cruel, inhuman or degrading treatment, which was underlined by the different duties that the Convention imposed on States in relation to each one. The second paragraph of Article 6 imposed on States the express obligation to adapt their laws to ensure that all acts of torture were defined as offenses under their criminal law. In the case of other cruel, inhuman or degrading treatment, the Convention established the obligation to adopt measures to prevent and punish this, without expressing the need to establish a specific offense to this end. Thus, the Court found that the prevention and prosecution of this type of act could be implemented by citing other non-specific offenses, insofar as these were appropriate. The Court also considered that the fact that the offense of torture was reserved for cases of extreme gravity did not necessarily mean that a case of injuries was considered less egregious, or entail a distinction in relation to the obligations to investigate, prosecute and punish acts that violate rights recognized in the Convention. To the contrary, the equivalence of the punishments in the domestic sphere revealed that a case classified as serious injuries could have the same relevance as one based on torture from the punitive point of view. Therefore, the Court concluded that, in this regard, the offense of serious injuries did not violate per se the obligation to prevent and punish cruel, inhuman or degrading treatment. Based on the foregoing, the Court did not establish that the State of Peru had failed to comply with Article 2 of the American Convention and Article 6 of the Inter-American Convention to Prevent and Punish Torture.

Lastly, the Court noted the existence of the close relationship between Mrs. Vilcapoma Taquia and her son, and that, together, they suffered the consequences of the attack and the harassment they had both received. Accordingly, the Court concluded that the State was responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of that instrument, to their detriment.

Regarding reparations, the Court established that the judgment constituted per se a form of reparation and, among other measures, ordered the State to continue the investigation and/or criminal proceedings that were underway for the facts related to the violation of personal integrity suffered by Mr. Quispialaya; to include in the training programs ordered in previous cases regular courses and training material on the limits to military discipline, and to ensure that all those who volunteer for military service receive the “Handbook on rights and duties of military service personnel,” and information on the mechanisms for filing complaints.

## **Case of the Kaliña and Lokono Peoples v. Suriname (collective ownership by indigenous peoples)**

On November 25, 2015, the Inter-American Court delivered judgment in the case of the Kaliña and Lokono Peoples v. Suriname, and declared that the State was responsible for the violation of the rights to recognition of juridical personality, collective ownership, political rights, and cultural identity, and the obligation to adopt domestic legal provisions. The facts referred to the Kaliña and Lokono peoples living in eight villages. The representatives indicated that the ancestral territory of the Kaliña and Lokono peoples extended over approximately 133,945 hectares, while the Court verified that various Maroon settlements and territories were excluded from the Kaliña and Lokono claim.

The Court determined that three nature reserves had been created within the territory that was in dispute, namely: (i) the Wia Wia Nature Reserve in 1966; (ii) the Galibi Nature Reserve in 1969, and (iii) the Wane Kreek Nature Reserve in 1986. The three reserves had been established in order to conserve the environment and, together, they covered approximately 59,800 hectares of the 133,945 hectares claimed as ancestral land. However, based on a 75-year concession granted in 1958, Suralco began strip-mining activities to exploit bauxite in the Wane Kreek Nature Reserve in 1997. The bauxite extraction activities had ended in 2009 and some areas were currently being reforested. In addition, in 1975, the State had initiated an urban subdivision project near the villages of Erowarte, Tapuku, Pierrekondre and Marijkedorp, under which it had granted land titles to non-indigenous third parties.

Regarding the merits of the matter, the Court referred to recognition of juridical personality and noted that, in previous cases relating to Suriname, it had underlined that domestic law guaranteed individual rights to the members of the indigenous and tribal communities, but did not recognize those communities as legal entities, and did not establish collective property rights. The Court also recalled that the rights of other communities in Suriname had been denied owing to lack of legal standing, and found that one of the special measures that the State should take with regard to the indigenous and tribal peoples was to accord them the right to recognition of their juridical personality as an entity in order to guarantee that they could enjoy their territories in accordance with their traditions. Thus, the Court indicated that, since the State’s domestic laws did not recognize the collective exercise of the juridical personality of the indigenous and



tribal peoples, the State had violated Article 3 of the American Convention, to the detriment of the Kaliña and Lokono peoples, in relation to Article 2 of that instrument. In addition, it noted that the absence of this recognition had had an impact on the violation of other rights recognized in Articles 1(1), 21 and 25 of the Convention.

With regard to the right to collective ownership, the Court concluded that the State's failure to delimit, demarcate and grant title to the territory of the Kaliña and Lokono peoples had violated the right to collective ownership, recognized in Article 21 of the Convention, and the obligation to adopt domestic legal provisions established in Article 2 of that instrument, to the detriment of these peoples. It also indicated that, following a consultation process, the State should delimit the territories that corresponded to the Kaliña and Lokono peoples in order to, then, demarcate and grant title to the land, ensuring its effective use and enjoyment. To this end, it indicated that the State should also respect the possible rights of the Maroons in the area. Regarding the right to request the return of the territory in relation to the existence of individual titles issued to non-indigenous third parties, the Court considered that the Kaliña and Lokono peoples retained this right and, therefore, that the State should weigh the private or State territorial interests against the territorial rights of the members of the indigenous communities.

Regarding the establishment of the nature reserves and the award of the mining concession, the Court noted that these took place before Suriname had ratified the Convention in 1987 and accepted the contentious jurisdiction of the Court. Although the State did not file a preliminary objection in this regard, the Court took into account its competence *ratione temporis* in relation to the respective disputes. As regards the persistence of the nature reserves in the traditional territory, the Court determined that the Kaliña and Lokono peoples had the right to file a claim under domestic law for the possible return of the parts corresponding to their traditional territory adjoining the nature reserves, and that the State should weigh the rights at stake, which, in this case, would be the protection of the collective rights of the Kaliña and Lokono peoples against the protection of the environment as a matter of public interest. Regarding the alleged restrictions for the indigenous peoples in the nature reserves, the Court considered it relevant to refer to the need to harmonize the protection of the protected areas with the adequate use and enjoyment of the traditional territories of the indigenous peoples. Thus, the Court found that a protected area consisted not only of its biological dimension, but also of its socio-cultural dimension and that, therefore, it required an interdisciplinary, participatory approach.

Consequently, the Court concluded that, in principle, the protection of natural areas and the right of the indigenous and tribal peoples to the protection of the natural resources in their territories were compatible, and emphasized that, owing to their interrelationship with nature and their way of life, the indigenous and tribal peoples could make a relevant contribution to such conservation. Thus, the criteria of: (a) effective participation; (b) access and use of their traditional territories, and (c) the possibility of receiving benefits from conservation were fundamental elements to achieve that compatibility. Consequently, the State must have adequate mechanisms to implement those criteria. In this regard, the Court found that the State had

violated the victims' rights to collective ownership, cultural identity, and participation in public affairs, above all, by preventing their effective participation and their access to part of their traditional territory and the natural resources in the Galibi and Wane Kreek Nature Reserves, as well as by failing to guarantee the traditional territory of the communities affected by the degradation of the environment in the Wane Kreek Nature Reserve, which constituted a violation of Articles 2, 21 and 23 of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of the Kaliña and Lokono peoples and their members.

Regarding the mining concession, the Court considered that the State's obligation to ensure real participation by means of a consultation process was in force prior to the implementation of actions, such as mining exploration and exploitation or extraction, which could have a relevant impact on the interests of the indigenous and tribal peoples. Although the mining concession was granted in 1958, the extraction activities only began in 1997, in other words 40 years later, at which time the site where the extraction activities would be executed had been determined precisely. Thus, the Court found that the guarantee of real participation should have been implemented prior to the start of the mining exploitation or extraction activities, which had not been the case. Accordingly the Court concluded that the State had failed to ensure the real participation of the Kaliña and Lokono peoples by means of a consultation process. In addition, no social and environmental impact assessment was made and the benefits of the mining project were not shared. Suriname had also failed to adopt mechanisms to guarantee the preceding safeguards. Based on the foregoing, the State had violated Articles 21 and 23 of the Convention, in relation to Articles 1(1) and 2 of that instrument, to the detriment of the Kaliña and Lokono peoples and their members.

Regarding the remedies to protect collective rights under domestic law, the Court considered that the laws examined did not include adequate and effective administrative or judicial remedies establishing procedures to protect the right to collective ownership of the indigenous and tribal peoples. The Court found that, pursuant to its case law and the relevant international standards, domestic remedies must be interpreted and applied in order to ensure the human rights of the indigenous peoples. In addition, it considered that the judicial proceedings and the petitions that were filed were ineffective to this end, and that the State had not provided the public information requested by the representatives or justified the impossibility of handing this over. Therefore, the State was found responsible for the violation of the right to judicial protection established in Article 25 of the American Convention, in relation to Articles 1(1), 2 and 13 of that instrument.

Regarding the measures of reparation ordered, the Court established that the judgment constituted *per se* a form of reparation. It also ordered the State, among other matters, to grant the Kaliña and Lokono peoples legal recognition of their collective juridical personality; to delimit, demarcate and grant collective title to the Kaliña and Lokono peoples; to determine the property rights of the Kaliña and Lokono peoples in relation to other lands owned by non-indigenous or tribal third parties, whether natural or legal persons, and to adopt adequate measures to ensure the access, use and participation of the Kaliña and Lokono peoples in the Galibi and Wane Kreek nature reserves.

## II. ORDERS ON MONITORING COMPLIANCE

Case	Date and number of monitoring order	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
<b>Case of Fontevecchia and D'Amico v. Argentina</b>	September 1, 2015			<p>To annul the civil conviction</p> <p>Publication of sections of the judgment</p> <p>Reimbursement of amounts paid out by the victims and also costs and expenses</p>
<b>Case of De la Cruz Flores v. Peru</b>	September 2, 2015	<p>Payment of the sums established in the judgment for pecuniary and non-pecuniary damage and to reimburse costs and expenses</p> <p>Reincorporation of Mrs. De la Cruz Flores in her functions as a physician</p> <p>Publication of sections of the judgment in a national newspaper and in the official gazette</p>		<p>Respect for the principle of legality and non-retroactivity and the requirements of due process of law in the new proceedings against Mrs. De la Cruz Flores</p> <p>Medical and psychological treatment for the victim</p> <p>Award of a grant for professional updating and training</p> <p>Reincorporation of Mrs. De la Cruz Flores into the pensions record</p>

<p><b>Case of the Barrios Family v. Venezuela</b></p>	<p>September 2, 2015</p>			<p>Criminal investigation of the facts that violated human rights</p> <p>Examination of the possible investigative and procedural irregularities in this case and penalization of the conduct of the corresponding public servants, as appropriate</p> <p>Free psychological and medical treatment through specialized public health institutions for the victims who request this</p> <p>Publications of the judgment or its official summary</p> <p>Public act to acknowledge international responsibility</p> <p>Award of scholarships in Venezuelan establishments</p> <p>Training actions and implementation of a compulsory program on the principles and norms for the protection of human rights as part of the general and on-going training of the police of the state of Aragua</p> <p>Reimbursement of costs and expenses</p> <p>Reimbursement of the Victims' Legal Assistance Fund of the Court</p>
<p><b>Case of the Human Rights Defender et al. v. Guatemala</b></p>	<p>September 2, 2015</p>			<p>Publication of sections of the judgment (the Court only ruled on this measure)</p>

<p><b>Case of Mohamed v. Argentina</b></p>	<p>November 13, 2015</p>			<p>Guarantee that Mr. Mohamed has the right to appeal against his conviction (suspended execution)</p> <p>Adoption of the measures required to suspend the legal effects of the conviction, and especially his criminal (suspended execution)</p>
<p><b>Cases of El Amparo, Blanco Romero et al., Montero Aranguren et al., Barreto Leiva and Usón Ramírez v. Venezuela</b></p>	<p>November 20, 2015</p>			<p>Measures of restitution and satisfaction, and guarantees of non-repetition</p> <p>Obligation to identify, prosecute and punish, as appropriate, those responsible for the violations that gave rise to State responsibility in three of the five cases</p> <p>Determination of the whereabouts of the victims</p> <p>Payment of the sums established as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses in the five cases</p>

<p><b>Case of López Mendoza v. Venezuela</b></p>	<p>November 20, 2015</p>			<p>Ensure that the disqualification does not represent an impediment for Mr. López Mendoza if he should wish to postulate his candidacy in electoral processes</p> <p>Publication and dissemination of the judgment</p> <p>Adaptation of Article 105 of the Organic Law of the Office of the Comptroller General and of the National System for Fiscal Control</p> <p>Reimbursement of costs and expenses.</p>
<p><b>Case of Fleury et al. v. Haiti</b></p>	<p>November 20, 2015</p>			<p>Initiation, conduct and conclusion of investigations and proceedings to establish the truth of the facts and to punish those responsible</p> <p>Implementation of a compulsory permanent program on human rights for officials of the National Police and agents of justice</p> <p>Payment of compensation for pecuniary and non-pecuniary damage</p> <p>Reimbursement of certain sums for costs and expenses</p> <p>Publication of the judgment and the official summary</p>

<p><b>Case of Yatama v. Nicaragua</b></p>	<p>November 20, 2015</p>			<p>Reform of Electoral Law No. 331; adoption of the necessary measures for members of the indigenous and ethnic communities to take part in electoral processes effectively, taking into account their traditions, practices and customs</p> <p>Establishment of a remedy that allows the Supreme Electoral Board's decisions to be controlled judicially</p> <p>Broadcast of the judgment on the radio</p>
<p><b>Cases of Ríos et al., Perozo et al. and Reverón Trujillo v. Venezuela</b></p>	<p>November 20, 2015</p>			<p>Measures of restitution, rehabilitation, and satisfaction, and guarantees of non-repetition ordered in the respective judgments</p> <p>Obligation to investigate the facts that resulted in State responsibility in the case of Ríos and Perozo</p> <p>Payment of the sums established as compensation for pecuniary and non-pecuniary damage in one case and to reimburse costs and expenses in the three cases</p>

<p><b>Cases of Chocrón Chocrón, Díaz Peña, and Uzcátegui et al. v. Venezuela</b></p>	<p>November 20, 2015</p>			<p>Measures of restitution, rehabilitation, and satisfaction, and guarantees of non-repetition ordered in the respective judgments</p> <p>Obligation to investigate the facts that resulted in State responsibility in the case of Uzcátegui et al.</p> <p>Payment of the sums established in the judgments as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses</p>
<p><b>Cases of Hilaire, Constantine and Benjamin et al., and Caesar v. Trinidad and Tobago</b></p>	<p>November 20, 2015</p>			<p><b>Case of Hilaire, Constantine and Benjamin et al.</b> Reimbursement of certain sums for costs and expenses Processing of the criminal proceedings against the 31 victims and review of their cases</p> <p><b>Case of Caesar</b> Provision, through the national health care services of adequate medical and psychological treatment Payment of compensation for non-pecuniary damage Abstention from applying the 1925 Offences against the Person Act, and amendment in keeping with international human rights standards Adoption of legislative or any other measures required to rescind the Corporal Punishment Act Amendment of Section 6 of the Trinidad and Tobago Constitution Adaptation of prison detention conditions to international human rights standards</p>



<p><b>Case of Yvon Neptune v. Haiti</b></p>	<p>November 20, 2015</p>			<p>Adoption of the judicial and any other measures required to ensure that Yvon Neptune's legal situation is fully defined as regards the criminal proceedings filed against him</p> <p>Adoption of legislative and any other measures to regulate the proceedings of the High Court of Justice</p> <p>Adoption of the legislative, administrative and any other measures required to improve the conditions in Haitian prisons</p> <p>Payment of compensation for pecuniary and non-pecuniary damage</p> <p>Reimbursement of certain sums for costs and expenses</p> <p>Publication of the judgment</p>
<p><b>12 Guatemalan cases v. Guatemala</b></p>	<p>November 24, 2015</p>			<p>Obligation to investigate, prosecute and punish those responsible for the violations, as appropriate (the Court only ruled on this measure)</p>

## Case of Fontevecchia and D'Amico v. Argentina

On September 1, 2015, the Court issued an order on monitoring compliance with the judgment in the *Case of Fontevecchia and D'Amico v. Argentina*. This case referred to a restriction incompatible with the American Convention of the right to freedom of expression of two journalists owing to a civil conviction handed down by the Argentine courts in response to a complaint filed by Carlos Saúl Menem, President of the Nation at the time, for the alleged violation of his right to privacy. In its judgment, the Court ordered the State to annul the said civil conviction; to publish sections of the judgment, and to pay certain sums to reimburse amounts paid out by the victims, and also costs and expenses. The Court also established that, within one year of notification of the judgment, the State should provide a report on the measures taken to comply with it.

In this regard, the Court noted that, even though two years and eight months had elapsed since the time limit established in the judgment had expired, and despite four requests made by the Court or its President, Argentina had not provided information on the implementation of the judgment or submitted any brief whatsoever. It also recalled that the State duty to comply promptly with the judgment included the State's obligation to inform the Court of the measures taken to implement each reparation ordered, which was essential to enable the Court to assess the situation of compliance with the judgment as a whole. Taking this non-compliance by the State into account, the Court concluded that it had no evidence to affirm that Argentina had complied with the reparations, and also that the State had failed to comply with its obligation to report on the measures taken to execute the judgment.

## Case of De la Cruz Flores v. Peru

On September 2, 2015, the Court issued an order on monitoring compliance in the *Case of De la Cruz Flores v. Peru*, regarding the sentence to 20 years' imprisonment of María Teresa De la Cruz Flores, a physician, by a "faceless" court, for the offense of collaboration with terrorism. Bearing in mind the measures of reparation that remain pending, the Court referred to: (a) respect for the principle of legality and non-retroactivity and the requirements of due process of law in the new proceedings against Mrs. De la Cruz Flores; (b) medical and psychological treatment for the victim; (c) a grant for professional updating and training, and (d) reincorporation of Mrs. De la Cruz Flores into the pension records.

On the first aspect, the Court assessed positively the decision of the Transitory Criminal Court of the Supreme Court of Justice of Peru to declare that the Supreme Order confirming the sentence handed down in the second proceedings against Mrs. De la Cruz Flores was null and void. The Court recalled that, in previous orders on compliance, it had considered that the second proceedings had not respected the principle of legality and non-retroactivity, and due process of law. However, the Court noted with

concern that, following the annulment of the second criminal proceedings, the institution of a third oral criminal trial against Mrs. De la Cruz Flores had been ordered, and determined that the reparation ordered did not mean that the State should continue the criminal prosecution of Mrs. De la Cruz Flores until it had obtained a conviction, but rather sought to guarantee her rights in the new proceedings that were underway. Consequently, the Court asked the State to present a detailed report on how the criminal proceedings currently being processed complied with the principle of legality and non-retroactivity, and due process of law, and decided to keep the monitoring procedure open.

Regarding the second element, the Court had ordered the State to provide medical and psychological treatment to the victim through the State's health care services, including the provision of medicines, free of charge. In this regard, the Court noted that, on September 26, 2013, Chile had accorded Mrs. De la Cruz refugee status and granted her permanent residence in that country. It also noted that, according to the 2010 monitoring order, although the Peruvian State was unable to provide psychological treatment outside its territory, the parties could reach an agreement to change the implementation method, in order to arrange an alternative means of complying with that aspect. Consequently, the Court asked the representative to provide complete updated information that included, if appropriate, information on whether Mrs. De la Cruz wished to receive medical and psychological-psychiatric treatment in Peru.

Regarding the study grant, the Court noted that the State had not provided information on the implementation of the measure and, without the necessary information from the State, the Court was unable to exercise its monitoring function. Consequently, the Court requested detailed information on the actions taken by the State to comply with this measure. Lastly, regarding the reincorporation of Mrs. De la Cruz into the pension records, it noted that the representative had indicated that the State had not complied with this measure, and that the State had not provided any information in this regard.

## Case of the Barrios Family v. Venezuela

On September 2, 2015, the Court issued an order on monitoring compliance in the *Case of the Barrios Family v. Venezuela*, decided on November 24, 2011. The case referred to the deprivation of the life of seven members of the Barrios family starting in 1998, and also to the search of the homes of some members of the family, the seizure and destruction of possessions, and the detention, attacks and threats against other members, including children. In its judgment, the Court had ordered the Venezuelan State to: (a) conduct a criminal investigation into the acts that violated human rights; (b) investigate possible investigative and procedural irregularities related to this case; (c) provide medical and psychological treatment as a measure of rehabilitation; (d) implement three measures of satisfaction; (e) provide training to the police of Aragua state as a guarantee of non-repetition; (f) pay compensation for pecuniary and non-pecuniary damage, and (g) reimburse costs and expenses, and the Victims' Legal Assistance Fund of the Court.

Venezuela provided information on compliance with the judgment, for the first time, at the February 2015

monitoring hearing; that is, two years and two months after the expiration of the deadline established to present the report on compliance with the measures of reparation. Based on the information provided during the said hearing, in this order, the Court referred first to the obligation to conduct a criminal investigation into the facts of this case and, subsequently, to all the other reparations.

Regarding the first aspect, the Court noted that the victims' representatives had referred to the investigation into the deaths of five of the seven victims of the violation of the right to life: Juan José Barrios, Wilmer José Flores Barrios, Oscar José Barrios, Benito Antonio Barrios and Narciso Antonio Barrios, while, the State had advised that it was conducting criminal investigations into the death of the first three. Regarding those investigations, the Court noted that it was only as a result of the investigation into the death of Juan José Barrios that possible perpetrators or participants in the crime had been identified, and that the respective preliminary hearing had not yet been held. Meanwhile, the representatives advised, without the State disputing this, that an investigation was also underway into the death of Benito Antonio Barrios and that this had lasted 14 years and, to date, no one had been convicted.

In this regard, the Court noted that it had insufficient evidence to prove that the State was following up on logical lines of investigation in the above-mentioned cases and reiterated that the incidents that occurred against numerous members of the Barrios family could not be examined individually, because there were links between several of them, as indicated in the judgment. It also noted that, according to the information it had received, the guarantees that should be observed in criminal investigations, and the obligation to provide guarantees for the safety of the victims and witnesses of the facts being investigated had not been complied with at times. In addition, the Court observed that the parties had reported that, following notification of the judgment, Jorge Antonio Barrios Ortuño, Víctor Tomás Navarro and Roni Barrios had been murdered; all three had been declared victims in the judgment and beneficiaries of provisional measures. The Court underscored the seriousness of the fact that, including these three, ten members of the Barrios family had been murdered to date. The Court considered that there was evidence to suggest a relationship between their deaths and the facts that the State was ordered to investigate in the judgment. It therefore required the State to take those deaths into account while conducting the investigation into the facts ordered in the judgment.

The Court also noted with concern that, more than 10 years after the last facts that the State had the obligation to investigate under the judgment, judicial decisions had only been issued concerning the death of one member of the Barrios family and, in this regard, the criminal responsibility of two officials as perpetrators of the crime of homicide had been determined. In addition, it noted that the death of six victims, members of the Barrios family, remained unpunished. Consequently, the Court reiterated to the State its obligation to increase its efforts and to take all pertinent measures in order to advance the corresponding investigations, concluding that this measure remained pending compliance.

Regarding the other measures of reparation, the Court indicated that the State had not provided

information that would allow it to verify whether any progress had been made to comply with them. To the contrary, the information provided by the representatives revealed that they had taken steps to seek compliance with some measures ordered in the judgment without any record of a response from the State. In this regard, the Court considered that the failure to present information on implementation of the other measures of reparation constituted non-compliance with the State obligation to report on execution of the judgment.

## Case of the Human Rights Defender et al. v. Guatemala

On September 2, 2015, the Court issued an order on monitoring compliance in the *Case of the Human Rights Defender et al. v. Guatemala*, decided on August 28, 2014. In this order, the Court only ruled on the actions taken by the State with regard to the measure relating to the publication of the judgment, because the victims' representatives had alleged that the State had flagrantly violated the principle of protection by failing to respect the required anonymity of the publication.

In its judgment, the Court had established as a form of reparation that Guatemala should publish the official summary of the judgment prepared by the Court in the official gazette and in a national newspaper with widespread circulation, and should also publish the entire judgment, omitting the names of the victims, on an official Guatemalan website. The Court had also indicated in the judgment that it was ordering "the confidentiality of the names of the presumed victims in this case at their request," because they had indicated that they feared attempts on their life and physical integrity. In this regard, the Court determined that, when publishing the official summary of the judgment, the State had included the names of two of the victims in the heading. In addition, it noted that, when publishing the judgment on the web page of the President's Human Rights Commission (COPREDEH), the State had included a link to the publication with the victims' names.

The Court considered that the said action had counteracted the object and purpose of the measures of confidentiality and reparation ordered by the Court. Furthermore, making the names public in that way was contrary to compliance in good faith with the measure, because the reparation ordered by the Court implied not only publishing the judgment and the summary with the initials of the victims' names, but also refraining from including headings and links to those publications that, erroneously, included a reference to the victims' names. Therefore, the Court concluded that Guatemala had failed to comply with its obligation to make the publications respecting the confidentiality of the victims' names.

## Case of Mohamed v. Argentina

On November 13, 2015, the Court issued an order on monitoring compliance with the judgment delivered in the *Case of Mohamed v. Argentina* concerning the violation of the right to appeal a judgment recognized

in Article 8(2)(h) of the American Convention, in relation to Articles 1(1) and 2 of that instrument, to the detriment of Oscar Alberto Mohamed.

In this order the Court referred to the measures pending compliance. In particular, it assessed the actions taken by the State to comply with the measure consisting in guaranteeing Mr. Mohamed the right to appeal his conviction, and that the legal effects of that sentence, as well as his criminal record, be suspended until a ruling had been made on the merits of his case guaranteeing that right. The Court determined that the victim's representative had asked that the Court exempt the Argentine State from complying with this aspect of the reparations, because "the result would be [...] contrary to [Mr. Mohamed's interests] rather than benefitting them, due to the effects of re-opening a criminal proceeding that ha[d] extinguished [...] owing to the passage of time," and of which the record "no longer exists" due to the extinguishment. In this regard, the Court recalled that the measures of reparation sought to guarantee Mr. Mohamed the rights that had been violated and to make integral reparation for the consequences he had suffered from the violations, without their implementation causing him any prejudice. Taking into account the victim's wishes, and that the State had indicated that it had no objection, the Court considered that the State should abstain from continuing to take actions to comply with these reparations.

The Court also determined that the State had complied with the publications of the judgment it had ordered; that is, in the official gazette, in a national newspaper with widespread circulation, and on an appropriate official website. With regard to the payment of the sums established in the judgment as compensation and to reimburse costs and expenses, the Court determined that Argentina had complied fully with those measures of reparation.

## **Cases of *El Amparo*, *Blanco Romero et al.*, *Montero Aranguren et al.*, *Barreto Leiva*, and *Usón Ramírez v. Venezuela***

On November 20, 2015, the Court issued an order on monitoring compliance in the cases of *El Amparo*, *Blanco Romero et al.*, *Montero Aranguren et al.*, *Barreto Leiva* and *Usón Ramírez*, all against Venezuela. In the judgments in these cases, the Court had declared the international responsibility of the State for diverse violations of the American Convention and had ordered Venezuela to implement certain measures of reparation. In these five cases compliance with the measures of restitution and satisfaction, and the guarantees of non-repetition remained pending compliance. The following measures also remained pending: the obligation to identify, prosecute, and punish, as appropriate, those responsible for the violations that resulted in the State's responsibility in three of the five cases; the determination of the whereabouts of the victims in two of the five cases, and the payment of the sums established as compensation for pecuniary and/or non-pecuniary damage and to reimburse costs and expenses in four of the five cases.

Furthermore, the Court determined that, in the five cases, Venezuela had failed to present the requested

compliance reports, even though considerable time had elapsed since the expiration of the deadlines established in the respective judgments or orders on monitoring compliance. It also underlined the State's failure to respond to the numerous requests made by the Court or its President. The Court considered that this constituted non-compliance by Venezuela with the obligation to report to the Court, and reiterated that a State's inactivity before the international human rights jurisdiction was contrary to the object, purpose and spirit of the American Convention. Added to this, it noted that the briefs submitted by the victims' representatives allowed the Court to conclude that Venezuela had failed to take measures to comply with the reparations ordered in the judgments in these cases.

Consequently, the Court affirmed that non-compliance with the obligations to implement the pending measures and to report to the Court was especially serious, taking into account not only the considerable time that had elapsed since the delivery of the judgments, but also that this appeared to be a common position of Venezuela in relation to these cases at the stage of monitoring compliance by the Court; in particular, since 2010. Based on the situations verified, the Court indicated that it found it necessary to apply the provisions of Articles 65 of the American Convention and 30 of its Statute and would therefore incorporate this order into the Annual Report for 2015 that it would submit to the consideration of the General Assembly of the Organization of American States.

## Case of López Mendoza v. Venezuela

On November 20, 2015, the Court issued an order on monitoring compliance with the judgment delivered in the *Case of López Mendoza v. Venezuela* that referred to the violation of political rights (the right to be elected) of Leopoldo López Mendoza, who was mayor of Chacao at the time of the facts, owing to the penalty of disqualification from exercising public office imposed on him in 2003 and 2004 by the Comptroller General.

In this order, the Court analyzed Venezuela's position in relation to compliance with the reparations ordered. In particular, it noted that the Constitutional Chamber of the Supreme Court of Justice of Venezuela had issued a ruling on October 17, 2011, affirming that the judgment delivered by the Inter-American Court was "unenforceable." Regarding the State's position in relation to this domestic judicial ruling and its impact on compliance with the judgment, the Court noted that, in answer to its requests for information, the State had responded that "the Supreme Court of Justice sitting as a Constitution Chamber [... had] ruled [...] that [it] was unenforceable" and that "it would be unlawful and unconstitutional to execute the judgment of the Inter-American Court directly." Added to this, the Court underlined that the victim's representatives had advised that, owing to the ruling of the Supreme Court of Justice, none of the organs of the public authorities had complied with the Inter-American Court's judgment.

In this regard, the Court considered that the State's position revealed an attitude contrary to the international principle of good faith in complying with the obligations arising from the system for the protection of

human rights. It also reiterated that, even though it was aware that the domestic authorities were subject to the rule of law, when the State was a party to an international treaty such as the American Convention, all its organs, including its judges and other bodies involved in the administration of justice, were also subject to the treaty, which obliged them to ensure that the effects of the Convention's provisions and, consequently, the decisions of the Inter-American Court, were not undermined by the application of norms contrary to their object and purpose.

Therefore, the Court considered that, pursuant to the international law that had been democratically and sovereignly accepted by the Venezuelan State, it was unacceptable that, when the Inter-American Court had delivered a judgment, domestic law or authorities sought to annul its effects. Based on the situation verified, the Court found it necessary to apply the provisions of Articles 65 of the American Convention and 30 of its Statute, and therefore determined that, in the Annual Report for 2015 that it would submit to the consideration of the OAS General Assembly, it would incorporate this order, indicating that Venezuela has failed to comply with its obligation to implement the reparations ordered in the judgment, and to report on the measures taken in this regard.

## Case of Fleury et al. v. Haiti

On November 20, 2015, the Court issued an order on monitoring compliance with the judgment in the *Case of Fleury et al. v. Haiti* that related to the violations perpetrated in 2002 of the rights to personal liberty, personal integrity, judicial guarantees and judicial protection, freedom of association and freedom of movement and residence of Lysias Fleury, human rights defender and legal adviser to the non-governmental organization, Comisión Episcopal Nacional de Justicia y Paz, and of the rights to personal integrity and to freedom of movement and residence of the members of his family. Regarding compliance with the measures ordered in the judgment, the Court determined that, even though three years had elapsed since the expiration of the respective deadline, and despite three requests by the President of the Court, the State had not presented a report on execution of the judgment or sent any briefs to the Court. The Court considered that this constituted non-compliance by the Republic of Haiti with the obligation to report to the Court. It also recalled that a State's inactivity before the international human rights jurisdiction was contrary to the object, purpose and spirit of the American Convention.

Taking into account this non-compliance by the State, the Court concluded that it had no evidence that would allow it to affirm that Haiti had taken measures to comply with the reparations ordered in the judgment, even though four years had passed since it had been delivered. Thus, it considered that this non-compliance prevented the reparation of the human rights violations declared in the judgment, and decided to keep the procedure of monitoring compliance open in relation to all the measures of reparation ordered in the judgment.



## Case of Yatama v. Nicaragua

On November 20, 2015, the Court issued an order on monitoring compliance with the judgment delivered in the *Case of Yatama v. Nicaragua* that related to the violation of the political right to be elected of the candidates proposed by the indigenous organization, YATAMA, because they had been excluded from taking part in the 2000 municipal elections by a decision of the Supreme Electoral Council that was not duly founded and was not in keeping with the standards established in Article 8(1) of the American Convention, as well as to provisions of Electoral Law No. 331 that established undue restrictions on the exercise of the right to be elected and regulated this in a discriminatory manner.

In its order on monitoring compliance of August 2013, the Court had noted that, since 2010, the State had not presented the requested reports on the measures it was taking to comply with the pending reparations, and had not appeared at the hearing on monitoring compliance with judgment held in May 2013. In the said order, the Court had granted Nicaragua until November 2013 to present information on compliance with the pending aspects of the judgment. Despite the reminders sent, the State has not presented the information requested.

In this regard, the Court considered that the failure to present the compliance report, now that more than five years had elapsed since the expiration of the first deadline that had been established, added to the failure to appear at the monitoring hearing, constituted serious non-compliance by Nicaragua with the obligation to report to the Court; added to this was the State's failure to respond to the numerous requests for information. Consequently, the Court reiterated that a State's inactivity before the international human rights jurisdiction was contrary to the object, purpose and spirit of the American Convention. In addition, it determined that, according to information provided by the representatives, no progress had been made in the radio broadcast of the judgment, in the payment of interest on arrears, or in amendments to the Nicaraguan electoral laws.

The Court considered that this non-compliance constituted a disregard of the obligations resulting from the judgment delivered by the Court and of the commitments made by the State in light of the Convention, prevented reparation being made for the human rights violations declared in the judgment, and deprived the Convention of its practical effects in this specific case. Based on the situation verified, the Court found it necessary to apply the provisions of Articles 65 of the American Convention and 30 of its Statute and therefore indicated that, in the Annual Report for 2015 that it would submit to the consideration of the OAS General Assembly, it would indicate that Nicaragua had failed to comply with its obligation to implement certain reparations ordered in the judgment, and also, since 2010, to report on the measures taken in this regard.

## Cases of *Ríos et al.*, *Perozo et al.* and *Reverón Trujillo v. Venezuela*

On November 20, 2015, the Court issued an order on monitoring compliance in the cases of *Ríos et al.*, *Perozo et al.*, and *Reverón Trujillo*, all with regard to Venezuela. In the respective judgments in these cases the Court had declared the international responsibility of the State for different violations of the American Convention and had ordered the State to implement certain measures of reparation.

The Court observed that, despite the time that had passed since the expiration of the deadlines established in the judgments in these three cases, and the repeated requests made by the President of the Court, Venezuela had not reported on the implementation of the measures ordered in these three cases or forwarded any briefs to the Court. It also considered that the failure to present the said compliance reports in these three cases, bearing in mind the considerable time that had elapsed since the expiration of the established deadlines, added to the State's failure to respond to the numerous requests of the Court's President, constituted non-compliance by Venezuela with the obligation to report to the Court. Consequently, the Court reiterated that a State's inactivity before the international human rights jurisdiction was contrary to the object, purpose and spirit of the American Convention.

It also pointed out that failure to comply with the obligation to report and the obligation to implement the pending measures was especially serious, taking into account not only the considerable time that had elapsed since the delivery of the respective judgments, but also that this appeared to be a common position of Venezuela in relation to these cases at the stage of monitoring compliance by the Court, particularly as of 2010. Based on the situation verified, the Court found it necessary to apply the provisions of Articles 65 of the American Convention and 30 of its Statute and therefore determined that, in the Annual Report for 2015 that it would submit to the consideration of the OAS General Assembly, it would indicate that Venezuela had failed to comply with its obligation to implement certain reparations ordered in the judgment, and also, since 2010, to report on the measures taken in this regard.

## Cases of *Chocrón Chocrón*, *Díaz Peña* and *Uzcátegui et al. v. Venezuela*

On November 20, 2015, the Court issued an order on monitoring compliance with regard to the cases of *Chocrón Chocrón*, *Díaz Peña*, and *Uzcátegui et al.*, all with regard to Venezuela. In the respective judgments in these cases the Court had declared the international responsibility of the State for different violations of the American Convention and had ordered the State to make certain measures of reparation.

The Court observed that, despite the time that had passed since the notification of the said judgments and the requests made by the President of the Court, Venezuela had not reported on the implementation of the measures ordered in these cases or forwarded any briefs to the Court. In this regard, the Court

considered that the failure to present the said compliance reports in these three cases, bearing in mind the considerable time that had elapsed since the expiration of the established deadlines, added to the State's failure to respond to the numerous requests of the Court's President, constituted non-compliance by Venezuela with the obligation to report to the Court. It also reiterated that a State's inactivity before the international human rights jurisdiction was contrary to the object, purpose and spirit of the American Convention.

Taking into account this non-compliance by the State, the Court concluded that it had no evidence that would allow it to affirm that Venezuela had taken any actions to comply with the reparations ordered in these judgments, despite the considerable time that had elapsed since they were handed down. Thus, the Court considered that this non-compliance prevented reparation being made for the human rights violations declared in the judgments, and decided to keep the procedure of monitoring compliance open in relation to all the measures of reparation ordered in the judgments in these three cases.

## **Cases of Hilaire, Constantine and Benjamin et al. and Caesar v. Trinidad and Tobago**

On November 20, 2015, the Court issued an order on monitoring compliance with regard to the cases of *Hilaire, Constantine and Benjamin* et al. and *Caesar*, both with regard to Trinidad and Tobago. In the judgment in the case of Hilaire, Constantine and Benjamin et al., the Court had declared the State responsible for the violation of the rights to life, personal integrity, personal liberty, and to judicial guarantees and judicial protection recognized by the American Convention, to the detriment of 32 individuals declared guilty of intentional homicide and sentenced to death under the 1925 Offences against the Person Act, which established this mandatory punishment for the offense. In the judgment in the case of Caesar, the State was declared responsible for the violation of the right to personal integrity of Winston Caesar, as well as of his rights to judicial guarantees and judicial protection, owing to the execution of the sentence of 20 years' imprisonment with forced labor and to receive 15 strokes of the lash in 1998. In both cases, the Court had determined that its judgments constituted per se a form of reparation, and ordered the State to make certain reparations.

Regarding compliance with the judgment in these cases, the Court emphasized that, even though more than twelve years and more than nine years had elapsed since the expiration of the deadlines established, and despite several requests by the Court, the State had not presented any report on the implementation of the judgments. The Court considered that this constituted non-compliance by Trinidad and Tobago with the obligation to report to the Court. It also reiterated that a State's inactivity before the international human rights jurisdiction was contrary to the object, purpose and spirit of the American Convention.

The Court considered that the said non-compliance with the duty to report and to implement the reparations

ordered constituted a disregard of the obligations resulting from the judgments delivered by the Court and of the commitments made by the State in light of the Convention, prevented reparation being made for the human rights violations declared in the judgment, and deprived the Convention of its practical effects in these specific cases. Based on the situations verified, the Court found it necessary to apply the provisions of Articles 65 of the American Convention and 30 of its Statute and therefore determined that, in the Annual Report for 2015 that it would submit to the consideration of the OAS General Assembly, it would indicate that, for twelve years, Trinidad and Tobago had failed to comply with its obligation to implement the reparations ordered in the judgment in the case of Hilaire, Constantine, Benjamin et al., and, for nine years, its obligation to implement the reparations ordered in the judgment in the case of Caesar.

## Case of Yvon Neptune v. Haiti

On November 20, 2015, the Court issued an order on monitoring compliance of judgment in the case of *Yvon Neptune v. Haiti* that related to the unlawful and arbitrary deprivation of liberty of the former Prime Minister of Haiti, who was arrested on June 27, 2004, in a context of public insecurity and political polarization.

Regarding compliance with the measures ordered in the judgment, the Court determined that the State had presented only one brief, in which questioned the conclusions reached by the Court, and had not submitted any report relating to compliance with those measures. It also determined that the position assumed by Haiti in relation to the judgment was particularly serious in view of the fact that, in the brief presented in September 2008, it had indicated that the judgment was “unjust” and “inappropriate” because it had not taken into account the existing circumstances in the country; questioned the Court’s conclusions in the judgment concerning the rights that had been violated, and included comments on the merits of the case.

The Court found it unacceptable that Haiti sought to re-open discussions that were precluded at this stage of the international proceedings. It also pointed out that the position taken by the State at the stage of monitoring compliance constituted a questioning of the decisions taken by the Court in the said judgment, which was inadmissible pursuant to Article 67 of the Convention. Consequently, the Court was not obliged to answer the concerns raised. Furthermore, it considered that the said position constituted an act of evident disregard of the mandatory nature of the Court’s judgment, contrary to the international principle that States must comply with their treaty-based obligations in good faith, and of non-compliance with the obligation to report to the Court.

Based on the situation verified, the Court found it necessary to apply the provisions of Articles 65 of the American Convention and 30 of its Statute, and therefore determined that, in the Annual Report for 2015 that it would submit to the consideration of the OAS General Assembly, it would incorporate this order, indicating that, for six years and five months, Haiti had failed to comply with its obligation to report on the

implementation of the judgment and, in addition, had refused to comply with it.

## 12 Guatemalan cases v. Guatemala

On November 24, 2015, the Court issued a joint order on monitoring compliance of judgment in the cases of *Blake*, *“White Van” (Paniagua Morales et al.)*, *“Street Children” (Villagrán Morales)*, *Bámaca Velásquez*, *Mack Chang*, *Maritza Urrutia*, *Molina Theissen*, *Plan de Sánchez Massacre*, *Carpio Nicolle et al.*, *Tiu Tojín*, *Las Dos Erres Massacre* and *Chitay Nech*, specifically with regard to the measure of reparation concerning the obligation to investigate, prosecute and punish those responsible for the violations, as appropriate. This was because, at the stage of monitoring compliance with those judgment, the Court had determined that no progress had been made in the criminal proceedings, or that similar difficulties had arisen.

First, the Court set out individual considerations in each case in the chronological order in which the respective judgment had been delivered. Based on the status of each case, the Court referred to common structural obstacles to compliance with the obligation to investigate established in the judgments in the 12 cases. In this regard, it determined that, with the exception of the Mack Chang case, the criminal proceedings remained at the investigation stage in each case. Judicial decisions on the determination of criminal responsibilities had been taken in only five of these 12 cases. Therefore, the Court found that impunity prevailed, above all, in seven of the cases owing to the ineffectiveness of the investigations and criminal proceedings and the unjustified delays in them and that, in the said five cases, the investigation and prosecution of other possible perpetrators or the capture of those convicted remained pending. It also pointed out that, for the State to implement the obligation to investigate effectively, it was essential that it took into account the criteria set out by the Court and removed all the normative, institutional and factual obstacles that maintained impunity in these cases. The Court referred to the following in particular:

**Limitations in access to relevant information for the investigations.** It determined that, according to the May 2014 report of the Public Prosecution Service, one obstacles to the investigation was the “[l]imited access to information on possible perpetrators,” because “[i]n very few cases, could the Public Prosecution Service obtain the information it require[d] from the Ministry of Defense.” The victims’ representatives and the Commission emphasized this obstacles in their briefs.

The Court recalled that, in numerous judgments in cases against Guatemala, it had found that one of the decisive factors of the lack of due diligence in criminal investigations was precisely the lack of collaboration by the Ministry of Defense, which obstructed progress in the investigations. When analyzing the individual cases, it also noted the repeated refusals of the Ministry of Defense and the Military Social Security Institute to provide relevant information for the investigations in answer to requests by the Public Prosecution Service in 8 of the 12 cases.

The Court considered that this constituted an obstacle to due diligence in the investigations, which had

a negative impact on compliance with the obligation to investigate established in the judgments. It also reiterated that the State authorities were obliged to collaborate in the collection of evidence in order to achieve the objectives of an investigation, and to abstain from taking steps that obstructed the progress of the investigations. Added to this, the entities in charge of the investigations must have the formal and substantive authority, and the appropriate and necessary guarantees, to access the documentation and information that was pertinent for investigating the facts denounced, and to obtain evidence regarding the whereabouts of the victims.

**Use of judicial remedies to cause delays and the role of the judge in leading the proceedings.** The Court observed that, the May 2014 report of the Public Prosecution Service referred, as an obstacle to the State's obligation to investigate, to the "abusive and disproportionate use of appeals to cause delays" by the defense of those accused in these cases. In this regard, the Court noted that, the excessive use of appeals had had a delaying effect that had adversely impacted access to justice and promoted impunity in these cases. Therefore, it considered that the State should comply with its obligation to investigate, prosecute and punish, without allowing the exercise of remedies of this nature to obstruct the victims' access to justice.

**Judicial decisions and remedies relating to the exoneration of responsibility.** The Court recalled that, during the private hearing held before it in May 2014 and in the briefs submitted by the State that year, Guatemala presented arguments relating to the application of exonerations of responsibility. Thus, the May 2014 report of the Public Prosecution Service had identified as an obstacle the amnesty request filed by the defense of those accused of crimes of genocide, torture and enforced disappearance, and other crimes that were not subject to a statute of limitations or that did not admit the extinction of criminal responsibility under domestic law or the international treaties ratified by Guatemala, arguing that, prior to trial, their cases should be subject to the process laid down by the Law on National Reconciliation.

The Court recalled that, according to its vast and reiterated case law on the obligation to investigate, prosecute and punish, as appropriate, amnesty, the statute of limitations, and the establishment of mechanisms that exempt responsibility, which seek to prevent the investigation and punishment of those responsible for egregious human rights violations, were inadmissible. It also recalled that the 12 cases referred to in this order related to gross human rights violations. The Court determined that, despite this case law, during the investigation of some of the cases an attempt has been made to avoid the obligation to investigate the facts by using mechanisms to exclude responsibility.

**Lack of support for the implementation of arrest warrants.** The May 2014 report of the Public Prosecution Service established as another obstacle to the investigation the "lack of support of the National Civil Police to implement the arrest warrants" of those presumed to be responsible in cases relating to the investigation of "incidents arising from the internal armed conflict," especially in the case of the Las Dos Erres Massacre. In this regard, the Court emphasized that all State institutions, including the National Civil

Police, must take the steps that, within their terms of reference, are required to cooperate and make an effective contribution to the investigation, prosecution and punishment of the facts by the competent bodies.

The Court considered that the fact that no information has been presented on the steps taken by the State, through its different institutions, to implement the arrest warrants, and the indications in the May 2014 report of the Public Prosecution Service and in the briefs of the parties, revealed an additional obstacle to compliance with the obligation to investigate ordered in the respective judgments.

**Lack of clarity with regard to logical lines of investigation.** The Court observed that, even though it had verified that 10 of the 11 investigations underway were being conducted by specialized units of the Prosecution Service, in all 11 cases being investigated, it was unable to determine from the information presented whether the investigations had a clear strategy and methodology for identifying and prosecuting the perpetrators of the human rights violations declared in each judgment.

Furthermore, it considered that the information provided by the State only included references to the steps that had been taken to date, and did not reveal the existence of lines of investigation. Therefore, the Court asked the State, in its next report on compliance with the said judgments, to present updated, detailed and complete information on the lines of investigation that the State would follow up on in the continuation of the respective investigations and trials.

**Other alleged obstacles.** The Court observed that the victims' representatives had presented information on the alleged harassment of agents of justice. In this regard, the Court considered that it had insufficient evidence to determine that the incidents described constituted a violation of the guarantee of the independence of judges and prosecutors, and that the agents of justice involved in these cases had been harassed and intimidated. Despite this, it reiterated that it was necessary to protect the prosecutors and all public authorities who were involved in the investigation of these cases from any threat, harassment or intimidation.

The Court also referred to the alleged lack of sufficient resources for the work of the "Unit of Special Cases related to the Internal Armed Conflict" of the Public Prosecution Service. In this regard, the Court reiterated the importance that the State guarantee sufficient resources to ensure that the cases relating to incidents that occurred during the internal armed conflict could continue to be investigated adequately and effectively.

In sum, the Court noted that the investigations in the 12 cases corresponded to incidents that occurred or that began to be executed between 1981 and 1999. Thus, it determined that from 18 to 34 years had elapsed since the perpetration of the gross human rights violations in these cases and they had remained unpunished. It appreciated the fact that, in 2015, Guatemala had changed its attitude of "contempt of

court” and that, towards the end of October 2015, it had even presented, *ex officio*, a report on compliance with the obligation to investigate in which it indicated that, in 2015, progress had been made in the investigation in some cases, such as the Plan de Sánchez Massacre. However, it noted that Guatemala had failed to refer to the structural obstacles identified by the Prosecutor General in May 2014 in any of the reports presented during 2015.

In view of the structural obstacles, common to the 12 cases identified in this order on monitoring compliance with judgment, the Court affirmed that it was essential that Guatemala rectify this problem. It emphasized that the officials taking part in the investigation, criminal prosecution and execution of sentence should not have to face these obstacles; overcoming them required greater analysis in order to determine the need for reforms, changes or the strengthening of legal, institutional or public policies. The Court also stressed that Guatemala should advise how the said obstacles effected compliance with the obligation to investigate in each of the criminal proceedings in the cases monitored in this order.

Based on the above, the Court concluded that the measures of reparation relating to the obligation to investigate the facts in the 12 cases remained pending. It therefore required the State to present a joint report on compliance with the obligation to investigate, prosecute and punish, as appropriate, the gross human rights violations in the 12 cases, in which it referred to all the situations mentioned and the criteria emphasized in this order.



## III. PROVISIONAL MEASURES

Monitor	State	Precedent before the IACHR	Status of the measure	Rights protected	Beneficiaries of the measure
<b>Gonzales Lluy et al.</b>	Ecuador	-	Request denied	Health, life and integrity	-
<b>Wong Ho Wing</b>	Peru	-	Request denied	Life and integrity	-
<b>Curado Prison Complex</b>	Brazil	Precautionary measures (August 4, 2011)	In force	Life and integrity	Persons deprived of liberty in the Curado Complex, and anyone within this establishment
<b>Certain Venezuelan Prisons</b>	Venezuela	Precautionary measures (dates unavailable)	In force	Life and integrity	Persons deprived of liberty in the Monagas Detention Center (“La Pica”); the Capital Region Penitentiary Center Yare I and Yare II (Yare Prison); the Occidental Region Penitentiary Center (Uribana Prison), the Capital Detention Center El Rodeo I and El Rodeo II. Humberto Prado, Marianela Sánchez and family

<b>"Globovisión" Television Station</b>	Venezuela	Precautionary measures (January 30, 2002)	Lifted	Life, personal integrity and freedom of expression	Globovisión journalists, management and employees, and others within the offices of this medium or who are directly linked to its journalistic activities.
<b>Guatemalan Forensic Anthropology Foundation</b>	Guatemala	Precautionary measures (March 8, 2002)	In force	Life and integrity	38 employees of the Foundation and eight members of the family of its Director, Fredy Armando Peccerelli
<b>Rojas Madrigal in relation to the Case of Amrhein et al.</b>	Costa Rica	-	Request denied	Life and integrity	
<b>Curado Prison Complex</b>	Brazil	Precautionary measures (August 4, 2011)	Expanded	Life and integrity	Persons deprived of liberty in the Curado Complex, and anyone within this establishment, Wilma Melo
<b>García Prieto et al.</b>	El Salvador	Precautionary measures (June 20, 1997)	Lifted	Life and integrity	Gloria Giralt de García Prieto and José Mauricio García Prieto Hirlemann
<b>Juan Almonte Herrera et al.</b>	Dominican Republic	Precautionary measures (December 11, 2009)	Lifted	Life personal freedom and integrity	Juan Almonte Herrera, Yuverky Almonte Herrera, Joel Almonte, Genaro Rincón, Francisco de León Herrera and Ana Josefa Montilla

## Case of Gonzales Lluy et al. with regard to Ecuador

In an order dated September 2, 2015, the Court referred to the request for provisional measures submitted by the representative of Talía Gonzales Lluy, in relation to the case being heard by the Court. The request was based on the fact that Talía Gonzales Lluy had begun to receive medical treatment against HIV from the Ecuadorian Ministry of Public Health in May 2014. However, the representative indicated that the medicines given to her had not helped to keep up her defenses and these had decreased to unacceptable levels, resulting in a significant deterioration in her health. On this basis, the Court was requested, among other matters, to order the Ecuadorian State to take the necessary measures to ensure that she receive “the new and appropriate, high quality user-friendly treatment in places acceptable to Talía.”

The Court noted that this request for provisional measures was closely linked to the contentious case in which it had ordered diverse reparations associated with the medical treatment that should be provided to Talía. It observed that, in the judgment in the contentious case, it had ordered the State to provide free medical and psychological or psychiatric treatment, including any medicines she might require, also free of charge. In addition, It recalled that, in other cases, it had rejected requests for provisional measures that entailed an assessment of information related to compliance with the measures of reparation ordered in the judgment and had considered that this information should be assessed at the stage of monitoring compliance with judgment. Consequently, the Court found that the information and arguments included in the request for provisional measures in relation to the immediate health care for Talía Gonzales Lluy should be assessed at the stage of monitoring compliance with the judgment in this case, in the context of the reparations ordered by the Court.

## Case of Wong Ho Wing v. Peru

On October 7, 2015, the Court decided a request for provisional measures related to the *Case of Wong Ho Wing v. Peru* that referred to the violation of the guarantee of a reasonable time and the right to personal liberty of Wong Ho Wing owing to the excessive delay in the processing of his extradition procedure, and the victim’s long and arbitrary deprivation of liberty.

The victim’s representative requested the adoption of provisional measures so that the State would “abstain from extraditing Wong Ho Wing until the competent Peruvian authorities had decided on the binding effects of the Peruvian Constitutional Court’s final decision on the application for habeas corpus presented in his favor.”

In this regard, the Court considered that the request for provisional measures was closely linked to the purpose of the measure of reparation ordered by the Court which ordered “the State [...], as soon as possible, to take a final decision in the extradition proceedings against Wong Ho Wing.” It also observed

that the representative's request for provisional measures sought that the Court order Peru to suspend the extradition of Wong Ho Wing until the judicial remedies that had been filed were decided. Nevertheless, it noted that according to the *judgment* delivered in this case, before extraditing Wong Ho Wing, the State must allow the pertinent appeals against the Executive's decision to be filed and decided, with suspensive effects. Therefore, the Court found that it was not in order to order provisional measure in this case, insofar as their purpose related to compliance with the judgment.

## **Matter of the Curado Prison Complex with regard to Brazil**

In an order issued on October 7, 2015, the Court ruled on the provisional measures relating to the matter of the Curado Prison Complex with regard to Brazil. These measures were granted in May 2014 and required the State to take, immediately, all necessary measures to protect the life and personal integrity of all those deprived of liberty in the Curado Complex, as well as anyone who was within that establishment, including prison guards, officials and visitors.

Regarding the elaboration and implementation of a medical emergency response plan, the Court appreciated certain measures taken by the State but also noted that it had received detailed information concerning serious flaws in the health care provided to the inmates which continued to endanger their life and integrity. As regards the emergency plan to reduce overcrowding and overpopulation, although the Court assessed positively the willingness of various authorities to implement this, it noted that the information available revealed that the situation of overcrowding and overpopulation in the Curado Complex had not decreased. Furthermore, the Court determined that the measures taken to eliminate the presence of weapons had not been effective, because, 16 months after the adoption of the provisional measures, among other objects, hundreds of weapons, different types of narcotics, hundreds of liters of alcoholic beverages, and hundreds of mobile telephones continued to be confiscated.

The Court also urged the State to continue taking measures to ensure safe conditions and respect for life and personal integrity, and to eliminate the practice of humiliating searches. Lastly, the Court regretted that the State had not allowed the representatives of the beneficiaries to take cameras into the Curado Complex, because this hindered their ability to monitor the implementation of the provisional measures and to document possible gross human rights violations in the Complex. Based on the foregoing, the Court concluded that a situation of extreme gravity and urgency and the risk of irreparable harm subsisted in the Curado Prison Complex. Consequently, it maintained the provisional measures in force and requested the State to provide the Court with a report on their implementation.

## **Matter of Certain Venezuelan Prisons. Humberto Prado. Marianela Sánchez Ortiz and family with regard to Venezuela**

In an order dated November 13, 2015, the Court ruled for the fourth time on the matter of Certain Venezuelan Prisons and, in particular, referred to the situation of Humberto Prado, Marianela Sánchez and family. In this regard, the Court recalled that Venezuela had been a State Party to the American Convention on Human Rights from August 9, 1977, to September 10, 2013, and had accepted the contentious jurisdiction of the Court on June 24, 1981. It also indicated that, according to the orders issued previously, the State must, *inter alia*, protect the life and personal integrity of the beneficiaries and, once put in place, provisional measures should remain in force while the Court considered that the basic requirements persist of extreme gravity and urgency and the prevention of irreparable harm to the rights that the said measures protect.

Regarding the implementation of the measures in favor of Humberto Prado, the Court noted that the State had indicated that the measure was being implemented, while the beneficiary had repeatedly advised that he was subject to supposed threats, harassment and defamation by State officials. Regarding Marianela Sánchez, the Court observed that she had indicated that the measure of protection granted to her has not been implemented and that the threats that had originated it continued. The Court also noted that, following the hearing held in February 2015 and during that year, the State had failed to forward any information regarding the implementation of these measures. Consequently, the Court concluded that it was appropriate to maintain the provisional measures in force, based on which the State had the obligation to protect the life and integrity of Humberto Prado and of Marianela Sánchez Ortiz and family.

## **Matter of the “Globovisión” Television Station with regard to the Bolivarian Republic of Venezuela**

On November 13, 2015, the Court ruled for the fourth time on the matter of the “Globovisión” Television Station with regard to the Bolivarian Republic of Venezuela. In this regard, the Court took note that the representatives of the beneficiaries had not presented information since October 2011, even though this had been requested in August 2013. Therefore, the Court considered that it had no evidence to allow it to determine that the need remained to keep the measures in force and, consequently, decided to lift them.

## **Matter of the Guatemalan Forensic Anthropology Foundation with regard to Guatemala**

In an order dated November 18, 2015, the Court ruled for the fifth time on the matter of the Guatemalan Forensic Anthropology Foundation (FAFG). In the last of these orders, issued in February 2011, it had decided to require the State to adopt or to maintain any necessary measures to provide effective protection to the rights to life and personal integrity of 38 employees of the Guatemalan Forensic Anthropology Foundation, as well as eight members of the family of the Foundation’s Director, Freddy Armando Peccerelli.

In July 2015, the petitioners requested the adoption of measures of protection for Freddy José Augusto

Muñoz Morán, who had received threats in June 2015, when he was a FAFG employee. In this regard, the Court determined that Mr. Muñoz Morán was not a beneficiary of the provisional measures and was no longer an employee of the FAFG, because he had stopped working for the Foundation. It also noted that the Inter-American Commission had not requested the expansion of the measures in favor of Mr. Muñoz Morán; hence, the Court was unable to consider the request.

Regarding the implementation of the provisional measures, the Court assessed positively the actions taken by the State of Guatemala in the context of these provisional measures (i.e. providing personal safety measures for Fredy Peccerelli and his family, and permanent on-site security arrangements for both the Foundation's offices). It also recalled that the measures should be implemented diligently and effectively and in coordination with the beneficiaries. Lastly, the Court recalled the State's obligation to report on the implementation of the provisional measures and also the need for the representatives to forward their comments promptly.

## **Matter of Rojas Madrigal in relation to the Case of Amrhein et al. v. Costa Rica**

On July 8, 2015, Rafael Antonio Rojas Madrigal presented a request for provisional measures related to the Case of Amrhein et al. v. Costa Rica, which the Court is examining at this time. The request was presented in favor of the petitioner, Rafael Antonio Rojas Madrigal, and of Carlos Alberto Céspedes León, both deprived of liberty and presumed victims in this case.

The Court determined that the request filed in favor of Mr. Rojas Madrigal was based on two main elements: (i) the presumed lack of medical care or the deficient medical care for his numerous ailments, and (ii) his detention conditions. Regarding the first element, the Court considered that the allegations concerning viral fever in 2000, and the failure to vaccinate him and, consequently, the influenza infection in June 2015, referred to facts that no longer existed. It also took note that, once the corresponding medical examinations had been performed, it was determined that Rafael Rojas was not an HIV carrier, was not diabetic, and did not appear to suffer from hypertension. Regarding the second element, the Court considered that the alleged incident in 2006 concerning Rafael Rojas supposedly being beaten up by other inmates constituted an incident that, according to the information provided, no longer subsisted. Consequently, it found that the said alleged facts did not constitute, *prima facie*, a situation of "extreme gravity and urgency" in which it was necessary to avoid "irreparable harm."

With regard to the request in favor of Mr. Céspedes León, the Court observed that this was based on two main elements: (i) the alleged pressure exerted on him because he had been proposed as a witness in the proceedings before the Court in the Case of Amrhein et al. v. Costa Rica, and (ii) the transfer to another building and area of the prison, and the alleged loss of his possessions as well as physical abuse.

In this regard, the Court considered that the information provided was insufficient, because it was unable to determine when or under what circumstances the alleged facts occurred, and could not assess them precisely in order to determine whether a situation of extreme danger existed, and whether the risk or threat involved required an immediate response in view of possible irreparable harm. Consequently, it concluded that it was not in order to adopt the provisional measures requested in favor of Mr. Céspedes León in this case.

## **Matter of the Curado Prison Complex with regard to Brazil**

In an order dated November 18, 2015, the Court ruled on this matter for the third time referring, in particular, to fresh acts of violence, deaths, and threats against inmates, and to a possible plan for an attempt on the life of the representative, Wilma Melo. Based on the information provided, the Court considered that a prima facie situation of extreme gravity, urgency and risk of irreparable harm to the life and personal integrity of Wilma Melo had arisen which justified expanding the provisional measures, ex officio, in her favor. Therefore, the Court required the State to put in place the measures of protection agreed with Ms. Melo as soon as possible.

Furthermore, the Court regretted the recent deaths of inmates and considered that it was extremely serious that these had occurred despite the provisional measures being in force. The Court recalled that it was not sufficient for the State merely to adopt certain measures of protection; rather such measures and their implementation had to be effective, so that the danger ceased for the persons they were intended to protect. Consequently, the Court decided to reiterate to the State that it should immediately continue taking any necessary measures to provide effective protection for the life and personal integrity of the individuals deprived of liberty in the Curado Complex, as well as anyone else within this establishment.

## **Case of García Prieto et al. with regard to El Salvador**

In its last order referring to this matter, issued in January 2015, the Court had decided to lift the provisional measures ordered in favor of María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez and Ricardo Alberto Iglesias Herrera. It had also decided to maintain the measures granted in favor of Gloria Giralt de García Prieto and José Mauricio García Prieto Hirlemann, for an additional period that would expire on November 21, 2015, following which it would assess the pertinence of maintaining them in force.

In this order of November 20, 2015, the Court evaluated the pertinence of maintaining the provisional measures. In this regard, it found it relevant to emphasize the appropriate and timely efforts of the State authorities to implement the measures. It also noted that, the State, the representatives and the Commission had all agreed that no new acts of violence, threats or harassment had occurred following the

order of January 2015. In addition, the Court pointed out that, for just over three years, it had not received any information that would indicate that acts had occurred that signified a risk for the beneficiaries.

The Court also noted that the representatives had argued that the release of one individual, the accession to power of a certain political party, and the appointment of one individual as a member of Congress could be considered a supposed risk for the beneficiaries. However, it found that those arguments did not denote, directly and clearly, a situation of risk; to the contrary, the representatives had sought to link the risk to these facts merely hypothetically or speculatively. Consequently, the Court found it reasonable to presume that the situation of these beneficiaries no longer met the requirements indicated in Article 63(2) of the Convention and ordered that the measures be lifted.

## **Matter of Juan Almonte Herrera et al. with regard to Dominican Republic**

In an order dated November 13, 2015, the Court referred, for the fourth time, to the provisional measures granted to protect the life, and the personal liberty and integrity of Juan Almonte Herrera, and the life and integrity of Yuverky Almonte Herrera, Joel Almonte, Genaro Rincón and Francisco de León Herrera, and of Ana Josefa Montilla, if she decided to return to the Dominican Republic. Regarding Juan Almonte Herrera, the measures were issued owing to the assessment *prima facie* of a situation of extreme gravity and urgency, since he disappeared on September 28, 2009, the date on which he had been detained by the National Police according to the representatives of the beneficiaries. In the case of the other beneficiaries – members of Mr. Almonte Herrera’s family and his lawyers – the measures were ordered because they had been threatened and harassed as a result of the steps taken to discover his whereabouts.

In its last order, the Court examined the status of the implementation of these measures in order to decide whether they should remain in force. Regarding Mr. Almonte Herrera, the Court observed that, although the measures had been in force for more than five years, it still had no information on specific results or progress that would allow it to determine clearly what happened or his whereabouts. The Court considered that, in view of the particular circumstances of the matter, and taking into account that, owing to their nature, provisional measures could not remain in place indefinitely, in addition to the fact that, since February 2012, a petition was being processed before the Commission, it was appropriate to order that the measures be lifted and that the possible violations of the American Convention be analyzed by means of a contentious case.

Regarding Juan Almonte Herrera’s family members and lawyers, the Court noted that the representatives had not presented information since March 2012, and the Commission had not presented information since June 2013. Accordingly, the Court recalled that the practical effects of provisional measures depended on their effective implementation; thus, they were ineffectual in the absence of information on the situation



of risk of the beneficiaries over a prolonged period. Consequently, it decided to order that the measures be lifted.

Lastly, the Court reiterated that lifting the provisional measures did not in any way mean that it considered that the State had complied effectively with the measures ordered, or that the State was relieved of its general obligations of protection contained in Article 1(1) of the Convention. It also noted that the State had not complied with these provisional measures or with its obligation to report promptly and adequately.





