

INTER-AMERICAN COURT OF HUMAN RIGHTS

VICKY HERNÁNDEZ ET AL. V. HONDURAS

JUDGMENT OF MARCH 26, 2021

(Merits, reparations and costs)

In the Case of Vicky Hernández et al. v. Honduras,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter also “the Rules of Procedure”), delivers this judgment structured as follows:

CASE OF VICKY HERNÁNDEZ ET AL. V. HONDURAS

Table of contents

I. INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE	4
II. PROCEEDINGS BEFORE THE COURT	5
III. JURISDICTION	8
IV. ACKNOWLEDGEMENT OF RESPONSIBILITY	8
A. <i>Acknowledgement by the State and observations of the representatives and the Commission</i>	8
B. <i>Considerations of the Court</i>	8
B.1. The facts	9
B.2. The legal claims	9
B.3. Reparations	9
B.4. Assessment of the acknowledgement of responsibility	9
V. EVIDENCE	10
VI. FACTS	11
A. <i>Context</i>	iError! Marcador no definido.
A.1. The context of violence against the LGBTI community	11
A.2. The coup d'état of June 28, 2009	14
B. <i>Vicky Hernández and her death</i>	iError! Marcador no definido.
C. <i>Investigations into the death of Vicky Hernández</i>	16
VII. MERITS	18
VII.1. GENERAL CONSIDERATIONS ON THE RIGHT TO EQUALITY AND NON-DISCRIMINATION	18
A. <i>Arguments of the parties and the Commission</i>	18
B. <i>Considerations of the Court</i>	19
VII.2. RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY, LIFE, PERSONAL INTEGRITY, PERSONAL LIBERTY, JUDICIAL GUARANTEES, PRIVACY, FREEDOM OF EXPRESSION, A NAME, JUDICIAL PROTECTION, EQUALITY AND NON-DISCRIMINATION AND A LIFE FREE OF VIOLENCE	22
A. <i>Arguments of the parties and the Commission</i>	iError! Marcador no definido.
B. <i>Considerations of the Court</i>	24
B.1. The alleged violation of the rights to life and personal integrity of Vicky Hernández..	24
B.2. The violation of the rights to judicial guarantees and judicial protection of Vicky Hernández's family	28
B.3. The violation of the rights to recognition of juridical personality, personal liberty, privacy, freedom of expression, a name, and equality and non-discrimination of Vicky Hernández	30
B.4. The alleged violation of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	33
VII.3. RIGHT TO PERSONAL INTEGRITY OF VICKY HERNÁNDEZ'S FAMILY	35
A. <i>Arguments of the parties and the Commission</i>	iError! Marcador no definido.
B. <i>Considerations of the Court</i>	36
VIII. REPARATIONS	37

A. <i>Injured party</i>	38
B. <i>Obligation to investigate</i>	38
C. <i>Measures of satisfaction and rehabilitation</i>	39
C.1. Measures of satisfaction	39
C.2. Measures of rehabilitation	42
D. <i>Guarantees of non-repetition</i>	iError! Marcador no definido.
D.1. Education, awareness-raising and training for law enforcement personnel	43
D.2. Procedure for the recognition of gender identity.....	433
D.3. Adoption of special investigation protocols	44
D.4. Diagnosis, compilation of data and elaboration of statistics	45
E. <i>Other measures requested</i>	iError! Marcador no definido.
F. <i>Compensation</i>	47
F.1 Pecuniary damage	47
F.2. Non-pecuniary damage	48
G. <i>Costs and expenses</i>	49
H. <i>Method of complying with the payments ordered</i>	iError! Marcador no definido.
IX. OPERATIVE PARAGRAPHS	50

I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On April 30, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court, pursuant to Articles 51 and 61 of the American Convention, the case of “Vicky Hernández and family” with regard to the Republic of Honduras (hereinafter “the State,” “the Honduran State” or “Honduras”). According to the Commission the dispute relates to the death of Vicky Hernández, a trans woman and human rights defender, in the city of San Pedro Sula between the evening of June 28 and the early morning hours of June 29, 2009, while a curfew was in place. The Commission also indicated that the death of Vicky Hernández took place in two relevant contexts. On the one hand, a context of violence and discrimination against the LGBTI community in Honduras with a high rate of acts committed by law enforcement agents and, on the other, the context of the coup d’état of June 28, 2009. Taking into account these contexts, the Commission considered that given that the streets were under the complete control of security forces, and that the State had failed to elucidate what happened in the courts, sufficient evidence existed to conclude that the State was directly responsible for the death of Vicky Hernández and that, due to the characteristics of the case, what happened to Vicky Hernández constituted a situation of prejudice-based violence owing to her gender identity and expression. Lastly, the Commission alleged that the Honduran State had failed to investigate the facts of the case adequately, with due diligence and within a reasonable time, and they remain in impunity.¹

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

Petition. On December 23, 2012, the Commission received a petition lodged against Honduras by the Red Lésbica “Cattrachas,” a Honduran feminist lesbian organization, and the Centro de Derechos Humanos de las Mujeres² (hereinafter “the petitioners”).

a. *Admissibility Report.* On December 6, 2016, the Commission adopted Admissibility Report No. 64/16.

b. *Merits Report.* On December 7, 2018, the Commission issued Merits Report No. 157/18, under Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 157/18”), in which it reached a series conclusions³ and made several recommendations to the State.

c. *Notification to the State.* The Merits Report was notified to the State on January 30, 2019, granting it two months to report on compliance with the recommendations. The State requested additional time to present its report and the Commission granted this; however, the State did not submit its report or a request for a further extension.

3. *Submission to the Court.* On April 30, 2019, the Commission submitted all the facts and alleged human rights violations described in the Merits Report to the Inter-American Court

¹ The members of Vicky Hernández’s family who appear as presumed victims in the Merits Report are her mother, Rosa Argelia Hernández Martínez, her sister, Merelin Tatiana Rápalo Hernández, and her niece, Argelia Johana Reyes Ríos.

² In a brief of March 30, 2015, the Centro de Derechos Humanos de las Mujeres relinquished its representation in this case. Subsequently, Robert F. Kennedy Human Rights incorporated the case as co-petitioner.

³ It concluded that Honduras was responsible for the violation of the rights to life, personal integrity, judicial guarantees, honor and dignity, freedom of expression, equality and non-discrimination, and judicial protection established in Articles 4(1), 5(1), 8(1), 11, 13, 24 and 25(1) of the Convention in relation to the obligations established in Article 1(1) of this instrument. Additionally, the Commission asked that the Court declare the international responsibility of the State for the violation of Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women.

“due to the need to obtain justice and reparation.” It asked the Court to declare the international responsibility of Honduras for the violations of the rights indicated in the report’s conclusions. In addition, it asked the Court to order certain measures of reparation (*infra* Chapter VIII). The Court notes that six years and four months elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

II PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and to the representatives.*⁴ The submission of the case was notified to the representatives and the State on May 29, 2019.

5. *Brief with pleadings, motions and evidence.* On July 25, 2019, the representatives presented their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”) under Articles 25 and 40 of the Court’s Rules of Procedure. The representatives agreed with the Commission’s allegations and also asked the Court to declare that the State had violated the rights to recognition of juridical personality and to a name. In addition, they asked the Court to order the State to adopt various measures of reparation and to reimburse costs and expenses.

6. *Answering brief.*⁵ On October 23, 2019, the State presented its brief answering the submission of the case and the pleadings and motions brief (hereinafter “answering brief”). In this brief, the State contested the alleged violations and the measures of reparation requested. It asked the Court to declare that the Commission’s claims were unfounded and to find that the State was not responsible for the violations indicated in the Merits Report.

7. *Public hearing.* In an order of September 1, 2020,⁶ the President of the Court called the parties and the Commission to a public hearing and this was held on November 11 and 12, 2020, during the Court’s 138th regular session, which took place by videoconference.⁷ During this hearing, the State made a partial acknowledgement of responsibility (*infra* Chapter IV).

8. *Amici Curiae.* The Court received 18 *amicus curiae* briefs submitted by: (1) Parliamentarians for Global Action;⁸ (2) María Helena Luna Hernández;⁹ (3) the International

⁴ The organisations representing the presumed victims are the Red Lésbica Cattrachas, a Honduran feminist lesbian organization, and Robert F. Kennedy Human Rights.

⁵ The State appointed Lidia Estela Cardona Padilla and Jacobo Cáliz as its Agents.

⁶ *Cf. Case of Vicky Hernández et al. v. Honduras. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of September 1, 2020.

⁷ There appeared at this hearing: (a) for the Inter-American Commission: Joel Hernández García, Flávia Piovesan, Marisol Blanchard and Jorge Meza Flores; (b) for the representatives: Indyra Mendoza Aguilar, Angelita Baeyens, Astrid Ramos, Nadia Mejía and Kacey Mordecai, and (c) for the State of Honduras: Lidia Estela Cardona Padilla, Jacobo Antonio Cáliz Hernández, Nelson Gerardo Molina, Olbin Antonio Mejía Cambar and Manuel Edgardo Torres Rivera.

⁸ The brief was signed by David Donat Cattin. It describes the situation of LGBTI persons throughout the world, and refers to regional and international case law on gender identity.

⁹ The brief refers to a proposal to make transfemicide a criminal offense in the Criminal Code of the Republic of Honduras. It also addresses the issue of femicide and transfemicide and the content of the violence.

Service for Human Rights;¹⁰ (4) José Benjamín González Mauricio;¹¹ (5) the United Nations High Commissioner for Human Rights;¹² (6) Human Rights Watch;¹³ (7) the Comité de Familiares de Detenidos Desaparecidos en Honduras (COFADEH);¹⁴ (8) the Equipo de Reflexión, Investigación y Comunicación of the Society of Jesus in Honduras and the Equipo Jurídico por los Derechos Humanos;¹⁵ (9) the Latin America and Caribbean Coalition of LGBTTTI organizations;¹⁶ (10) the Pakta Foundation of Ecuador;¹⁷ (11) the Human Rights Clinic at the Universidad de Santa Clara;¹⁸ (12) the Law, Justice and Society Study Center –

¹⁰ The brief was signed by Theresa McEvoy and refers to the situation and the treatment of human rights defenders who defend the rights of LGBTI persons in Honduras, as well as the efforts of the international community to take a stand against discrimination based on sexual orientation and gender identity.

¹¹ The brief refers to hate crimes committed against the sexually diverse population in Latin America and the Caribbean. It describes a theoretical framework for hate crimes and refers to a comparative framework that is being assessed in Mexico.

¹² The brief was signed by Michelle Bachelet and refers to: (a) the prevention, elimination, investigation, punishment and reparation of violence against trans women based on their gender expression or identity, which forms part of the duty of due diligence to tackle gender-based violence, and (b) the protection, respect and guarantee of the rights to equality and non-discrimination. This means that the duty of due diligence to prevent, eliminate, investigate, punish and redress violence based on gender identity or expression includes specific obligations to address intersectional discrimination.

¹³ The brief was signed by Aisling Reidy and refers to: (a) the obligation of a State Party to the American Convention to conduct effective investigations into lethal or fatal attacks based on the protection of the right to life pursuant to Article 4(1); (b) the need for the Court to harmonize its case law with that of the European Court, clarifying that the failure to conduct an effective investigation may result in a distinct violation of Article 4, independent of the substantive violations of the right to life or to judicial guarantees or to judicial protection; (c) the obligation to conduct an effective investigation based on the right to life. This includes the obligation to investigate and to discover whether a violent act was motivated by discrimination against the LGBTI community, and (d) the duty to investigate homophobic motives, which is particularly important in a country such as Honduras where the authorities fail to conduct effective investigations in circumstances that endanger the life of LGBTI persons.

¹⁴ The brief was signed by Bertha Oliva de Nativi and refers to the context of the 2009 coup d'état in Honduras, the state of emergency, and the human rights situation.

¹⁵ The brief was signed by Joaquín A. Mejía Rivera and Claudia Herrmannsdorfer and refers to: (a) general considerations on the obligations assumed by the State of Honduras due to its ratification of the American Convention on Human Rights, and (b) the obligation to investigate "in light of due diligence."

¹⁶ The brief was signed by Mirta Moragas Mereles, Fanny C. Gómez Lugo, Jackson Cochran, Natasha Mighell, Marcela Sánchez Buitrago, Juan Felipe Rivera Osorio, Alejandro Barreiro Jaramillo, and Daniela Díaz Villamil and refers to: (a) the responsibility of Honduras for the violation of the right to life of Vicky Hernández in light of Article 4 of the American Convention on Human Rights and Articles 3 and 7 of the Convention of Belém do Pará; (b) the violation of Vicky Hernández's freedom of expression in light of Article 13 of the American Convention on Human Rights, and (c) measures of reparation.

¹⁷ The brief was signed by Mateo Ruales, Gustavo Silva, Diego Corral, Christian Paula Aguirre, and Seyeden Sougand Hessamzadeh and refers to: (a) structural discrimination based on gender identity in the Americas and in Honduras; (b) the coup d'état and the state of emergency in Honduras; (c) the sociological dimension of trans persons; (d) the legal dimension of transfemicide; (e) transfemicide as a gross human rights violation; (f) transfemicide as a crime against humanity; (g) the standards of transitional justice in Honduras applicable to the LGBTI population, and (h) suggestions for integral measures of reparation.

¹⁸ The brief was signed by Francisco J. Rivera Juaristi and refers to: (a) the State's failure to protect Vicky Hernández as a transgender woman and sexual worker in violation of her rights to life, personal integrity, freedom of expression, equality of protection, and a life free from gender-based violence recognized in Articles 4, 5, 13 and 24 of the American Convention and 7 of the Convention of Belém do Pará, and (b) the State's failure to carry out its duty to investigate the death of Vicky Hernández, violating her right of access to justice recognized in Articles 8 and 25 of the American Convention and 7 of the Convention of Belém do Pará.

Dejusticia;¹⁹ (13) Colombia Diversa;²⁰ (14) Equis Justicia para las Mujeres, A. C., and Casa de las Muñecas Tiresias, A.C.;²¹ (15) ODRI, Oficina de Derechos Interseccionales;²² (16) Lawyers without Borders, Canada;²³ (17) the RedTraSex,²⁴ and (18) Pedro DiPietro.²⁵

9. *Provisional measures.* In an order of November 12, 2020,²⁶ the Court required the State to adopt all appropriate measures to provide effective protection to the rights to life and personal integrity of Vicky Hernández's family, as well as to the members of the Red Lésbica "Cattrachas."²⁷

10. *Final written arguments and observations.* On December 14, 2020, the parties and the Commission presented their final written arguments and final written observations, respectively.

11. *Helpful evidence.* On January 29, 2021, pursuant to Article 58 of the Rules of Procedure, the State was asked to submit helpful evidence and this was received on February 11, 2021.

12. *Deliberation of the case.* The Court began deliberating this judgment on March 24, 2021.²⁸

¹⁹ The brief was signed by Mauricio Albarracín Caballero, Mariluz Barragán González, Nina Chaparro González, Sindy Castro Herrera and Santiago Carvajal Casas and refers to: (a) presentation of Vicky Hernández as a trans woman and LGBTI activist who was murdered as a result of the prejudice-based violence that exists in Honduras; (b) the State's obligations in relation to the guarantee of the rights of trans women under the American Convention and the Convention of Belém do Pará; (c) the impact of the murder of an LGBTI activist on her community, and (d) the LGBTI rights organizations to which the victims of prejudice-based crimes belong and that should be beneficiaries of the reparations adopted by the Inter-American Court.

²⁰ The brief was signed by Marcela Sánchez Buitrago, Juan Felipe Rivera Osorio, María Daniela Díaz Villamil, María Susana Peralta, Gustavo Adolfo Pérez, María Mercedes Gómez Acosta, and Alberto Sánchez Galeano and refers to: (a) hate crimes against the LGBTI community, and (b) the obligation of enhanced due diligence and the systemic nature of prejudice-based violence against trans women in the case of Vicky Hernández.

²¹ The brief was signed by Ana Hadzi Pecova, Kenya Cytlay Cuevas Fuentes, Amaranta Viridiana Valgañon Salazar, Gerardo Contreras Rubalcava, Luis Alberto Muñoz López, and Leslie Idalia Jiménez Urzua and refers to: (a) the institutional violence against the LGBTI population in the processes of access to justice in the region: historical, social and legal context; (b) the institutional violence and discrimination against trans women in the processes of access to justice in cases of hate crimes committed in the context of the Honduran coup d'état, and (c) the recognition of intersectionality and the gender perspective in the inter-American system for the protection of human rights.

²² The brief was signed by Regina Pajares Carrillo and refers to the international standards concerning hate crimes against trans persons.

²³ The brief was signed by Pascal Paradis and refers to: (a) the context in which the extrajudicial execution of Vicky Hernández occurred, and (b) the standards for states of emergency.

²⁴ The brief was signed by Elena Reynaga, Regina Barahona and Fanny Cata Gómez Lugo and refers to: (a) the legal framework for sex work in Honduras; (b) the violence against sex workers in Honduras, and (c) the lack of investigation and impunity.

²⁵ The brief refers to the socio-cultural, historical and anthropological roots of the transfemicide violence apparent in the case of Vicky Hernández.

²⁶ Cf. *Case of Vicky Hernández et al. v. Honduras. Provisional measures.* Order of the Inter-American Court of Human Rights of November 12, 2020.

²⁷ The request for provisional measures was presented by the representatives of the presumed victims during the public hearing in this case.

²⁸ Due to the exceptional circumstances resulting from the COVID-19 pandemic, this judgment was deliberated and adopted during the 140th regular session, which was held virtually using technological means as established in the Court's Rules of Procedure.

III JURISDICTION

13. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention because Honduras has been a State Party to the Convention since September 8, 1977, and accepted the contentious jurisdiction of the Court on September 9, 1981.

IV ACKNOWLEDGEMENT OF RESPONSIBILITY

A. Acknowledgement by the State and observations of the representatives and the Commission

14. During the public hearing, the **State** indicated that “based on the principle of good faith, it recognize[d] the rights established in the American Convention and officially made [...] a partial acquiescence because the case was not investigated at the time, in 2009; [...] consequently, it w[ould] not present arguments in that regard.” In its final arguments, the State indicated that “as established in Article 62 of the Rules of Procedure of the Court [...], the State of Honduras, guided by the principle of good faith, has presented a partial acquiescence specifically with regard to the arguments relating to the violation of the rights established in Articles 8(1) and 25(1) of the Convention, thereby recognizing that, at the time that the regrettable act occurred, the competent authorities did not conduct the required investigation into the unlawful acts and clarify the death of Vicky Hernández.”

15. The **representatives** emphasized the contradiction revealed by the State because it based its categorical rejection of the possible participation of state agents in the death of Vicky Hernández on the investigation, while at the same time acknowledging that this was not conducted in keeping with the inter-American standards. They added that there was sufficient evidence to presume that an unlawful death at the hands of state agents had occurred in the case of Vicky Hernández, and that the burden of proof in this regard should be reversed and fall on the State. They also argued that, by accepting its international responsibility for the violation of the rights to judicial guarantees and protection recognized in Articles 8(1) and 25(1) of the American Convention, the State of Honduras was tacitly admitting that it had failed to investigate adequately the possible participation of state agents in Vicky Hernández’s death. During the public hearing, the **Commission** mentioned that it “appreciate[d] the State’s partial acquiescence because this ma[de] a positive contribution to obtaining justice for Vicky Hernández”; however, it indicated that, despite this, “the State ha[d] not addressed other human rights violations that had been described in the Merits Report [...] such as [...] the lack of due diligence, and also including the violations under the Convention of Belém do Pará.”

B. Considerations of the Court

16. Pursuant to Articles 62 and 64 of the Rules of Procedure and in exercise of its authority to provide international judicial protection for human rights, a matter of international public order, it is incumbent on this Court to ensure that acts of acknowledgement of responsibility are acceptable for the purposes of the inter-American system.²⁹ The Court will now examine the situation in this specific case.

²⁹ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and reparations*. Judgment of September 1, 2020. Series C No. 411, para. 19.

B.1. The facts

17. In light of the State's partial acknowledgement of responsibility, the Court concludes that the dispute has ceased with regard to the facts relating to the investigation to clarify the death of Vicky Hernández.

18. However, the dispute subsists with regard to the events that led to the death of Vicky Hernández, as well as those that refer to the alleged prejudice-based discrimination against LGBTI persons by the Honduran authorities responsible for conducting the investigation.

B.2. The legal claims

19. The Court considers that the State's acknowledgement constitutes an acquiescence to the legal claims of the Commission and the representatives concerning the violation of the rights to judicial guarantees and judicial protection contained in Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument, specifically in relation to the investigation into the death of Vicky Hernández, to the detriment of her family.³⁰

20. Nevertheless, the Court notes that the acknowledgement of responsibility made by the State does not refer to the alleged violation of Article 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (hereinafter also "the Convention of Belém do Pará") to the detriment of Vicky Hernández's family based on the investigations relating to her death. Consequently, the dispute continues with regard to the alleged violation of that Convention in the context of the investigations into her death.

21. Likewise, the Court finds that the dispute continues with regard to:

- a) the alleged violation of the rights to life, personal integrity, privacy, freedom of expression, equality and non-discrimination, and a life free of violence (Articles 4(1), 5(1), 11, 13, 24 and 1(1) of the American Convention and 7(a) and (b) of the Convention of Belém do Pará) to the detriment of Vicky Hernández;
- b) the alleged violation of the rights to gender identity, recognition of juridical personality, personal liberty, privacy, freedom of expression, and a name (Articles 3, 11, 13, 18, 24 and 1(1) of the American Convention in relation to Articles 1(1), 2 and 24 of this instrument), to the detriment of Vicky Hernández, and
- c) the alleged violation of the right to personal integrity (Article 5(1) of the American Convention) to the detriment of Vicky Hernández's family.

B.3. Reparations

22. Lastly, regarding reparations, the Court must analyze the reparations requested by the Commission and the representatives because the State has not explicitly accepted them.

B.4. Assessment of the acknowledgement of responsibility

23. The acknowledgement made by the State constitutes a partial acquiescence to the facts and a partial acknowledgement of the alleged violations. The Court considers that it makes a positive contribution to the development of these proceedings and to the observance of the principles that inspire the Convention, as well as to the victims' need for reparation.³¹ The State's acknowledgement has full legal effects pursuant to the said Articles 62 and 64 of the

³⁰ These persons are identified in footnote No. 1.

³¹ Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Fernández Prieto and Tumbeiro v. Argentina, supra*, para. 20.

Court's Rules of Procedure and has significant symbolic value to ensure that similar facts are not repeated. In addition, the Court notes that the acknowledgement of certain specific violations may have effects and consequences on its analysis of the other alleged facts and violations, insofar as they all form part of one and the same set of circumstances.³²

24. The Court will examine the admissibility and scope of the violations cited by the Commission, and by the representatives autonomously, regarding which the dispute subsists. Lastly, the Court will rule on the dispute that continues concerning the reparations requested by the Commission and the representatives.

V EVIDENCE

25. The Court admits those documents presented at the proper procedural moment by the parties and the Commission (Article 57 of the Rules of Procedure), whose admissibility was not contested or challenged, and whose authenticity was not questioned.³³ The Court also finds it pertinent to admit the statements made during the public hearing and by affidavit,³⁴ insofar as they are in keeping with the purpose defined in the order requiring them and the purpose of this case.³⁵ In addition, the Court accepts the documentation presented by the representatives together with their final written arguments and the expense vouchers related to the litigation of the case before this Court.³⁶

26. The representatives also forwarded a communication of September 28, 2020, from the General Subdirector for Prosecutions of the Public Prosecution Service concerning the investigations underway.³⁷ Also, on January 23, 2021, they sent information on recent events that would "illustrate the increasingly hostile environment being promoted by different branches of the Honduran State for the full enjoyment of human rights of LGBTI persons," and attached documentary support.³⁸ The Court admits this documentation because it refers to supervening events.

³² Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 27, and *Case of Spoltore v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of June 9, 2020. Series C No. 404, para. 44.

³³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Cordero Bernal v. Peru. Preliminary objection and merits.* Judgment of February 16, 2021. Series C No. 421, para. 29.

³⁴ Affidavits were received from two (2) presumed victims and one (1) expert witness proposed by the representatives.

³⁵ These were submitted by: Marlene Wayar, Claudia Dayanara Spellmant Sosa, Édgar Fernando Pérez Archila, Merelin Tatiana Rápalo Hernández and Rosa Argelia Hernández Martínez, proposed by the representatives, and Carlos J. Zelada, proposed by the Commission. The purposes of the statements was established in the President of the Court's order of September 1, 2020.

³⁶ These documents are: vouchers for visit to San Pedro Sula from September 30 to October 2, 2020; vouchers for visit to Tegucigalpa from November 10 to 12, 2020; vouchers for payment to psychologist; voucher for technological equipment to take part in the hearing, and voucher for notarial fees for affidavits.

³⁷ Cf. Communication DGF N. 452-2020 of September 28, 2020, and Communication DGF N. 496-2020 of October 5, 2020, General Subdirector for Prosecutions (evidence file, folios 1601 to 1609).

³⁸ These documents are: (a) proposed constitutional amendment regarding the prohibition of abortion; (b) opinion on the draft decree amending article 67 of the Honduran Constitution; (c) request of Cattrachas to the Human Rights Secretariat; (d) opinion sent by the said Human Rights Secretariat to the National Congress, and (e) Decree 192/2020 which includes this amendment and which is on the agenda for constitutional ratification by the incoming legislature. Cf. Evidence file (folios 1610 to 1629).

27. Lastly, the Court admits the evidence requested on January 29, 2021, under Article 58 of the Rules of Procedure.³⁹ On that occasion, the State was asked to provide information on all cases of violence that culminated in the death of one or more persons in Honduras between June 25 and September 1, 2009, and, in particular, in San Pedro Sula.

VI FACTS

28. In this chapter, the Court will establish the facts that will be considered proved in this case based on the acknowledgement of responsibility, the body of evidence that has been admitted, and within the factual framework established in the Merits Report. This will also include the facts described by the parties that explain, clarify or reject that factual framework.⁴⁰ The facts will be described in the following order: (a) Context; (b) Vicky Hernández and her death, and (c) Investigations into the death of Vicky Hernández.

A. Context

29. The facts of this case took place in a context of violence against the LGBTI community, especially against trans women and also in the context of the coup d'état of June 28, 2009, in Honduras during which a curfew was ordered.

A.1. The context of violence against the LGBTI community

30. When the death of Vicky Hernández occurred, a general context of discrimination and violence against the LGBTI community existed in Honduras.⁴¹ In this regard, the United Nations Special Rapporteur on the situation of human rights defenders indicated that the "persistence of acts of violence and attacks against persons belonging to the LGBTI community [since the coup d'état] could correspond to patterns of hate crimes by public and private agents, including, primarily, the police and private security guards."⁴² Meanwhile, the United Nations High Commissioner for Human Rights indicated that "the coup d'état [in Honduras] gave rise to a number of human rights violations, most of which remain unpunished," and this "increased the vulnerability of victims."⁴³

31. In this regard, expert witness Carlos Zelada informed the Court that a context of continual violence against the LGBTI community existed in Honduras that went back to at least 1994. He also referred to a context of violence and murders of trans women. In

³⁹ The State provided: (a) an Excel table with data on homicides in San Pedro Sula between June 25 and August 31, 2009; (b) Communication 013-2021-IUDPAS of the Instituto Universitario en Democracia, Paz y Seguridad (IUDPAS), and (c) Communication-262-2021 of the Ministry of Security. Cf. Evidence file (folios 1630 to 1651).

⁴⁰ Cf. *Case of the "Five Pensioners" v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Noguera et al. v. Paraguay. Merits, reparations and costs*. Judgment of March 9, 2020, para. 33.

⁴¹ Cf. United Nations, General Assembly, *Report of the Working Group on the Universal Periodic Review. Honduras*, A/HRC/16/10, January 4, 2011; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, A/HRC/17/28/Add.1, May 27, 2011, and United Nations High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, para. 24.

⁴² Cf. United Nations, *Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Honduras*, A/HRC/22/47/Add.1. December 13, 2012, para. 90.

⁴³ Cf. United Nations. *Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009*. A/HRC/13/66, Human Rights Council, Thirteenth session, March 3, 2010. Agenda item 4. Human rights situations that require the Council's attention, paras. 77 and 81.

particular, he reported that most of the trans women who were murdered were under 35 years of age and that they were particularly vulnerable to violence by the State's security forces responsible for enforcing law and order. He recalled that, from 2002 to 2018, several United Nations reports had recorded the context of violence against the LGBTI community in Honduras.⁴⁴ He described how this context had three stages or periods that should be seen as parts of a whole. He indicated that it was possible to distinguish a first period from 1994 to May 2009 characterized by the murder of at least 11 gay men and 9 trans persons and that, during that stage, it could be noted that: (i) trans women sex workers were frequently victims of incidents of lethal and non-lethal violence; (ii) the complaints regarding those incidents of violence mainly involved police officers, and (iii) a perception of impunity existed that discouraged filing complaints, so that it could be assumed that there was an under-recording of incidents and a lack of visibility of other violent events against the Honduran LGBTI community over the same period. The expert witness referred to a second stage that ran from June 2009 to January 2010, and a third that lasted from February 2010 to date.⁴⁵ The death of Vicky Hernández occurred at the start of the second stage described by the expert.

32. The expert explained that the second stage took place against the backdrop of the coup d'état (June 28, 2009 – January 17, 2010). In addition, at that time, there was also an increase in acts of lethal violence against the LGBTI community in Honduras that confirmed – this time with a more systematic record than during the previous stage – the particular danger that trans women sex workers had been facing over the preceding years. He described that, over those years, in only seven months, at least 15 trans women and 14 gay men died violently. He added that, according to another non-State database, “at the end of 2009, the documented figures for this type of event were double those of 2008, and triple those of 2007, and they were exponentially higher than those for previous years, such as 2005 or 2006.” He added that the bodies of the 15 trans women murdered during this stage were found on the street, each one with significant signs of violence; eight with bullet wounds, two with their heads

⁴⁴ He referred to the following United Nations reports and documents: Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Honduras, E/CN.4/2003/3/Add.2, June 14, 2002, para. 68; Provisional report to the General Assembly, A/57/138, July 2, 2002, para. 38; Human Rights Commission, Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2005/72/Add.1, March 18, 2005, paras. 172 to 180; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, paras. 711 to 718; Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28/Add.1, May 27, 2011; United Nations High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, para. 24; Special Rapporteur on the situation of human rights defenders, Mission to Honduras A/HRC/22/47/Add.1, December 13, 2012, paras. 64, 90, 91 and 113; Special Rapporteur on violence against women, its causes and consequences, *Mission to Honduras*, A/HRC/29/27/Add.1, March 31, 2015, para. 17; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Mission to Honduras*, A/HRC/35/23/Add.1, April 11, 2017, paras. 33, 34, 44 to 47, 117(d) and 118(a), and United Nations High Commissioner for Human Rights, *Situation of human rights in Honduras*, A/HRC/37/3/Add.2, March 20, 2018, para. 58.

⁴⁵ The expert witness indicated that, during that third stage, the State adopted important measures: (i) in 2011, it created the “Special Commission to Follow UP on Special Crimes,” to investigate, *inter alia*, crimes committed against LGBT persons; (ii) in 2013, it created the “Special Prosecution Service for Crimes against Life” and, within this entity, the Unit for the Investigation of Deaths with High Social Impact, Sexual Diversity Unit”; (iii) also in 2013, it created the “Section on Deaths of Members of Vulnerable Groups” as part of the Special Prosecution Service for Crimes against Life; (iv) in 2016, it amended the Criminal Code in force to include sexual orientation and gender identity as generic aggravating factors, amended the offense of discrimination to include the variables of sexual orientation and gender identity, and created the offense of incitement to discrimination, and (v) in 2019, when the new Criminal Code entered into force, it kept among its articles the structure that renders the variables of sexual orientation and gender identity visible. He indicated that, despite this, acts of lethal violence against the LGBTI community in Honduras continue to increase. He asserted that, to December 2019, it was reported that in the decade following the coup d'état, at least 296 LGBTI persons had died violently in the country. Of this total, 157 were gay men, 104 trans women and 35 lesbians. Cf. Opinion provided by Carlos Zelada during the public hearing held in this case on November 11, 2020, and document attached to his expert opinion (evidence file, folios 1554 *bis* and *ff.*).

having been beaten, one stoned, one stabbed, one run over, one burned and one dismembered, castrated and beheaded.⁴⁶

33. Furthermore, in his annual report to the Human Rights Council on the situation of human rights in Honduras, the United Nations High Commissioner indicated that “[t]he bodies and processes for the investigation of attacks against lesbian, gay, bisexual, transgender and intersex persons must be strengthened.”⁴⁷

34. In addition, in its decisions, this Court has mentioned the contexts of violence against the LGBTI community in the region. For example, in the case of *Azul Rojas Marín et al. v. Peru* it recalled that, since 2008, the OAS General Assembly in different resolutions had indicated that, in the region, LGBTI person continued to be subjected to various forms of violence and discrimination based on their sexual orientation, gender identity or expression, and resolved to condemn the acts of violence, the human rights violations, and all forms of discrimination due to, or on the basis of, sexual orientation, gender identity or expression.⁴⁸

35. Similarly, it should be recalled that, in her testimony during the public hearing in this case, Claudia Spellmant Sosa referred to the context “of arbitrary and unlawful detentions, inhuman, cruel and degrading treatment by the police, rape, extortion, beatings [...] by the police, and also murders” suffered by trans women sex workers in San Pedro Sula and in Honduras during those years. The witness also indicated that, when trans women sex workers were arrested, they were taken away in a patrol car and that, sometimes, the police “took out their guns to frighten them,” “beat them with their batons,” “tore off their wigs,” and “tore their clothes.” She also stated that the police agents told them that they gave “the city a bad image” and that they were men and had no reason to dress as women. She indicated that this was and continued to be a constant reality in Honduras. The witness also narrated that she had witnessed the murder of a trans woman by the police during an arrest. In addition, she mentioned a case in which another trans woman was murdered in front of two of her companions and that the case had been prosecuted and culminated in the conviction of the perpetrator; however, she added that one of the companions had subsequently been murdered and the other was forced to go into exile after denouncing the police agent who was the perpetrator.⁴⁹

⁴⁶ Cf. Opinion provided by Carlos Zelada during the public hearing held in this case on November 11, 2020, and document attached to his expert opinion (evidence file, folios 1554 *bis* and *ff.*).

⁴⁷ United Nations, Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras, A/HRC/37/3/Add.2, March 20, 2018, para. 58.

⁴⁸ Cf. *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 46, and *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. State Obligations in relation to Change of Name, Gender Identity, and Rights deriving from a relationship between Same-Sex Couples (Interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights)*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 35. Also, OAS, General Assembly resolutions: AG/RES. 2928 (XLVIII-O/18), Promotion and Protection of Human Rights: (xii) Human rights and prevention of discrimination and violence against LGBTI persons, adopted at the fourth plenary session held on June 5, 2018; AG/RES. 2908 (XLVII-O/17), Human rights, sexual orientation and gender identity and expression, June 21, 2017; AG/RES. 2887 (XLVI-O/16), Human rights, sexual orientation and gender identity and expression, June 14, 2016; AG/RES. 2863 (XLIV-O/14), Human rights, sexual orientation and gender identity and expression June 5, 2014; AG/RES. 2807 (XLIII-O/13); AG/RES. 2600 (XL-O/10), Human rights, sexual orientation and gender identity, June 8, 2010; AG/RES. 2504 (XXXIX-O/09), Human rights, sexual orientation and gender identity, June 4, 2009, and AG/RES. 2435 (XXXVIII-O/08), Human rights, sexual orientation and gender identity, June 3, 2008.

⁴⁹ Cf. Testimony of Claudia Spellmant Sosa during the public hearing in this case on November 11, 2020.

A.2. The coup d'état of June 28, 2009

36. Added to the context of discrimination and violence against the LGBTI community described above, the facts of the case took place in a second context related to the political situation in Honduras characterized by a coup d'état that exacerbated cases of violence as well as human rights violations in general. And it was on June 28, 2009, precisely the day on which Vicky Hernández met her death that the constitutional President of Honduras was overthrown by a coup d'état.

37. Regarding these events, in the case of *López Lone et al. v. Honduras*, this Court indicated that, "on June 28, the National Congress met and read a 'supposed letter of resignation [from President Zelaya].' Subsequently, by Legislative Decree 141-09, it ordered: '[t]he constitutional appointment of the [then President of Congress] Roberto Micheletti Bain [...] to the office of Constitutional President of the Republic for the remainder of the current presidential term.' After taking office, Mr. Micheletti declared a state of emergency and imposed a curfew."⁵⁰

38. During the following days, numerous public protests were held and were "violently suppressed."⁵¹ In addition, thousands of people were arrested, mostly during protests against the coup.⁵² On this point, the Truth Commission's report recorded that demonstrations were repressed with an excessive use of lethal and non-lethal force, and arbitrary and illegal detentions occurred against people taking part in the political protests in support of President Zelaya. The Truth Commission reported that nine people died during the clashes between police and protesters.⁵³ According to the information provided by the State in response to the Court's request for helpful evidence, four murders were committed on June 29, 2009, the day on which the lifeless body of Vicky Hernández was found. Furthermore, over the period from June 25 to September 1, 2009, 217 persons were victims of homicide.⁵⁴

39. In his report on human rights violations in Honduras since the coup d'état, the United Nations High Commissioner for Human Rights indicated that "within the framework of the emergency provisions, several measures limiting fundamental rights were adopted, including curfews, repression of demonstrations and closure of media. These provisions were applied in an arbitrary and discriminatory manner, [...] and served to cover up or justify excessive use of force, illegal and arbitrary detention, torture, sexual abuse and political persecution. On the basis of these measures, fundamental freedoms, including those of expression, movement and assembly, as well as the principles of proportionality and legality, were violated."⁵⁵

B. Vicky Hernández and her death

40. Vicky Hernández was born on September 21, 1983, in San Pedro Sula, Honduras. She attended school up until sixth year of primary education but then had to drop out to get a job and provide financial support to her mother, as well as contributing to her niece's educational

⁵⁰ Cf. *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 50.

⁵¹ Cf. *Case of López Lone et al. v. Honduras*, *supra*, para. 51.

⁵² Cf. United Nations, Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009. A/HRC/13/66, March 3, 2010, para. 32.

⁵³ Cf. *Case of López Lone et al. v. Honduras*, *supra*, footnote 66.

⁵⁴ Cf. National Observatory on Violence of the Universidad Nacional Autónoma de Honduras (UNAH), Communication 013-2021-IUDPAS (evidence file, folio 1644 to 1650).

⁵⁵ United Nations, Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009. A/HRC/13/66, March 3, 2010, para. 19.

expenses.⁵⁶ Vicky Hernández was a trans woman and, as such, formed part of a group that was particularly discriminated against. She was reduced to living on the margin of society owing to the prejudices that existed and the lack of legal recognition of her gender identity. She was also a sex worker and well-known activist within the “*Colectivo Unidad Color Rosa*,” which defends the human rights of trans persons in Honduras. The organization also specializes in cases of HIV/AIDS. According to the representatives, and undisputed by the State, Vicky was extremely active within the *Colectivo Unidad Color Rosa*. In this regard, Claudia Spellmant, director of the Colectivo at the time, indicated that Vicky took part in many of the organization’s activities, including the marches and the training workshops.⁵⁷

41. At the time of the events, Vicky was HIV positive and lived with her mother, Rosa Argelia Hernández Martínez, her cousin, Tatiana Rápalo Hernández, and her niece, Argelia Johanna Reyes Ríos in San Pedro Sula. Her mother stated that, two months before she was murdered, she had been attacked by a security guard who dealt her a machete blow to the head and that, when she went to the police, the officers told her that for all they cared, she could die. Therefore, a friend then took her to a hospital. Vicky Hernández reported this incident, but the authorities failed to investigate it.⁵⁸

42. On the evening of June 28, 2009, a curfew from 9 p.m. until 6 a.m. was declared in the context of the coup d’état (*supra* para. 37). Rosa Argelia stated that the last time she saw Vicky was on June 27, 2009.⁵⁹ On June 28, Vicky went to a friend’s house. On June 29, 2009, at 7.30 a.m., agents of the National Criminal Investigation Directorate (hereinafter “the DNIC”) were informed that a body had been found at No. 3 between Streets 7 and 8, Avenida Colonia Ruiz in San Pedro Sula. The corpse was removed at 9.15 a.m.⁶⁰

43. Regarding the circumstances of the death of Vicky Hernández, her mother and the witness, Claudia Spellmant, recounted that some of Vicky’s friends had told them that she was with two friends; that they had gone out and that, when they were walking in the red light district where they carried out their sex work, the three women were discovered by a police patrol that tried to arrest them. They fled in different directions so that the police patrol car could not catch them and, therefore, lost contact with Vicky and were unaware of what happened to her until she appeared dead the following day.⁶¹

44. Finally, Vicky Hernández’s mother stated that she found out that her daughter had died on June 29 from a trans woman called Alicia, who was later murdered.

45. The record of the removal of Vicky Hernández’s body indicates that there was a wound with irregular edges in her left eye; a wound with irregular edges on the left frontal region, and bruising around her eye. It concluded that the apparent cause of death was a brain injury due to perforation with a bullet, and a postmortem interval of 8 to 10 hours prior to the discovery of the body. She was registered as “John Doe”; the record also mentioned the

⁵⁶ Cf. Socio-economic report, Cattrachas, March 2, 2017 (evidence file, folios 4 to 13).

⁵⁷ Cf. Testimony of Claudia Spellmant Sosa during the public hearing in this case on November 11, 2020.

⁵⁸ Cf. Affidavit made by Rosa Argelia Hernández Martínez (evidence file, folio 1518).

⁵⁹ Cf. Investigation file 1057-09 delivered on November 20, 2013. Report of the statement by Rosa Argelia Hernández Martínez, May 3, 2011 (evidence file, folios 14 to 18) and Affidavit made by Rosa Argelia Hernández Martínez (evidence file, folio 1518).

⁶⁰ Cf. National Criminal Investigation Directorate. Preliminary report on corpse removal of June 29, 2009 (evidence file, folios 20 to 23)

⁶¹ Cf. Testimony of Claudia Spellmant Sosa during the public hearing in this case on November 11, 2020, and Affidavits made by Rosa Argelia Hernández and Tatiana Rápalo on October 1, 2020 (evidence file, folios 1521 and 1526).

discovery of a condom that had apparently been used and, seven meters away, a grey bullet casing.⁶²

46. According to the Prosecutor General, the investigation case file contains the transcript of the autopsy report, which determined that the cause of death was a brain laceration and described the injuries found that had been caused by a bullet, with entry and exit wounds.⁶³ The evidence file before the Court does not contain the autopsy report.

47. Vicky's death was not registered in the National Civil Registry Office until 2013.⁶⁴

C. Investigations into the death of Vicky Hernández

48. The Public Prosecution Service recorded the investigation into the matter as a case against unknown persons for the crime of homicide against Vicky Hernández.⁶⁵ As indicated above, the preliminary inspection and record of removal of the corpse were executed on June 29, 2009. According to the representatives, and uncontested by the State, the forensic authorities refused to perform Vicky Hernández's autopsy on the pretext of assuming that she was HIV positive.⁶⁶

49. On March 16, 2011, the Prosecution Service's Crimes against Life Unit asked the DNIC for the autopsy reports on several cases of the homicide of trans persons, including the case of Vicky Hernández.⁶⁷

50. On March 30, 2011, the prosecutor of the Crimes against Life Unit asked the DNIC to conduct various investigation procedures in the case, including: identifying the suspects; requesting the autopsy report; taking statements from witnesses of the criminal act and from the members of the victim's family, and establishing the motive for the death.⁶⁸

51. On May 3, 2011, the statement was taken of Rosa Argelia Hernández, the victim's mother. According to her statement, on June 29, 2009, she found out what had happened by a telephone call from a friend of Vicky Hernández, a trans woman called Alicia, who told her that the body was at the morgue.⁶⁹

52. According to the report of the Special Prosecutor for Crimes against Life, by July 23, 2013, the following procedures had been conducted:

1. Preliminary report on removal of the corpse 1138-09. 2. Death certificate obtained from the National Civil Registry Office. 3. Photocopy of identity card in the victim's name. 4. Site inspection No. 1095-09. 5. Copy of autopsy request A1334-09 sent on March 16, 2011. 6. Statement of Rosa Argelia Hernández Martínez, mother of the deceased. 7. Police record in

⁶² Cf. National Criminal Investigation Directorate. Record of corpse removal No. 1095-09 of June 29, 2009 (evidence file, folios 25 to 27).

⁶³ Cf. Prosecutor General. Communication FGR No. 667-2015 of October 14, 2015 (evidence file, folios 29 to 32).

⁶⁴ Cf. Mission report, October 14 to 18, 2013 (evidence file, folios 36 to 39).

⁶⁵ The investigation was opened under the name she was assigned at birth.

⁶⁶ Cf. Brief with pleadings, motions and evidence (merits file, folio 110).

⁶⁷ Cf. Communication of the Crimes against Life Unit, March 16, 2011. Investigation file 1057-09 (evidence file, folios 83 and 84).

⁶⁸ Cf. Communication of the Investigating Prosecutor – Crimes against Life Unit, March 30, 2011. Investigation file 1057-09 (evidence file, folios 80 to 82).

⁶⁹ Cf. Statement of Rosa Argelia Hernández Martínez before the National Criminal Investigation Directorate on May 3, 2011 (evidence file, folios 15 and 16).

the name [of the victim]. 8. Request for inspections of the scene and the photograph album.
9. Migratory movements of [the victim].”⁷⁰

53. The same report indicated that the autopsy of Vicky Hernández was performed by someone who, at that date, no longer worked for the forensic department, “so that their localization [was] pending in order to take the respective declaration.”⁷¹

54. On October 17, 2013, the lawyer of Vicky Hernández’s family formally requested a photocopy of the case file.⁷² In addition, on the same date, she submitted a request to the Regional Forensic Medicine Directorate to corroborate the identity of the doctor who prepared the autopsy report, and requested the incorporation of this report into the investigation file.⁷³

55. On October 18, 2013, in response to the request, the Regional Coordinator of Forensic Medicine responded that the autopsy report had been sent to the Prosecution Service on July 13, 2013.⁷⁴ On October 28, 2013, the Prosecutor reiterated his request to the Regional Director of Forensic Medicine to forward urgently the report and photographic album of the autopsy of Vicky Hernández.⁷⁵

56. On the same October 28, 2013, in a reasoned decision, the Prosecutor for Crimes against Life rejected the request of the lawyer of Vicky Hernández’s family to obtain a photocopy of the case file on the grounds that it could jeopardize the investigation, and also that it was not the appropriate way to submit a request of this nature.⁷⁶ On October 30, 2013, the lawyer of Vicky Hernández’s family requested copies of the case file from the Special Prosecutor for Crimes against Life, as his superior in rank.⁷⁷

57. On November 4, 2013, the Prosecutor for Crimes against Life presented a report describing the most recent procedures conducted in the investigation, including: copy of an investigation request; record of the telephone calls made to contacts in the case, and second request for the autopsy report.⁷⁸ The same day, according to the respective record, the Prosecutor tried to contact friends and people close to the deceased by telephone in the context of the investigation; however, the record indicates that the numbers appeared to have been disconnected.⁷⁹

58. On November 20, 2013, the Public Prosecution Service decided to admit the request of the lawyer of Vicky Hernández’s family and acknowledged the right of Vicky Hernández’s mother to obtain a copy of the investigation file.⁸⁰

59. On March 12, 2015, the lawyer of Vicky Hernández’s family submitted a communication to the Special Prosecutor for Crimes against Life indicating: “that the status of the said case file has not changed since October” and that important documents had not been incorporated,

⁷⁰ Special Prosecutor for Crimes against Life. Report of July 23, 2013 (evidence file, folios 91 and 92).

⁷¹ Special Prosecutor for Crimes against Life. Report of July 23, 2013 (evidence file, folios 63 and 64)

⁷² Cf. Request by the lawyer, Rita Isabel Romero Renderos, of October 17, 2013 (evidence file, folio 103).

⁷³ Cf. Request by the lawyer, Rita Isabel Romero Renderos, of October 17, 2013 (evidence file, folio 105).

⁷⁴ Cf. Regional Coordinator of Forensic Medicine. Communication of October 28, 2013 (evidence file, folio 107).

⁷⁵ Cf. Prosecutor of the Social Impact Deaths Unit. Communication FEDCV-322-13-UEMIS of October 28, 2013 (evidence file, folio 109).

⁷⁶ Cf. Prosecutor for Crimes against Life. Reasoned decision of October 28, 2013 (evidence file, folios 111 and 112).

⁷⁷ Cf. Request by the lawyer, Rita Isabel Romero Renderos, of October 30, 2013 (evidence file, folio 114).

⁷⁸ Cf. Prosecutor for Crimes against Life. Report of November 4, 2013 (evidence file, folio 118).

⁷⁹ Cf. Prosecutor for Crimes against Life. Record of procedure of November 4, 2013 (evidence file, folio 120).

⁸⁰ Cf. Head of the Special Prosecution Unit for Crimes against Life. Decision of November 20, 2013 (evidence file, folios 124 and 125).

including: (i) the autopsy report; (ii) the note of October 18, 2013, sent by Forensic Medicine to the Special Prosecutor for Crimes against Life, reporting that the said autopsy report had been sent to the Homicide Prosecution Unit on July 13, 2013, and (iii) the requests to incorporate documents into the file of October 17 and 30, 2013.⁸¹ A communication of September 28, 2020, of the General Subdirectorate for Prosecutions of the Public Prosecution Service concerning the investigation mentions the procedure consisting in an order to investigate of October 22, 2019, that appears to be “pending the reception of investigation procedures assigned [to the Police Investigations Directorate]”⁸² although it provided no details of their nature. The Court has no updated information on the status of the investigation.

VII MERITS

60. In the instant case, the Court must examine the scope of the State’s international responsibility due to the alleged violation of various rights recognized by the Convention in connection with the death of Vicky Hernández. According to the allegations, this death occurred while a curfew was in force and, also, in a context of violence against the LGBTI community. The Court will examine the arguments on the merits in the following order: (a) general considerations on the right to equality and non-discrimination; (b) rights to recognition of juridical personality, life, personal integrity, personal liberty, judicial guarantees, privacy, freedom of expression, a name, equality and non-discrimination, judicial protection and a life free of violence, and (c) right to personal integrity of Vicky Hernández’s family.

VII.1 GENERAL CONSIDERATIONS ON THE RIGHT TO EQUALITY⁸³ AND NON-DISCRIMINATION⁸⁴

A. Arguments of the parties and the Commission

61. The **Commission** argued that what happened to Vicky Hernández could be characterized as a murder based on prejudice against her gender identity and expression. It indicated that this form of violence was driven by perpetrator’s the prejudice-based desire “to punish” identities, expressions or bodies that differed from traditional gender models and roles, or were contrary to a binary system. It added that the murder of Vicky Hernández and the circumstances surrounding it were characteristic of this type of hate crime. The Commission also referred to the prejudices that existed within the organs and authorities responsible for investigating the death of Vicky Hernández.

62. The **representatives** argued that, because she had exercised her right to express her gender identity, Vicky Hernández had been arbitrarily deprived of her life. They added that the actions of the Honduran authorities during the investigation into the case of the transfemicide of Vicky Hernández plainly revealed prejudice and evident bias against trans people in general, and against Vicky Hernández specifically. They indicated that the authorities based themselves on this prejudice to neglect and abandon the investigation, intentionally using the masculine name that did not reflect her gender identity and failed to apply the due

⁸¹ Cf. Communication of March 12, 2015 (evidence file, folios 127 and 128).

⁸² Communication DGF N. 452-2020 of September 28, 2020, and Communication DGF N. 496-2020 of October 5, 2020, General Subdirectorate for Prosecutions (evidence file, folios 1601 to 1609).

⁸³ Article 24 of the Convention.

⁸⁴ Article 1(1) of the Convention.

diligence required by their own laws. The representatives argued that the fact of applying a distinction between Vicky and another person in the same situation, based solely on her gender identity, also signified a violation of Article 1(1) of the American Convention which prohibited discrimination based on gender identity or expression. They also argued that the State had violated the right to equality before the law contained in Article 24 of the American Convention. Furthermore, they argued that, in the case of Vicky Hernández, the fact that she was unable to reflect her gender identity and chosen name on her identity document, and that, more broadly, she was discriminated against and socially excluded for expressing this gender identity to the point where it cost her her life reveals the interrelationship between the different rights that were violated owing to the State's acts and omissions.

63. The **State** argued that Vicky Hernández had developed her transgender personality and identity fully and that there was no evidence to indicate that an act had been committed based on prejudice against trans women.

B. Considerations of the Court

64. The Court has indicated that States must refrain from implementing actions that are in any way directly or indirectly addressed at creating situation of discrimination *de jure* or *de facto*.⁸⁵ Thus, it has established that Article 1(1) of the Convention is a norm of a general nature the content of which extends to all the provisions of the treaty and establishes the obligation of the States Parties to respect and to ensure the full and free exercise of the rights and freedoms recognized therein "without any discrimination." In other words, whatever the origin or the form it assumes, any treatment that may be considered discriminatory in relation to the exercise of any of the rights ensure in the Convention is, *per se*, incompatible with this instrument.⁸⁶ The State's failure to comply with the general obligation to respect and to ensure human rights, by any different treatment that may result in discrimination – in other words, that does not seek a legitimate purpose, or is unnecessary and/or disproportionate – will engage its international responsibility. Consequently, there is an indissoluble link between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination.⁸⁷

65. Moreover, while the general obligation of Article 1(1) refers to the State's obligation to respect and to ensure "without discrimination" the rights contained in the American Convention, Article 24 protects the right to "equal protection of the law."⁸⁸ That is, Article 24 of the American Convention prohibits discrimination *de jure*, not only with regard to the rights contained in this treaty, but also with regard to all the laws enacted by the State and their application.⁸⁹ In other words, if a State discriminates as regards the respect and guarantee of a right protected by the Convention it would fail to comply with the obligation established in

⁸⁵ Cf. *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 103, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 125.

⁸⁶ Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, January 19, 1984. Series A No. 4, para. 53, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407, para. 81.

⁸⁷ Cf. Advisory Opinion OC-18/03, *supra*, para. 85, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 184.

⁸⁸ Cf. Advisory Opinion OC-4/84, *supra*, paras. 53 and 54, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 93.

⁸⁹ Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 186, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 94.

Article 1(1) and the substantive right in question. If, to the contrary, the discrimination refers to an unequal protection of domestic law or its application, the fact must be examined in light of Article 24 of the American Convention, in relation to the categories protected by Article 1(1) of this instrument.⁹⁰

66. Therefore, in light of the obligation of non-discrimination, States are also obliged to adopt positive measures to reverse or change any situations in their societies that discriminate against certain group of persons. This relates to the State's special duty of protection with regard to actions and practices of third parties that, with its tolerance or acquiescence, create, maintain or encourage discriminatory situations.⁹¹ Thus, any discrimination based on one of the categories indicated for illustrative purposes in Article 1(1) of the Convention merits special or particular attention because the wrongful act that its exercise signifies is committed based on what the presumed victim specifically represents or appears to be and what distinguishes him or her from other people.⁹²

67. The Inter-American Court has recognized that the LGBTI community has historically been a victim of structural discrimination, stigmatization, diverse forms of violence, and the violation of fundamental rights.⁹³ Similarly, the Court has established that a person's sexual orientation, gender identity and gender expression⁹⁴ are categories protected by the Convention.⁹⁵ Consequently, the State may not discriminate against a person based on their sexual orientation, their gender identity and/or their gender expression.⁹⁶

68. Discrimination against LGBTI persons is revealed in numerous aspects of the public and private spheres. In the Court's opinion, one of the most extreme forms of discrimination against LGBTI persons is that which occurs in situations of violence.⁹⁷ In Advisory Opinion OC-24/17 this Court stressed that:

[T]he mechanisms for the protection of human rights of the United Nations and of the Inter-American system have documented violent acts committed against LGBTI persons in all regions based on prejudices. The UNHCHR has noted that "such violence may be physical (including murder, beatings, kidnapping and sexual assault) or psychological (including threats, coercion and the arbitrary deprivation of liberty, which includes forced psychiatric incarceration)."

69. Violence against the LGBTI community is based on prejudices, perceptions that are generally negative towards those persons or situations that are unfamiliar or different. In the case of LGBTI persons, this refers to prejudices based on sexual orientation, and gender identity and expression. This type of violence may be "driven by the desire to punish those

⁹⁰ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 192.

⁹¹ Cf. Advisory Opinion OC-18/03, *supra*, para. 104, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 186.

⁹² Cf. *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 89.

⁹³ Cf. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, paras. 92 and 267, and *Advisory Opinion OC-24/17, supra*, para. 33.

⁹⁴ This Court has explained that gender expression is understood to be the outward manifestation of a person's gender by physical aspects, which may include dress, hair style, or the use of cosmetics, or by mannerisms, speech, personal behavior or social interaction, and names or personal references. A person's gender expression may or may not correspond to his or her self-perceived gender identity. *Advisory Opinion OC-24/17*, para. 32(g).

⁹⁵ Cf. *Case of Atala Riffo and daughters v. Chile. Merits, supra*, para. 78, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 90.

⁹⁶ Cf. *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 90. See also, *mutatis mutandis*, *Advisory Opinion OC-18/03, supra*, paras. 100 and 101.

⁹⁷ Cf. *Advisory Opinion OC-24/17, supra*, para. 36, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 91.

seen as defying gender norms.”⁹⁸ The United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has indicated that:

At the root of the acts of violence and discrimination [based on sexual orientation and gender identity] lies the intent to punish based on preconceived notions of what the victim’s sexual orientation or gender identity should be, with a binary understanding of what constitutes a male and a female or the masculine and the feminine, or with stereotypes of gender sexuality.⁹⁹

70. Likewise, this Court has indicated that violence against the LGBTI community has a symbolic purpose; the victim is chosen in order to communicate a message of exclusion or subordination. On this point, the Court has indicated that the purpose or effect of violence used for discriminatory purposes is to prevent or invalidate the recognition, enjoyment or exercise of the human rights and fundamental freedoms of the person subjected to such discrimination, irrespective of whether that person self-identifies with a specific category.¹⁰⁰ This violence, fueled by hate speech may result in hate crimes.¹⁰¹

71. In the instant case, the allegations concerning discrimination constitute a cross-cutting issue to the other alleged violations and, consequently, the Court will take them into account throughout this judgment.

⁹⁸ Cf. *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 92.

⁹⁹ Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Víctor Madrigal-Borloz, UN Doc A/HRC/38/43, May 11, 2018, para. 48.

¹⁰⁰ Cf. *Case of Perozo et al. v. Venezuela, Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 195, para. 158, and *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 93.

¹⁰¹ Cf. *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 93, and *Advisory Opinion OC-24/17*, para. 79. In this regard, the Court has emphasized that “discriminatory speech and the resulting attitudes, which are based on stereotypes of heteronormativity and cisnormativity with different degrees of radicalization, lead to the homophobia, lesbophobia and transphobia that encourage such hate crimes.” *Advisory Opinion OC-24/17*, *supra*, para. 47.

VII.2
RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY,¹⁰² LIFE,¹⁰³ PERSONAL
INTEGRITY,¹⁰⁴ PERSONAL LIBERTY,¹⁰⁵ JUDICIAL GUARANTEES,¹⁰⁶ PRIVACY,¹⁰⁷
FREEDOM OF EXPRESSION,¹⁰⁸ A NAME,¹⁰⁹ EQUALITY AND NON-
DISCRIMINATION,¹¹⁰ JUDICIAL PROTECTION¹¹¹ AND A LIFE FREE OF VIOLENCE¹¹²

A. Arguments of the parties and the Commission

72. The **Commission** considered that, given the nature of the violence and the manner in which it was inflicted on Vicky Hernández, and bearing in mind the additional indications suggested by the considerations as to the context in which the events occurred, what happened to Vicky Hernández could be characterized as murder due to prejudice based on her gender identity and expression as a trans woman, and therefore transfemicide.¹¹³ In addition, it considered that the context of violence against the LGBTI community in Honduras, along with a high incidence of participation by law enforcement agents in such violence, its upsurge as a result of the coup d'état, the general climate of militarization generated in the wake of the coup with the resulting control imposed by the state's security forces, as well as the fact that Vicky Hernández's murder occurred precisely in the context of a curfew during which, at the exact time of her death, the streets were under the control of the State's law enforcement personnel, amount to strong circumstantial evidence of direct State involvement in the events.

73. The Commission also argued that the lack of a diligent investigation prevented the State from offering a satisfactory and convincing explanation to disprove the allegations of the responsibility of its agents in the events of this case. Therefore, it concluded that the State had failed to comply with its obligation to respect the rights to life and personal integrity of Vicky Hernández. It added that it had no information concerning specific preventive measures in the context of the curfew ordered at the time of the coup d'état, despite the State being aware of the lack of protection in which LGBTI persons found themselves according to the findings relating to the context.

¹⁰² Article 3 of the American Convention.

¹⁰³ Article 4 of the American Convention.

¹⁰⁴ Article 5 of the American Convention.

¹⁰⁵ Article 7 of the American Convention.

¹⁰⁶ Article 8 of the American Convention.

¹⁰⁷ Article 11 of the American Convention.

¹⁰⁸ Article 13 of the American Convention.

¹⁰⁹ Article 18 of the American Convention.

¹¹⁰ Article 24 of the American Convention.

¹¹¹ Article 25 of the American Convention.

¹¹² Article 7 of the Convention of Belém do Pará.

¹¹³ The Commission considered that certain elements analyzed jointly are indicative of whether or not a crime is committed due to prejudice. It indicated that the record of the removal of the corpse mentioned the discovery of a condom that had apparently been used next to the body and understood that this fact could be indicative of sexual violence. It added that Vicky Hernández was murdered with a firearm and that her body was found in a public place. It considered that those elements were consistent with the manner in which most prejudice-based crimes against trans women are committed, quite often in situations connected with sex work. In addition, it recalled that the facts took place in a context of violence and discrimination against LGBT persons in Honduras. In that context, around the time of Vicky Hernández's death, the records began to show an alarming increase in murders connected to the victims' gender identity and expression, together with a recurring pattern of police violence.

74. Added to the foregoing, the Commission underscored that, two months before she was murdered, Vicky Hernández went to a police station to report that she had been assaulted by a security guard. Based on these elements, the Commission considered that the death of Vicky Hernández occurred in circumstances where she was clearly defenseless and unprotected against threats of violence against her as a trans woman and sex worker in the context analyzed above, which also resulted in a breach of the duty to ensure her rights.

75. In light of the foregoing considerations, the Commission concluded that the Honduran State was responsible for violating the rights to life, personal integrity, privacy, freedom of expression, equality and non-discrimination and to live free of violence established in Articles 4(1), 5(1), 11, 13 and 24 of the American Convention, in relation to the obligations to respect and to ensure rights established in Article 1(1) of this instrument and Article 7 of the Convention of Belém do Pará to the detriment of Vicky Hernández.

76. Regarding the investigations, the Commission argued that the State failed to elaborate or implement logical lines of inquiry based on the evidence and context surrounding the events of this case. The Commission also indicated that the internal investigation process had been flawed and the evidence-seeking actions had been minimal, unjustifiably sporadic and uncoordinated. Furthermore, the classification of the incident as a crime of passion implied a justification of violence against a trans woman. Regarding the reasonable time, it observed that, nine years after the events, the authorities had not yet identified those responsible or made any significant progress in terms of determining the circumstances in which the murder of Vicky Hernández occurred. Therefore, the Commission concluded that, in the instant case, the State had violated the rights to judicial guarantees, equality and non-discrimination, and judicial protection established in Articles 8(1), 24 and 25(1) of the American Convention, in relation to the obligations established in Article 1(1) of this instrument, as well as Article 7 of the Convention of Belém do Pará, to the detriment of Vicky Hernández's family.

77. The **representatives** added to the above that the death of Vicky Hernández was an extrajudicial execution. Specifically, they argued that, given the nature of extrajudicial executions and that the facts of this case took place in a more general context of violations committed by state agents, if there was compelling evidence that her death truly corresponded to an extrajudicial execution the burden of proof should not fall on private individuals. They argued that, in such cases, it corresponded to the State to prove that this was not so. They indicated that the *modus operandi* of the hate crime demonstrated that the murder of Vicky Hernández occurred "as part of a pattern of human rights violations against trans women in Honduras, and of *social cleansing* tolerated by the State." They added that the facts also occurred within a context of the intersectionality of the vulnerabilities and discriminations that affect trans women, and that the State was responsible for failing to create the appropriate conditions to prevent the violation of the right to life. Furthermore, they argued that, in this case, the State had violated the right of individuals to develop and express their own gender identity recognized in Articles 3, 7, 11(2), 13 and 18 of the Convention, in relation to Articles 1(1), 2 and 24 of this instrument to the detriment of Vicky Hernández.

78. Regarding the investigations, the representatives agreed with the Commission's arguments and recalled that the facts took place in a context of lack of due diligence and effectiveness in the investigation of the facts; particularly, as regards the possible involvement of State agents. They argued that this flawed investigation had allowed the facts to continue in impunity and that this formed part of the more general context of impunity. In addition, they referred to the specific obligations in the investigation of cases of violence against women – including trans women – that were not met in this case. Moreover, they indicated that there had been discrimination due to the application of stereotypes and an investigation that lacked a gender perspective and gender expression. They also argued that, in the instant case, the authorities had refused to give Vicky Hernández's family an opportunity to be heard. Lastly, they argued that the fact that amnesty decree No. 2-2010 was in force represented a

significant obstacle during investigations because it granted a general amnesty to those who had committed a series of crimes between January 1, 2008, and January 27, 2010.

79. The **State** argued that, in the context of the 2009 coup d'état, it had adopted a decree by which, in June 2009, it proceeded to restrict constitutional guarantees and that this restriction was based on the serious situation resulting from that political event, because various violent demonstrations of social protest had occurred and, therefore, it was urgent and necessary to proceed in a proportionate manner to protect the rights to life, personal integrity and property. It added that the purpose of the measures taken was to safeguard and to prevent harm to human life, preventing possible danger for many people due to the demonstrations that continued as a political protest. Consequently, this restriction was issued in the above socio-political context, abiding by the constitutional provisions.

80. The State also indicated that, in the said context, there was no evidence and it could not be inferred that those responsible for the death of Vicky Hernández were members of law enforcement personnel because they were conducting constant patrols to avoid the occurrence of "unrest and regrettable tragedies." It added that, evidently, the decree did not and could not guarantee the presence of law enforcement personnel in all the streets and avenues of the country's cities because, in principle, the preventive effect was based on the understanding that the threat represented by the measure ordered would (and did) result in fewer people on the street when the constitutional restrictions were in force, thus avoiding the disturbances and violent acts that occur when large crowds gather.

81. The State also argued that it was inadmissible to try and make it responsible for failing to prevent the death of Vicky Hernández because, in the instant case, there was no evidence that the state authorities were aware of any risk to Vicky Hernández's life, since there had been no reports indicating this. Regarding the State's positive obligation of prevention, it argued that supposing its responsibility owing to the omission of that obligation implied imposing on the authorities an impossible and disproportionate burden, considering "the unpredictability of human conduct."

82. Lastly, it considered that, based on the factual framework of the case, it was not possible to substantiate a violation of the right to personal liberty because there was no evidence that the presumed victim's freedom of movement had been limited in any way. Regarding the right to a name, the State recognized that the domestic laws did not allow a change of name; however, it noted that the petitioners had not proved that the presumed victim had made a requests or taken any steps with the National Civil Registry, or explained how this right directly affected the presumed victim, or how this right was linked to the purpose of the claim.

83. Lastly, the State recognized, in general, its failure to comply with the obligation to investigate and the violation of Articles 8 and 25 of the American Convention for the reasons previously mentioned (*supra* para. 14).

B. Considerations of the Court

84. The Court will now examine the issue of the State's international responsibility for the violation of Articles 3, 4, 5, 11, 13 and 24 of the American Convention and 7 of the Convention of Belém do Pará to the detriment of Vicky Hernández.

B.1. The alleged violation of the rights to life and personal integrity of Vicky Hernández

85. This Court has established that the right to life plays a fundamental role in the American Convention because it is the essential presumption for the exercise of the other rights. Respect for Article 4, related to Article 1(1) of the American Convention, not only presupposes that no one may be deprived of their life arbitrarily (negative obligation), but also requires States to

take all appropriate measures to protect and preserve the right to life (positive obligation)¹¹⁴ in accordance with the obligation to ensure to all persons subject to their jurisdiction the free and full exercise of their rights.¹¹⁵

86. With regard to the right to personal integrity, the Court recalls that Article 5 of the Convention expressly recognizes that “every person has the right to have his physical, mental and moral integrity respected,” and stipulates that “no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.”¹¹⁶ The Court has established that the violation of personal integrity is a type of violation with diverse connotations of degree, the physical and mental effects of which vary in intensity based on endogenous and exogenous factors that must be proved in each specific situation.¹¹⁷

87. In relation to the death of Vicky Hernández, the Court notes, first, that this occurred while a curfew was in force which had been declared that same day following the coup d’état on June 28, 2009 (*supra* para. 36). The curfew decreed on the day of the coup d’état was in force from 9 p.m. to 6 a.m., a time during which, in principle, everyone should have remained in their homes and only the police patrols and armed forces were present on the streets. Consequently, at the time of Vicky Hernández’s death, the State exercised absolute control of the public spaces and the movements of everyone in them.

88. It should be recalled that this Court has established that curfews and the suspension of guarantees in general constitute exceptional situations and that, while they are in force, it is lawful for the State to apply certain measures that restrict rights and freedoms which, under normal conditions, are prohibited or subject to more rigorous requirements. Nevertheless, this does not mean that the suspension of guarantees entails the temporary suspension of the rule of law or that it authorizes the authorities to deviate from the legality by which it must always abide. When guarantees are suspended, some of the legal limits the actions of the public authorities may differ from those in force under normal conditions, but these should not be considered inexistent and, consequently, it should not be understood that the Government is invested with absolute powers over and above the conditions in which the exceptional legality of this measure is authorized.¹¹⁸

89. Second, as indicated in the chapter on the facts, at the time, a context of violence, arbitrary detentions, homicides and discrimination against the LGBTI community and, in particular, against trans women sex workers existed in Honduras. Additionally, in many cases, that violence was committed by law enforcement agents (*supra* para. 31). On this point, in her testimony during the public hearing in this case (*supra* para. 35), Claudia Spellmant Sosa referred to the context of arbitrary detentions, ill-treatment, rape, extortion and also killings by the police, suffered by trans women sex workers in San Pedro Sula and in Honduras over those years. This witness recounted that she had witnessed the murder of a trans woman by the police during an arrest and referred to the murder of a trans woman by a police officer who was subsequently prosecuted and convicted for this act; however, she also mentioned

¹¹⁴ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999, para. 144, and *Case of Olivares Muñoz et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 10, 2020. Series C No. 415. para. 85.

¹¹⁵ Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 153 and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 85.

¹¹⁶ Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, para. 126, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of July 8, 2020. Series C No. 406, para. 141.

¹¹⁷ Cf. *Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33*, para. 57, and *Case of Petro Urrego v. Colombia, supra*, para. 141.

¹¹⁸ Cf. *Habeas Corpus in Emergency Situations (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights)*, Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 24, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 137.

that one of the women who had denounced the act had been killed and the other had been forced to go into exile (*supra* para. 35).

90. Witness Claudia Spellmant Sosa also indicated in her testimony that, “on many occasions,” she and Vicky Hernández had been victims of violent attacks by the police during arrests. In particular, she stated that the police did not “ask” them to accompany the police agents “voluntarily; rather they took [them] away by beating them,” and that “there [were] frequent raids in the sex work districts of San Pedro Sula.” She indicated that Vicky Hernández “went to the organization [*Colectivo Unidad Color Rosa*] to report that she had been arrested and beaten.”¹¹⁹

91. Regarding the circumstances of Vicky’s death, witness Claudia Spellmant Sosa recounted that, in a conversation with two friends who were at Vicky’s wake, she found out that the events had occurred in this way: Vicky Hernández and two friends went out onto the street to work during the curfew on the night of June 28, 2009. When they were walking through the red light district where they carried out their sex work, the three women were discovered by a police patrol that tried to arrest them. The women fled in different directions so that the police patrol would not catch up with them and they therefore lost contact with Vicky and were unaware of what had happened to her until she appeared dead the next day (*supra* para. 43).¹²⁰

92. This version is consistent with the report on the conversations that Rosa Argelia Hernández, Vicky Hernández’s mother, had with her daughter’s friends. She stated before the Court that her daughter’s friends had told her that the police were following them and they fled and did not know where Vicky had gone (*supra* para. 43).¹²¹

93. In addition, as indicated in the chapter on acknowledgement of responsibility (*supra* Chapter IV), in this case the Honduran authorities failed to comply with their obligation to conduct a diligent and adequate investigation into the death of Vicky Hernández. This omission of the obligation to investigate is consistent with a general context of impunity for acts of violence against LGBTI persons and against trans women sex workers in Honduras. Likewise, in that chapter, it was possible to verify that the said context of murders of members of the LGBTI community was accompanied by a high incidence of impunity and investigations that failed to result in the determination and prosecution of those responsible and that, consequently, continued unpunished (*supra* para. 31).

94. On this point, it is relevant to recall that expert witness Carlos Zelada indicated, in relation to the time at which the facts of this case occurred, that there had been an exacerbation of the acts of lethal violence against LGBTI persons in Honduras that confirmed the particular danger faced by trans women sex workers. He also explained that, at the end of 2009, the documented figures for this type of act were twice those of 2008, and three times those of 2007, and were “exponentially higher” than in previous years such as 2005 or 2006 (*supra* para. 32).

95. Furthermore, it is illustrative to reiterate that the Police failed to investigate the acts of violence reported by Vicky Hernández and by the *Colectivo Unidad Color Rosa*. For example, there is no record that the complaint filed by Vicky Hernández after she had been assaulted by a security guard was investigated (*supra* para. 41). Witness Claudia Spellmant Sosa indicated that one of the aims of the *Colectivo Unidad Color Rosa* was to file and monitor

¹¹⁹ Testimony of Claudia Spellmant Sosa during the public hearing in this case on November 11, 2020.

¹²⁰ Cf. Testimony of Claudia Spellmant Sosa during the public hearing in this case on November 11, 2020.

¹²¹ Cf. Affidavits made by Rosa Argelia Hernández and Tatiana Rápalo on October 1, 2020 (evidence file, folios 1521 and 1526).

complaints because the Police did not want to receive them because they considered that sex work was unlawful; therefore, such complaints were never followed up on.¹²²

96. In this regard, the Court has repeatedly indicated that the State has the legal obligation “to take reasonable steps to prevent human rights violations and to use the means at its disposal to conduct a serious investigation of the violations committed within its jurisdiction in order to identify those responsible, impose the appropriate punishments and make adequate reparation to the victim.”¹²³ Among other measures, this includes “establish[ing] an effective system of justice capable of investigating, punishing, and providing reparation for the deprivation of life by state agents or private individuals.”¹²⁴

97. The Court has also underscored that the investigation of cases of violation of the right to life is an essential element when determining the State’s international responsibility and that this obligation results from the guarantee under Article 1(1) of the Convention; moreover, if it is proved that there has been a shortcoming or flaw in the investigation that has reduced the possibility of establishing the cause of death or identifying those responsible, this will mean that the obligation to protect the right to life has not been met.¹²⁵ Similarly, the Court has indicated that the absence of effective mechanisms to investigate violations of the right to life and the incapacity of the system of justice to address such violations may foster a climate of impunity in the States in this regard and, in certain contexts and circumstances, may result in general situations or significant patterns of impunity, thereby encouraging and perpetuating the repetition of such violations.¹²⁶

98. Furthermore, States have the enhanced obligation to investigate violations of the rights of human rights defenders, such as groups that defend the rights of LGBTI persons and trans women, especially when such violations take place in the context of a curfew when law enforcement agents are the only persons authorized to circulate on the streets.¹²⁷

99. The Court recalls that the State’s responsibility for the acts of state agents or private individuals must be determined based on the particularities and circumstances of each case.¹²⁸ Also, as regards the circumstantial evidence, indicia and presumptions that may point to contexts of human rights violations similar to those that occurred in the instant case, these may be used provided they lead to conclusions consistent with the facts.¹²⁹

100. In the instant case, the Court notes that, although it is not possible to determine with complete certainty that police officers were implicated in the facts of the case, there are various indicia of the participation of state agents in those facts that, added to the context of

¹²² Testimony of Claudia Spellmant Sosa during the public hearing in this case on November 11, 2020.

¹²³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations and costs. Judgment of February 5, 2019. Series C No. 374*, para. 102.

¹²⁴ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs. Judgment of January 31, 2006. Series C No. 140*, para. 120, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 87.

¹²⁵ Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs. Judgment of April 6, 2006. Series C No. 147*, para. 97, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs. Judgment of March 13, 2018. Series C No. 352*, para. 164.

¹²⁶ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202*, para. 179 and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 164.

¹²⁷ Cf. *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of August 28, 2014. Series C No. 283*, para. 142, and *Case of Escaleras Mejía et al. v. Honduras. Judgment of September 26, 2018. Series C No. 361*, para. 54.

¹²⁸ Cf. *Case of the “Mapiripán Massacre” v. Colombia. Merits, reparations and costs. Judgment of September 15, 2005. Series C No. 134*, para. 113, and *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs. Judgment of November 19, 2019. Series C No. 392*, para. 68.

¹²⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 130, and *Case of Díaz Loreto et al. v. Venezuela, supra*, para. 68.

violence against the LGBTI community and, in particular, against trans women sex workers, points to the State's responsibility for the violation of the rights to life and integrity of Vicky Hernández. As noted in this chapter, these indicia are as follows: (a) Vicky Hernández was murdered when there was a curfew with a heavy and exclusive military and police presence and control of the streets (*supra* para. 37); (b) there is a general context of violence against the LGBTI community in Honduras and, in particular, against trans women who are also sex workers (*supra* para. 31); (c) within this context the Police have been associated with acts of violence against LGBTI persons and against trans women sex workers (*supra* para. 31); (d) as indicated in the chapter on the facts, at the time of Vicky's death and the coup d'état, an alarming increase in deaths associated with the gender identity and expression of the victims began to be recorded (*supra* para. 32); (e) on numerous occasions, Vicky Hernández had been assaulted by police agents while she was working (*supra* para. 90); (f) there is indirect testimony that, on the night before Vicky Hernández's lifeless body was found, a police patrol had tried to arrest her together with two friends who lost contact with her while they were fleeing (*supra* para. 43); (g) there is a context of impunity in cases of acts of violence against trans women (*supra* para. 31), and (h) the investigations into the events of this case have been inadequate to determine what happened and the corresponding responsibilities (*supra* Chapter IV).

101. In sum, and based on the foregoing, the Court concludes that there are sufficient indications to affirm that the Honduran State is responsible for violating the right to life contained in Article 4(1) of the American Convention, in relation to Articles 1(1), 8 and 25 of this instrument, to the detriment of Vicky Hernández.

102. Furthermore, regarding the right to personal integrity of Vicky Hernández, the Court notes that neither the Commission nor the representatives presented autonomous arguments with regard to this right. Nevertheless, it was recorded that Vicky Hernández's body had irregular wounds in her left eye and left frontal region, and bruising around her eye. Also, evidence was found that could lead to the conclusion that she might have been the victim of sexual violence in the moments prior to her death.¹³⁰ The Court understands that, owing to the circumstances in which the facts occurred that culminated in Vicky Hernández's death, she must have experienced pain and anguish in the moments before her murder, and this leads to the reasonable conclusion that her physical and moral integrity were violated in the terms of Article 5(1) of the American Convention.

B.2. The violation of the rights to judicial guarantees and judicial protection of Vicky Hernández's family

103. In light of the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25) that must be substantiated pursuant to the rules of due process of law (Article 8(1)), all within the general obligation of those States to ensure the free and full exercise of the rights recognized in the Convention to every person subject to their jurisdiction (Article 1(1)). The right of access to justice, within a reasonable time, must ensure the right of the presumed victims or their next of kin that everything necessary is done to know the truth of what happened and to investigate, prosecute and, punish, as appropriate, those eventually found responsible.¹³¹ The Court has also indicated that the duty to investigate is an obligation of means and not of

¹³⁰ As mentioned previous, a condom that had apparently been used was found beside Vicky's body, which could be evidence of possible sexual intercourse before or after her death (*supra* para. 45).

¹³¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 217.

results; however, it requires the investigating body to try and obtain the result sought; in other words, it must take all the necessary steps and make all the required inquiries to determine the truth, using all available legal means.¹³²

104. In the instant case, the Commission and the representatives argued that the State had violated Articles 8(1) and 25 of the Convention, essentially referring to: (a) the lack of due diligence in the investigations; (b) the failure to comply with the principle of a reasonable time in the investigation into the death of Vicky Hernández; (c) the failure to follow up on logical lines of investigation; (d) the fact that Vicky Hernández's family did not take part in the investigations; (e) the existence of legal obstacles to the investigations; (f) the specific obligations in the investigation of cases of violence against women – including trans women – that were not complied with in this case, and (g) the discrimination owing to the application of stereotypes and the failure to adopt a gender-based approach in the investigations.

105. As it has found in this judgment, the Court recalls that the State made a partial acknowledgement of its responsibility in relation to the violation of Articles 8(1) and 25 of the Convention to the detriment of Vicky Hernández's family (*supra* Chapter IV.A). Therefore, the Court understands that the dispute has ceased with regard to the alleged violations of Articles 8 and 25. Nevertheless, bearing in mind the nature of the case, the Court finds it necessary to mention some aspects of the obligation to investigate.

106. With regard to logical lines of investigation, the Court recalls that, to ensure the effectiveness of the investigation of human rights violations, it is necessary to avoid omissions in obtaining evidence and in following up on logical lines of investigation.¹³³ The Court has specified the principal guidelines that must be observed in criminal investigations into human rights violations, which may include, *inter alia*: the recovery and preservation of evidence in order to contribute to any potential criminal investigation of those responsible; the identification of possible witnesses and obtaining their statements, and the determination of the cause, manner, place and time of the fact investigated. It is also necessary to conduct a thorough examination of the scene of the crime, and ensure that rigorous tests are performed by qualified professionals using the most appropriate procedures,¹³⁴ and this entails guaranteeing the proper chain of custody.

107. In addition, the Court has indicated that when violent acts such as homicides are investigated, the state authorities have the duty to take all reasonable measures to discover whether possible discrimination is involved. This obligation signifies that when there are indications or concrete suspicions of discrimination-based violence, the State must take all reasonable steps, based on the circumstances, to gather and safeguard the evidence, explore all practical means to discover the truth, and issue fully reasoned, impartial and objective decisions, without omitting suspicious facts that may indicate discrimination-based violence.¹³⁵ The failure by the authorities to investigate possible discriminatory motives may, *per se*, constitute a form of discrimination, contrary to the prohibition established in Article 1(1) of

¹³² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120*, para. 83, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 120.

¹³³ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120*, paras. 88 and 105, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 194.

¹³⁴ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*, para. 128, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 194.

¹³⁵ Cf. *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 196. See, similarly, *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of May 19, 2014. Series C No. 277*, para. 208.

the Convention¹³⁶.

108. In the instant case, the Court notes that the only line of investigation adopted by Honduras was the one to identify the person related to the supposed assault that Vicky Hernández had suffered and the only evidence in this regard is revealed by a statement taken from the victim's mother two years after the facts occurred (*supra* para. 41). In the investigation, the authorities did not take into account the elements that indicated that the act could be linked to the victim's gender identity, due to the fact that she was a trans woman sex worker. Nor did they take into account her activities in defense of trans women or the possible participation of state agents. In addition, the authorities did not take into consideration the indications that pointed to a possible sexual attack or violence that Vicky Hernández might have suffered (*supra* para. 45), or the context of discrimination and violence against the LGBTI community or the context of police violence against the LGBTI community, particularly trans women sex workers.

109. The arguments concerning discrimination due to stereotyping and the failure to adopt a gender-based approach in the investigation will be analyzed in the following section.

110. Lastly, regarding the alleged legal obstacles arising from the adoption of amnesty decree No 2-2010, the Court notes that the said decree was not applied to the facts of this case and, therefore, will not issue a ruling in this regard.

B.3. The alleged violation of the rights to recognition of juridical personality, personal liberty, privacy, freedom of expression, a name, and equality and non-discrimination to the detriment of Vicky Hernández

111. With regard to the arguments relating to the rights to recognition of juridical personality, personal liberty, privacy, freedom of expression, a name, equality and non-discrimination and, more generally, the right to gender identity, the Court notes that these refer to violations relating to three different aspects: (a) as a result of the murder of Vicky Hernández; (b) in the context of the investigations into this murder, and (c) in the general legal framework of the State of Honduras that did not recognize Vicky Hernández's gender identity.

112. First, it should be noted that there are indications that lead to a reasonable assumption that the violence against Vicky Hernández culminating in her death was very probably committed for gender-based reasons and/or due to her gender expression or her gender identity. In addition, evidence exists that permits presuming that Vicky Hernández could have been a victim of sexual violence. Some of the specific elements that point towards these conclusions are: (a) the context of discrimination and violence against the LGBTI community in Honduras, particularly at the time when the death of Vicky Hernández occurred; (b) the existence of a condom that had apparently been used beside Vicky's body; (c) the exposure of Vicky Hernández's lifeless body to public view, dressed in her clothing as a sex worker; (d) her status as a defender of LGBTI persons and their rights, and (e) the nature of the injuries to her face (she had irregular wounds in her left eye and the left frontal region and bruising around her eye) (*supra* para. 45).

113. In addition, the State recognized that the authorities had not conducted the investigations satisfactorily and, therefore, acknowledged its responsibility for a violation of the rights to judicial guarantees and judicial protection contained in Articles 8(1) and 25 of the American Convention (*supra* Chapter IV.A). In addition, during those investigations, the Honduran authorities: (a) failed to follow a line of investigation related to Vicky Hernández's

¹³⁶ Cf. *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 196. See, similarly, *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 223.

work as an activist within the trans organization, *Colectivo Unidad Color Rosa*; (b) failed to look into facts such as a possible hate crime based on gender identity, despite the existence of a context of such crimes; (c) according to the case file, classified the murder as a possible crime of passion; (d) failed to perform the corresponding tests to determine whether Vicky Hernández was a victim of sexual violence, and (e) recorded Vicky Hernández's sex/gender as masculine and, in general, identified her as a man (*supra* para. 48).

114. In this regard, the Court recalls that it has recognized that personal prejudices and gender stereotypes may affect the objectivity of state officials responsible for investigating complaints and influence their perceptions when determining whether or not an act of violence has occurred, and also their evaluation of the credibility of the witnesses and even the victim. Stereotyping "distorts perceptions and result in decisions based on preconceived beliefs and misconceptions instead of facts" and this, in turn, can result in the denial of justice, including the re-victimization of those filing complaints. The Court considers that this may occur in cases of stereotyping based on gender expression and gender identity.¹³⁷

115. Regarding the right to gender identity, the Court has indicated that the right of each person to define his or her sexual and gender identity is protected by the American Convention under the provisions that guarantee the free development of the personality (Articles 7 and 11(2)), and the rights to privacy (Article 11(2)), recognition of juridical personality (Article 3), and a name (Article 18).¹³⁸

116. Regarding the relationship between the rights to liberty in the broadest sense, gender expression, gender identity, and privacy, the Court has indicated in other cases that recognition of the affirmation of a person's sexual and gender identity is protected by the American Convention under Articles 7 and 11(2). Accordingly, gender and sexual identity are linked to the concept of liberty, the right to privacy and the possibility of self-determination of all human beings and to freely choose the options and circumstances that give a meaning to their existence in keeping with their personal convictions. Therefore, the State's recognition of gender identity is of crucial importance to ensure that trans persons may fully enjoy their human rights, including protection against violence, torture and ill-treatment.¹³⁹

117. The Court has also considered that the right to identity and, in particular, the expression of identity is also protected by Article 13 which recognizes the right to freedom of expression. From this perspective, arbitrary interference in the expression of the different attributes of identity may signify a violation of that right. Consequently, to ensure this right, the State and society must respect and ensure the individuality of each person, as well as the right to be treated in keeping with the essential aspects of their personality, as well as the legitimate ability to establish the exteriorization of their persona according to their innermost convictions.¹⁴⁰ Similarly, this Court has understood that a close relationship exists between, on the one hand, the recognition of juridical personality and, on the other, the legal attributes inherent in all human beings that distinguish, identify and individualize them.¹⁴¹

118. Furthermore, in light of the obligation of non-discrimination, States are also obliged to adopt positive measures to reverse or change any discriminatory situations existing within their societies that prejudice a specific group of persons. This entails the special obligation of

¹³⁷ Cf. *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 199. See also, *Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 24, 2017. Series C No. 339, para. 173, and *Case of López Soto et al. v. Venezuela*, *supra*, para. 326.

¹³⁸ Cf. Advisory Opinion OC-24/17, *supra*, para. 115.

¹³⁹ Cf. Advisory Opinion OC-24/17, *supra*, para. 101.

¹⁴⁰ Cf. Advisory Opinion OC-24/17, *supra*, paras. 91, 96 and 101.

¹⁴¹ Cf. Advisory Opinion OC-24/17, *supra*, paras. 91, 96, 101 and 104.

protection that the State must exercise with regard to the actions and practices of third parties who, with its acquiescence or tolerance, create, maintain or facilitate discriminatory situations.¹⁴²

119. In its case law, this Court has recognized that LGBTI persons have historically been victims of structural discrimination, stigmatization, diverse types of violence, and violations of their fundamental rights (*supra* para. 67). In addition, as indicated, such conduct violates not only the right to life and personal integrity, but also the right to gender identity and/or gender expression, as well as all the rights related to this.¹⁴³

120. In this regard, the Court considers that the respect and guarantee of the rights to life, personal integrity and gender identity of trans persons are closely related. In the instant case, the Court has noted that there were compelling indications that the death and the acts of violence against Vicky Hernández occurred for motives of gender and/or owing to her gender expression or her gender identity. Therefore, in the particular circumstances of this case, the determination of the State's responsibility for an alleged violation of the right to gender identity must necessarily be derived, among other considerations, from the State's responsibility for a violation of Vicky Hernández's right to life since her death occurred precisely because of the way in which she expressed her gender identity.

121. Added to the above is the fact that, during the investigation into Vicky Hernández's murder, the Honduran authorities systematically employed stereotyping and gender-based prejudices (*supra* para. 113). Indeed, it has already been mentioned that, during the investigation procedures, her self-perceived gender identity was ignored and logical lines of investigation were not followed up on which could have examined her death as a possible manifestation of gender-based violence and discrimination owing to her trans feminine identity.

122. Additionally, the fact that Vicky Hernández was unable to have her gender identity and her chosen name reflected on her identity document, in keeping with her self-perceived gender, probably had a significant impact in the context of the investigations that, as indicated, were characterized by ignoring and omitting lines of investigation related to her gender identity (*supra* para. 113). Moreover, this lack of recognition of her self-perceived gender identity could, more broadly, have fostered a form of discrimination and social exclusion because she had expressed that identity.

123. As already indicated, sexual orientation and gender identity, together with gender expression, are categories protected by the Convention and, therefore, any discriminatory law, act or practice based on a person's sexual orientation, gender identity or gender expression are prohibited by the Convention. Consequently, this Court indicated *supra* that no domestic legal provision, decision or practice, either by state authorities or by private individuals, may in any way reduce or restrict someone's rights based on their sexual orientation, gender identity and/or gender expression (*supra* para. 67).

124. Accordingly, the Court has indicated that the right of each person to define his or her sexual and gender identity autonomously and that the information in records, and on identity documents, should correspond to and coincide with their self-defined identity is protected by the American Convention under the provisions that ensure the free development of the personality (Articles 7 and 11(2)), the right to privacy (Article 11(2)), the recognition of juridical personality (Article 3), and the right to a name (Article 18). Thus, States must respect and ensure to everyone the possibility of registering and/or changing, rectifying or amending their name and the other essential components of their identity such as their photograph, or

¹⁴² Cf. Advisory Opinion OC-18/03, *supra*, para. 104, and *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 89.

¹⁴³ Cf. Advisory Opinion OC-24/17, *supra*, paras. 113 and 114.

the reference to sex or gender, without interference by the public authorities or by third parties. This necessarily means that those who identify themselves with diverse gender identities must be recognized as such. Moreover, the State must ensure that they can exercise their rights and assume obligations based on that same identity, without being obliged to retain another identity that does not represent their individuality, especially when this involves a continuous exposure to the social questioning of that same identity, thus affecting the exercise and enjoyment of the rights recognized by both domestic and international law.¹⁴⁴

125. Based on the foregoing considerations and in light of the close relationship in this case between, on the one hand, the rights to judicial guarantees and judicial protection and, on the other, the right to gender identity and gender expression, the Court finds that the State is also responsible for the violation of the obligation to ensure the rights to recognition of juridical personality, personal liberty, privacy, freedom of expression, and a name contained in Articles 3, 7, 11, 13 and 18 of the American Convention, in relation to Articles 1(1), 24, 8 and 25 of this instrument, to the detriment of Vicky Hernández.

B.4. The alleged violation of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)

126. The Commission and the representatives argued that, in this case, the State had violated the obligations contained in Article 7(a) and 7(b) of Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women owing to the events relating to the murder of Vicky Hernández, as well as for failing to act with due diligence in the investigation into her death.

127. The Court recalls that the Convention of Belém do Pará was adopted owing to the need to provide enhanced protection to the right of women to a life free of violence and to eliminate all situations of violence that could affect them in both the public and the private sphere. Also, as indicated in the Preamble to that Convention, violence against women constitutes a violation of their human rights and an offense against human dignity. Consequently, the “States Parties condemn[ed] all forms of violence against women and agree[d] to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence.”

128. Article 1 of the Convention of Belém do Pará refers to violence against women based on their gender. This violence is based on a system of patriarchal domination deeply-rooted in gender stereotypes and constitutes a “manifestation of the historically unequal power relations between women and men.”¹⁴⁵ Violence against persons based on gender identity or expression, and specifically against trans women, is also based on gender, as a social construct of the identities, attributes and roles that society assigns to women and men.¹⁴⁶ However, its expression responds to a specific pattern of violence and discrimination so that it should be addressed taking into account its particularities in order to respond adequately and effectively. The United Nations High Commissioner for Human Rights has indicated that transphobic violence “constitute[s] a form of gender-based violence, driven by a desire to punish those seen as defying gender norms” and also that “violence against LGBT persons tends to be

¹⁴⁴ Cf. *Advisory Opinion OC-24/17, supra*, para. 115.

¹⁴⁵ *Case of the Miguel Castro Castro Prison v. Peru*. Merits, reparations and costs. Judgment of November 25, 2006. Series C No. 160, para. 303; *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of November 16, 2009. Series C No. 205, para. 397 and *Case of Guzmán Albarracín et al. v. Ecuador*. Merits, reparations and costs. Judgment of June 24, 2020. Series C No. 405, para. 113.

¹⁴⁶ Cf. *Advisory Opinion OC-24/17, supra*, para. 32.

especially vicious compared to other bias-motivated crimes.”¹⁴⁷

129. In addition, Article 9 of the Convention of Belém do Pará urges States, when adopting measures to prevent, punish and eradicate violence against women, to take into account “the vulnerability of women to violence by reason of, among others, their race or ethnic background, or their status as migrants, refugees or displaced persons.” This list of factors is not *numerus clausus*, as indicated by the use of the expression “among others.” Thus, it may be considered that, in certain circumstances such as those of this case which relates to a trans woman, gender identity constitutes a factor that may contribute, intersectionally, to the vulnerability of women to gender-based violence. Indeed, the Court has determined that sexual orientation and gender identity are categories protected by the American Convention and that any discriminatory law, act or practice based on a person’s sexual orientation or gender identity is prohibited.¹⁴⁸ In addition, the Court has indicated that gender identity is “the internal and individual experience of gender as each person feels it, which may or may not correspond to the sex assigned at birth,” so that “recognition of gender identity is necessarily linked to the idea that sex and gender should be perceived as being part of the constructed identity that is the result of the free and autonomous decision of each person and without this having to be subject to their genitalia.”¹⁴⁹

130. Similarly, in its Report on Violence against Lesbians, Gay, Bisexual, Trans and Intersex Persons in the Americas, the Inter-American Commission noted that:

Sexual orientation and gender identity are not expressly included in the Convention of Belém do Pará. However, the IACHR is of the view that the Convention of Belém do Pará is a “living instrument.” Thus, the Commission considers that when Article 9 of the Convention of Belém do Pará speaks of the State obligation to take special account of factors of special vulnerability to violence, listing certain examples “among others,” these other factors would necessarily include sexual orientation and gender identity.¹⁵⁰

131. Consistent with this, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) indicated in its General Recommendation No. 28 of 2010 that, “[a]lthough the Convention [CEDAW] only refers to sex-based discrimination, interpreting article 1 together with articles 2(f) and 5(a) indicates that the Convention covers gender-based discrimination against women.”¹⁵¹ In its General Recommendation No. 35 of 2017 on gender-based violence, CEDAW considered that the expression “gender-based violence against women” was a “more precise term that makes explicit the gendered causes and impacts of the violence.” Furthermore, in this recommendation it examined the different factors that may have an impact on discrimination against women, among them “being lesbian, bisexual, transgender or intersex.”¹⁵²

132. Similarly, the Follow-up Mechanism to the Convention of Belém do Pará (“MESECVI”) includes in its Practical Guide to the System of Progress Indicators for Measuring the Implementation of the Convention the need to include rates of violence and hate crimes

¹⁴⁷ United Nations High Commissioner for Human Rights. *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, Un Doc A/HRC/19/41, November 17, 2011.

¹⁴⁸ Cf. *Case of Atala Riffo and daughters v. Chile*, *supra*, para. 91 and *Advisory Opinion OC-24/17*, *supra*, para. 68.

¹⁴⁹ *Advisory Opinion OC-24/17*, *supra*, para. 94.

¹⁵⁰ Inter-American Commission on Human Rights. *Violence against Lesbians, Gay, Bisexual, Trans and Intersex Persons in the Americas*, November 12, 2015. OAS/Ser.L/V/II.rev.1 Doc 36, para. 52.

¹⁵¹ Committee on the Elimination of Discrimination against Women. *General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, CEDAW/C/GC728, para. 5.

¹⁵² Committee on the Elimination of Discrimination against Women. *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, July 26, 2017, CEDAW/C/GC/35, paras. 9 and 12.

against girls, adolescents, and adult and older women who are lesbians and/or against persons with diverse gender identities.¹⁵³

133. Based on the above and on an evolutive interpretation,¹⁵⁴ the Court considers that, in the sphere of application of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, there is also a reference to situations of gender-based violence against trans women, as in this case.

134. In addition, the Court recalls that, when applying the said treaty, it has developed the notion of enhanced due diligence.¹⁵⁵ This signifies applying a gender perspective in the investigation and prosecution of cases of violence against women, including violence against trans women, as well as avoiding chronic impunity that sends a message of tolerance and permits a repetition of the facts. The purpose of the treaty is to achieve the eradication of this phenomenon which is structurally rooted in our societies.

135. In the preceding sections, the Court has examined the acts of violence against Vicky Hernández and her murder and concluded that the State was responsible for the violation of her rights to life and personal integrity (*supra* Chapter VII.2.B.B1). It has also considered that there is sufficient evidence to conclude that these facts occurred owing to her gender identity as a trans woman (*supra* para. 112). Furthermore, the Court underscored the State's enhanced obligation to investigate such facts, and also the omissions that occurred owing to the failure to consider the particularities involved in the investigation of a crime related to the victim's gender identity. Moreover, in this case, it was very relevant that Vicky Hernández was a trans woman sex worker living with HIV, and that she carried out activities in defense of the rights of trans women. These characteristics placed Vicky Hernández in a particularly vulnerable situation where numerous factors of discrimination converged intersectionally.

136. On this basis, interpreting Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, together with its Articles 1 and 9, the Court finds that the State is also responsible for failing to comply with the obligations established in Article 7(a) of this instrument to the detriment of Vicky Hernández, as described above in relation to the scope of State responsibility for the violation of the right to life (*supra* paras. 101 and 102), and in Article 7(b) of this instrument, to the detriment of Vicky Hernández's family, for failing to investigate adequately, with the required strict due diligence and free of gender stereotyping, the events that led to her death.

VII.3 RIGHT TO PERSONAL INTEGRITY¹⁵⁶ OF VICKY HERNÁNDEZ'S FAMILY

A. Arguments of the parties and the Commission

137. The **Commission** argued that both the loss of a loved one and the gravity of the events that occurred, added to the failure to clarify the facts and the absence of an adequate and prompt judicial response, gave rise to effects that exceeded the direct victim, and extended to the members of her family. Consequently, it considered that the State had violated the right to mental and moral integrity established in Article 5(1) of the Convention, to the

¹⁵³ Cf. MESECVI. *Practical Guide to the System of Progress Indicators for Measuring the Implementation of the Belém do Pará Convention*. February 2015. Module 5, p. 75 of the Guide.

¹⁵⁴ *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, October 1, 1999. Series A No. 16, para. 114.

¹⁵⁵ Cf. *Case of López Soto et al. v. Venezuela*, *supra*, paras. 131, 136 and 141.

¹⁵⁶ Article 25 of the American Convention.

detriment of the members of Vicky Hernández's family.

138. The **representatives** added to this that, in the instant case, the family of Vicky Hernández had experienced profound suffering owing to the death of their loved one, as well as to the impunity in which the facts remained. In addition, they indicated that the death of Vicky Hernández aggravated the already difficult financial situation of the family. Lastly, they also mentioned that the family's personal integrity had been violated by the authorities' lack of respect with regard to everything related to Vicky's case.

139. The **State** argued that it was "evident that the incident in which Vicky Hernández lost her life could not have had a direct effect on her family and the arguments regarding the personal integrity of the family members was not logical." Therefore, it indicated that it was not admissible for the Court to recognize the alleged effects on Vicky Hernández's family.

B. Considerations of the Court

140. The Court notes that the Commission and the representatives have argued that the State was responsible for violating the right to integrity of Vicky Hernández's family owing to: (a) the loss of their loved one; (b) the failure to clarify the incident, the absence of an adequate and prompt judicial response, and the State's failure to acknowledge their rights as victims under Honduran law, and (c) the impact of Vicky Hernández's death on the financial situation of her family.

141. The representatives substantiated these violations by the statements made by Vicky Hernández's family¹⁵⁷ and by a socio-economic report prepared by Cattrachas on March 2, 2017.¹⁵⁸ Rosa Argelia Hernández Martínez, Vicky Hernández's mother, stated, in particular, that her daughter's murder had affected her considerably and that she felt "a profound sadness" because "a mother is not prepared to lose" her daughter and "especially when she is aware that they killed her in that way because she was trans." She indicated that, at times, she has "feelings of despair" and would like to die. She stated that, at times, she "starts crying out of the blue." She also stated that, sometimes, she is unable to sleep thinking about her daughter who was killed and the way in which her death occurred.¹⁵⁹ Similarly, Merelin Tatiana Rápalo Hernández, Vicky Hernández's sister, declared that Vicky's death affected her greatly and that, when she thinks of her and everything that happened, her death, and how she suffered all her life because she had no support, she is "unable to sleep." She added that, even though many years had passed since her death, it was still difficult to get over it.¹⁶⁰

142. Similarly, Rosa Argelia Hernández Martínez recounted how her daughter, Vicky, was assaulted, mistreated and discriminated against because she was a trans woman sex worker. She described: (a) how she was wounded in the head and in the arm by a blow from a machete inflicted by a security guard who told her "I hate prostitutes, they should not exist"; (b) how she was mistreated by the police when she went to file the complaint; on that occasion, the police allegedly told her "as far as we're concerned you can die, prostitute, gay; as far as we're concerned you don't exist and are not worth anything"; (c) how her daughter, Vicky, had told her that "other people" took advantage of her, "treated [her] badly" and thought that they "could do whatever they wanted" against her, and (d) how her daughter told her that

¹⁵⁷ Cf. Affidavits made by members of Vicky Hernández's family: Merelin Tatiana Rápalo Hernández, Vicky Hernández's sister, and Rosa Argelia Hernández Martínez, Vicky Hernández's mother (evidence file, folios 1515 to 1528).

¹⁵⁸ Cf. Socio-economic report, Cattrachas, March 2, 2017 (evidence file, folios 5 to 13).

¹⁵⁹ Cf. Affidavit made by Rosa Argelia Hernández Martínez (evidence file, folio 1520).

¹⁶⁰ Cf. Affidavit made by Merelin Tatiana Rápalo Hernández (evidence file, folio 1526).

she had been the victim of rape.¹⁶¹ Meanwhile, Merelin Tatiana Rápalo Hernández recounted that Vicky had told her how “difficult it was to live with the daily discrimination and mistreatment.” She indicated that even when she accompanied Vicky on an errand, she “saw how people stared at her, insulted her and, in the worst case, threw things at her,” and how, on many occasions, they even threw things at Merelin herself.¹⁶² These statements described the suffering experienced by Vicky’s family members who had to witness the constant and systematic discrimination against their loved one.

143. Furthermore, in the chapter on acknowledgement of responsibility and in the chapter on judicial guarantees and judicial protection (*supra* Chapter VII.2.B.B2), the Court reached the conclusion that the State was responsible for a violation of those rights to the detriment of Vicky Hernández’s family. The Court also determined that the State was responsible for a violation of the right to life of Vicky Hernández (*supra* Chapter VII.1). Consequently, owing to the different statements made by Vicky Hernández’s family and taking into account the foregoing, the Court finds that the State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the Convention, to the detriment of Vicky Hernández’s family¹⁶³ owing to the suffering that her death caused them, the permanent discrimination she was subjected to, and the situation of impunity of her murder. Regarding the impact that the death of Vicky Hernández may have had on the financial situation of her family, this will be examined in the chapter on reparations in the part corresponding to pecuniary damage (*infra* Chapter VIII).

VIII REPARATIONS¹⁶⁴

144. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.¹⁶⁵

145. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the rights that have been violated and to redress the consequences of the violations.¹⁶⁶ Therefore, the Court has found it necessary to grant diverse measures of reparation in order to redress the harm integrally and, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.¹⁶⁷

¹⁶¹ Cf. Affidavit made by Rosa Argelia Hernández Martínez (evidence file, folio 1518).

¹⁶² Cf. Affidavit made by Merelin Tatiana Rápalo Hernández (evidence file, folio 1526).

¹⁶³ These persons are identified in footnote #1.

¹⁶⁴ Application of Article 63(1) of the American Convention.

¹⁶⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2020. Series C No. 419, para. 126.

¹⁶⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 24, and *Case of Mota Abarullo et al. v. Venezuela. Merits, reparations and costs. Judgment of November 18, 2020. Series C No. 417, para. 135.*

¹⁶⁷ Cf. *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Mota Abarullo et al. v. Venezuela, supra*, para. 135.

146. In addition, the Court has established that the reparations should have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to redress the respective harm. Accordingly, the Court must analyze this concurrence in order to rule appropriately and according to law.¹⁶⁸

147. Consequently, based on the considerations on the merits and the violations of the Convention declared in this judgment, the Court will proceed to examine the claims presented by the Commission and the victims' representatives, as well as the State's observations on these, in light of the criteria established in its case law on the nature and scope of the obligation to make reparation, in order to establish measures to redress the harm caused.¹⁶⁹

A. Injured party

148. The Court considers that, pursuant to Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any rights recognized therein is the injured party. Therefore, the Court considers that Vicky Hernández, her mother Rosa Argelia Hernández Martínez, her sister Merelin Tatiana Rápalo Hernández, and her niece Argelia Johana Reyes Ríos are the "injured party" and, as victims of the violations declared in Chapter VII, they will be considered beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate

149. The **Commission** asked that the Court order the State to continue the criminal investigation in a diligent and effective manner, within a reasonable time, in order to fully clarify the facts, identify all those who bear possible responsibility, and impose the appropriate punishments for the human rights violations declared in the report.

150. The **representatives** agreed with the Commission and asked that the Court order the State of Honduras to investigate the facts through the competent organs of justice and that, to this end, the State must provide the authorities in charge of the investigation with all necessary means to conduct it. They added that the investigation should be aimed at clarifying the facts fully, identifying all the possible masterminds and perpetrators, and imposing the corresponding punishments. They also indicated that it was crucial that the main lines of investigation included the direct participation of state agents in Vicky's execution, the perpetration of a hate crime, and the possible presence of sexual violence. Lastly, they asked the Court to order the State to determine the disciplinary responsibility of the public servants and agents culpable of the negligence and errors committed in the investigation of the case.

151. The **State** reiterated that it denied that the facts could be classified as an extrajudicial execution or a hate crime because the participation of state agents had not been proved. Therefore, it disagreed that the main lines of investigation should seek to establish the direct participation of state agents.

152. In light of the conclusions in this judgment and the acknowledgement of responsibility made by the State concerning the violation of the duty to investigate, the Court establishes that the State, within a reasonable time and through officials training in responding to victims of discrimination and violence against trans persons, must promote and continue the necessary extensive, systematic and thorough investigations to determine, prosecute and punish, as appropriate, those responsible for the murder of Vicky Hernández, avoiding the application of discriminatory stereotyping and any action that could revictimize her family

¹⁶⁸ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Mota Abarullo et al. v. Venezuela*, *supra*, para. 135.

¹⁶⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 25 and 26, and *Case of Almeida v. Argentina. Merits, reparations and costs*. Judgment of November 17, 2020. Series C No. 416, para. 57.

members.¹⁷⁰ This investigation must follow specific lines of investigation that take into account the victim's gender identity and the possibility that her murder was related to this identity and/or her activities as a defender of the rights of LGBTI persons and as a sex worker, as well as the possibility that acts of sexual violence had been committed against her. Also, the investigation must be conducted objectively, rather than starting out with a preconceived notion that state agents were not involved. The investigation must also be conducted based on the special investigation protocols that the State must adopt and that are established below (para. 176). Likewise, the State must determine the administrative, disciplinary and criminal responsibilities of the public servants and agents culpable of the negligence and errors committed in the investigation of the case pursuant to the applicable law.

153. Regarding the above, the Court finds it necessary to recall that the protection system instituted by the American Convention does not substitute for the national jurisdictions, but rather complements them.¹⁷¹ This means that the State is the principal guarantor of human rights; therefore, if an act occurs that violates those rights, it is the State that should resolve the matter at the domestic level and, if necessary, make reparation before having to respond before an international instance.¹⁷² It is only if a specific case is not settled at the domestic or national level that the Convention establishes an international level at which the main organs are the Commission and the Court.¹⁷³ Therefore, owing to the very nature of the inter-American system for the protection of human rights, when the Court issues a judgment, it is usual that a prolonged period of time has passed without the victims receiving reparation. Consequently, when the Court orders a criminal investigation into the facts of the case so that they do not remain unpunished and the victims may obtain the justice that, until then, has been denied to them, the State must immediately adopt the necessary measures to ensure that the said reparation does not turn out to be illusory. The State may not treat the said criminal investigation in the same way as any other investigation; rather it must give it priority attention and take special measures to ensure that the case is expedited as much as possible, because it seeks to make reparation to the victims in the case.¹⁷⁴

C. Measures of satisfaction and rehabilitation

C.1. Measures of satisfaction

C.1.a Publication of the judgment

154. The **representatives** asked that, as a measure of satisfaction, the Court order the publication of the judgment in this case in the Official Gazette and the summary of the judgment in "the national newspapers with the highest circulation." In addition, the asked

¹⁷⁰ Cf. *Case of López Soto et al. v. Venezuela*, *supra*, para. 278, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 371, para. 338.

¹⁷¹ Cf. *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of October 15, 2014. Series C No. 286, para. 137, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations*. Judgment of October 6, 2020. Series C No. 412, para. 167.

¹⁷² Cf. *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 157, para. 66, and *Case of Martínez Esquivia v. Colombia, supra*, para. 167.

¹⁷³ Cf. *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C. No 330, para. 92, and *Case of Petro Urrego v. Colombia, supra*, para. 102.

¹⁷⁴ Cf. *Case of Bueno Alves v. Argentina. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 5, 2011, *considerandum* 44, and *Case of Torres Millacura v. Argentina. Monitoring compliance with judgment and reimbursement of the Victims' Legal Assistance Fund*. Order of the Inter-American Court of Human Rights of July 21, 2020, *considerandum* 45.

that the Court order the publication of the full text of the judgment for at least one year on an “appropriate” official website of the State. The **State** indicated that, if this measure was accepted, the judgment should be published as ordered in other cases, establishing “the time frames and the details of the publication” in order to ensure compliance with this measure.

155. The Court establishes, as it has in other cases,¹⁷⁵ that, within six months of notification of this judgment, the State must publish in a legible and appropriate font: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this judgment, in full, available for one year on an official website of the State. The State must advise the Court immediately when it has made each of the publications ordered, regardless of the one-year time frame for presenting its first report established in the twentieth operative paragraph of this judgment.

C.1.b Public act to acknowledge international responsibility

156. The **representatives** asked the Court to order the State to hold a public act to acknowledge and accept responsibility for the facts of this case. They asked that senior representatives of the Honduran Government take part in the act and that the organization and other details of the public ceremony be previously and duly consulted with the members of Vicky Hernández’s family; also, the expenditure required for them to attend the ceremony should be covered by the State. The **State** indicated that, if this measure was granted, the Court should establish the time frame and the details, and the public institutions that should be represented either by the head or the person designated, provided the latter had “decision-making powers.”

157. The Court appreciates the partial acknowledgement of international responsibility made by the State during the public hearing before the Court, which could represent partial satisfaction for the victims based on the violations declared in this judgment. Nevertheless, it finds it necessary to establish, in order to redress the harm caused to the victims and to avoid facts such as those of this case being repeated, that the State organize a public act to acknowledge international responsibility for the facts of the instant case. During this act, reference must be made to the human rights violations declared in this judgment. Also, it must be carried out by means of a public ceremony in the presence of senior State officials and those who have been declared victims in this judgment, if they so wish, and their representatives.¹⁷⁶

158. The State, the victims and/or their representatives must reach agreement on the way in which the public act is organized, as well as on its details, such as the place and date.¹⁷⁷ If Vicky Hernández’s family agree, this act must be held at the “*Colectivo Unidad Color Rosa*,” provided the Colectivo also agrees. In addition, it must be ensured that the victims who are able to attend do so and, to this end, the State must cover the costs corresponding to their transportation. Also, as it has in other cases,¹⁷⁸ the Court orders the State to publicize this act as widely as possible by the media, including disseminating it by radio, television and social

¹⁷⁵ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 226.

¹⁷⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 81, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 347.

¹⁷⁷ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 353, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 348.

¹⁷⁸ See, for example, *Case of the Miguel Castro Castro Prison v. Peru, supra*, para. 445, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 348.

networks. The state authorities designated to attend or participate in the act must be senior state authorities, including the highest authorities of the Police. The State has one year from notification of this judgment to comply with the obligation to hold the act to acknowledge international responsibility.

C.1.c Scholarship for Argelia Johana Reyes Ríos

159. The **representatives** asked the Court to order the Honduran State to guarantee a scholarship for Argelia Johana Reyes Ríos consisting of a monthly stipend that fully covered the expenses of her studies in a secondary education establishment and in the university that she, together with her grandmother, decide, until she has terminated her “advanced studies for a professional career.” They indicated that the scholarship should be subject to the condition that she did not abandon her studies and be administered by her grandmother, Rosa Argelia Hernández Martínez, until Argelia Johana Reyes Ríos came of age, when she herself should administer it.

160. The **State** indicated that, if this measure were granted, the Court should establish an amount and the period that it would cover, and authorize the Honduran State to set up a trust fund through a national banking institution to administer and disburse the funds on a monthly basis so that she could attend college and, if appropriate, continue with university studies under the national system, establishing a cancellation clause if she abandoned her studies and subject to her academic performance.

161. The Court notes that, according to the affidavits of Rosa Argelia Hernández Martínez and Merelin Tatiana Rápalo Hernández, Vicky Hernández provided important financial support to her family and contributed to the expenses of food, electricity, water and rent; therefore, after her death, their financial situation had deteriorated substantially.¹⁷⁹ Taking this into account, as well as the fact that, in this case, it has concluded that the State was responsible for the death of Vicky Hernández (*supra* VII.2.B.B1), the Court finds it necessary to order the State to grant the requested scholarship in favor of Argelia Johana Reyes Ríos consisting of a monthly stipend that fully covers the expenses relating to her studies in a public secondary education establishment together with technical or university education in Honduras.

162. Moreover, this scholarship must not be conditioned to her obtaining notes that would earn her a merit scholarship, or depend on her academic performance; rather, it must be granted based on her condition as a victim owing to the violations declared in this judgment. The scholarship must be granted as soon as the beneficiary makes the request to the State and until the conclusion of her advanced technical or university studies and must cover all the expenses until she has completely terminated such studies, including all educational or academic materials, as well as maintenance costs. The victim or her legal representatives have six months from notification of this judgment to inform the State of her intention to receive this scholarship, and 24 months following the completion of her secondary studies to advise the State of her intention to continue to receive this scholarship and the career she has decided to follow at the technical or university level.

C.1.d Audiovisual documentary on the situation of discrimination and violence experienced by trans women in Honduras

163. In view of the circumstances of this case, which constitutes a manifestation of the context of violence against trans women in Honduras, the Court establishes, as it has in other

¹⁷⁹ Cf. Affidavits of Rosa Argelia Hernández Martínez and Merelin Tatiana Rápalo Hernández (evidence file, folios 1520 and 1525).

cases,¹⁸⁰ that an audiovisual documentary be made on the situation of discrimination and violence experienced by trans women in Honduras. This documentary must refer to the facts of the instant case and its content; also, the victims must play an active role at all stages of its production. The State must cover all the expenses arising from the production and distribution of this video. The Court considers that the video should be distributed as widely as possible among the victims, their representatives, police and military training centers, and the country's schools and universities for its promotion and subsequent screening with the end purpose of informing Honduran society about these facts and about the situation experienced by trans women in Honduras. The video must be transmitted, at least once, at prime time, by a national television channel, and placed on the website of the National Police of Honduras. The State has one year from notification of this judgment to produce and distribute this audiovisual documentary. Furthermore, the State must present a report to the Court on the progress made in compliance with this measure of reparation within six months of notification of this judgment. The State must appoint a contact person to coordinate with the victims or their representatives in the compliance with the measures within four months of notification of this judgment.

C.1.e Creation of the "Vicky Hernández" study grant for trans women

164. Taking into account the context of discrimination against trans women in Honduras, which also constitutes an obstacle for access to the education system, the Court establishes, as it has in other cases,¹⁸¹ that the State must create a program of study grants named after Vicky Hernández for trans women so that they may conclude their secondary or technical studies. This program must cover the expenses, including maintenance, for one person to study in a Honduran public institution and must be renewed each year on a permanent basis. The study grant will be coordinated by a group or organization designated by the victims or their representatives that helps and supports trans women. It will be the said group or organization that determines the conditions for applying for this grant by a merits-based competition, in a procedure that the organization establishes respecting objective criteria. The State has two years from notification of this judgment to comply with this measure. Meanwhile, the victims or their representatives must designate the organization responsible for coordinating the Vicky Hernández study grant within six months of notification of this judgment. And the State must designate a contact person to coordinate with the victims or their representatives in the compliance with the measures within four months of notification of this judgment.

C.2. Measures of rehabilitation

165. The **Commission** asked that the Court establish the physical and mental health care measures necessary for the rehabilitation of Vicky Hernández's family, if they so wish and in a manner that meets their agreement. The **representatives** asked that Vicky Hernández's family be provided with medical and psychosocial care for as long as necessary, including the cost of any medication that is part of the treatment. They also asked that the medical center that provides this physical and psychosocial care be chosen by mutual agreement with the beneficiaries and take into account the specific circumstances and needs of each one. The **State** asked that, should this measure be ordered, the Court establish that it be provided by the State's nearest health center that had the special services required to treat them.

166. The Court has noted the violations of personal integrity suffered by the members of

¹⁸⁰ Cf. *Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, paras. 228 to 230, and *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 365.

¹⁸¹ See, for example, *Case of Cepeda Vargas v. Colombia, supra*, para. 233.

Vicky Hernández's family as a result of the facts of this case (*supra* paras. 140 to 143). Therefore, the Court considers a measure of reparation must be established that provides adequate treatment for the psychological or psychiatric problems suffered by the victim's family and that responds to their specific needs and background.¹⁸² Consequently, the Court orders the State to pay a sum of money so that the members of Vicky Hernández's family are able to cover the costs of the necessary psychological care. The corresponding amount will be defined in the section on non-pecuniary damage (*supra* para. 192).

D. Guarantees of non-repetition

D.1. Education, awareness-raising and training for law enforcement personnel

167. The **Commission** asked that the Court order the State to design education, awareness-raising and training programs on hate crimes against the LGBTI community for its law enforcement personnel. The **representatives** asked that the Court order training and awareness-raising activities for law enforcement agents on LGBTI persons and the risks they face, with differentiated approaches based on sexual orientation, gender identity and expression, and sexual characteristics or those related to the fact of being intersex, in order to prevent the repetition of the extrajudicial execution of LGBTI persons. They indicated that these programs should also include awareness-raising on sex work, HIV positive status, and the work of defending the human rights of the LGBTI community. The **State** indicated that, if this measure of reparation were granted, the Court should determine its scope and duration.

168. Regarding education, awareness-raising and training programs on hate crimes against LGBTI persons for the State's law enforcement personnel, the Court finds it pertinent to order the State to create and implement, within two years, a permanent training program for law enforcement personnel to: (a) raise the awareness of members of the State's law enforcement bodies as regards respect for sexual orientation and gender expression in their interventions with the civilian population; (b) train them on standards of due diligence when conducting investigations related to acts of violence against the LGBTI community; (c) insist on the discriminatory nature of stereotypes relating to sexual orientation and gender expression and the negative impact that their use has on LGBTI persons, and (d) educate them on the rights of those who carry out activities linked to sex work and to the work of defending the human rights of the LGBTI community and persons who are HIV positive, and on the way they should perform their functions in relation to such persons. This training program should be incorporated into the regular training course of the police forces.

169. Also, groups and organisations dedicated to the protection of the rights of trans persons must take part in the planning and execution of these education and training courses.

D.2. Procedure for the recognition of gender identity

170. The **Commission** asked that the State adopt legislative, administrative or other measures to achieve recognition of the self-perceived gender identity of trans persons taking into account inter-American standards in such matters. The **representatives** asked that the Court order the adoption of reforms that permit a change of name and gender of trans persons "based on the self-perceived gender identity, including the creation of a gender identity law and the amendment of article 38 of the Regulations to the National Registry of Persons Act which contains the prohibition to change a person's name or sex, all in accordance with the interpretation of the American Convention made by the Court in its Advisory Opinion 24/17."

¹⁸² Cf. *Case of Barrios Altos v. Peru. Reparations and costs*, *supra*, para. 42 and 45, and *Case of Olivares Muñoz et al. v. Venezuela*, *supra*, para. 156.

171. The **State** argued that it had not been proved that the victim had been prejudiced by a denial by the National Registry of Persons. It added that the causal nexus with the disputed facts had not been established and, therefore, asked the Court not to consider this measure.

172. The Court notes that in Chapter VII.2 and VII.3 of this judgment, it determined that the State was responsible for a violation of Vicky Hernández's right to gender identity, among others, because it had not investigated the facts of this case taking into account her self-perceived gender identity and had conducted the investigation in a discriminatory manner due to prejudices based on gender identity and/or expression. In addition, as indicated, several of the obstacles that cropped up in those investigations were based, in part, on the inexistence of a mechanism or procedure for the recognition of gender identity that allowed people to adapt the data on their identity documents to their self-perceived gender. Consequently, the Court finds it necessary to order the State, within two years of notification of this judgment, to adopt a procedure for the recognition of gender identity. This procedure must allow anyone to amend their identity data on their identity documents and in the public records so that these conform to their self-perceived gender identity.

173. The adoption of this procedure for the recognition of gender identity must conform to the provisions of Advisory Opinion OC-24/17 of November 24, 2017. In particular, it must ensure that anyone interested in rectifying the annotation of gender or, if applicable, the mention of sex or change of name, and substituting their photograph in the records and/or on their identity document to conform to their self-perceived gender identity, may have access to a procedure: (a) addressed at the complete rectification of the self-perceived gender identity; (b) based solely on the free and informed consent of the applicant without involving requirements such as medical and/or psychological or other certifications that could be unreasonable or pathologizing; (c) that should be confidential, and the changes, corrections or amendments to the records and on the identity documents should not reflect the changes made based on the gender identity; (d) that should be rapid and, insofar as possible, cost-free; (e) that should not require evidence of surgery and/or hormonal therapy, and (f) that should not necessarily be regulated by a law.¹⁸³ Lastly, the State must present a report every six months from notification of this judgment, indicating in detail the steps taken to comply with this measure. If it considers this helpful, the State may approach organisations such as the OAS Universal Civil Identity Program in the Americas (PUICA) for any advice or assistance that may be useful to comply with the measure ordered.

D.3. Adoption of special investigation protocols

174. The **representatives** asked that the Court order the State to adopt special investigation protocols with a differentiated LGBTI approach. They added that it was important that the State guarantee that all complaints of hate crimes based on sexual orientation and the real or perceived gender identity or expression of the victim be investigated promptly and thoroughly and that, in those cases in which there was appropriate evidence, formal charges be brought against the perpetrators, who should be prosecuted and duly punished. These action protocols must refer to the existence of prejudices and define homophobia, lesbophobia, misogyny, biphobia and transphobia as possible motives for the perpetration of crimes against persons with non-normative sexual orientation or gender identity or expression or characteristics related to being intersex. They added that these protocols should be implemented as part of the State's criminal policies at all stages of the investigation, including the protocols for forensic medicine and for the public defense service.

175. The **State** indicated that the investigating body already had investigation protocols. Moreover, Vicky Hernández was a human rights defender and, in compliance with the Court's

¹⁸³ Cf. Advisory Opinion OC-24/17, *supra*, paras. 160 and 161.

rulings in the cases of *Pacheco León* and *Escaleras Mejía* against Honduras, in which the State had been ordered to create an investigation protocol for defenders, the representatives and the State were working on this together. Consequently, it asked the Court not to order this measure.

176. The Court notes that, when investigating prejudice-based acts of violence owing to the sexual orientation and real or perceived gender identity or expression of the victim, it is necessary to have specific rules that include the criteria established in this judgment and in other international instruments. Consequently, the Court finds it appropriate to order the State to adopt, within two years of the notification of this judgment, a protocol on investigation and administration of justice during criminal proceedings in cases of LGBTI persons victims of violence. The protocol should be binding under domestic law. It should be addressed at all public officials who intervene in the investigation and processing of criminal proceedings in cases of LGBTI persons victims of violence, as well as public and private health personnel who take part in such investigations. This protocol should include the obligation of state agents to refrain from using discriminatory stereotyping and presumptions when receiving, processing and investigating complaints. When drawing up the protocol, the State must take into account the criteria developed in this judgment and in the Court's case law. It must conform to the standards described in paragraphs 106 to 109 of this judgment.

D.4. Diagnosis, compilation of data and elaboration of statistics

177. The **Commission** asked that the State be ordered to adopt legislative, administrative or other measures to make an adequate diagnosis of the context of violence faced by LGBTI persons in Honduras and to introduce a comprehensive policy for its prevention and eradication that addressed its structural causes. The **representatives** asked that the Court order the State to compile data and prepare statistics on violence against the LGBTI community. They added that the severity of the human rights violations and their systematic nature justified the need for the State to document and systematize them. They also indicated that the State should recognize gender identity as a category when preparing demographic, epidemiological, social and political reports. In this regard, it was necessary that the Police, the Public Prosecution Service, the courts and the prison system recognize the category of transgender when compiling statistics on violence. They indicated that, without this, it was almost impossible for the system to identify patterns of hate crimes committed due to transphobia, or human rights violations against trans defenders, and to adopt the respective measures. Lastly, they underlined that this was particularly necessary because, to date, it was national civil society organizations that had had to fill this information void.

178. The **State** argued that, currently, it was working with the Honduran System to Monitor International Recommendations (SIMOREH), which included the working group on the LGBTI community composed of state institutions and civil society organizations that followed up on the international recommendations made to the State by treaty bodies and facilitated their implementation. In addition, as a member of the OAS, it recalled that it provided reports to the system's organs that were subsequently published. It concluded that the measure requested would overlap with what it was already working on together with the Inter-American Commission and Court.

179. The Court takes note of the information provided by the State concerning the Honduran System to Monitor International Recommendations. Nevertheless, the Court understands that it is necessary to compile comprehensive information on the violence experienced by the LGBTI community in order to assess the true scale of this phenomenon and, on this basis, design strategies to prevent new acts of violence and discrimination and eradicate the

problem. Therefore, as it has in other cases,¹⁸⁴ the Court orders the State to design immediately and to implement within one year, through the corresponding state entity, a system to compile data and figures relating to cases of violence against LGBTI persons in order to assess precisely and uniformly the prevalence, tendencies and patterns of the violence and discrimination against the LGBTI community, disaggregating the data by communities, ethnic origin, religion or beliefs, health, age, class, migratory status and economic situation. In addition, the number of cases prosecuted must be specified, identifying the number of indictments, convictions and acquittals. The State must disseminate this information every year in the corresponding report, ensuring that the general public has access to it, and ensure the confidentiality of the victims' identity. In this regard, the State must present a yearly report to the Court for three years following the implementation of the data compilation system indicating the actions taken to achieve this.

E. Other measures requested

180. The **Commission** asked that the Court order the State: (i) to adopt all necessary measures to ensure access to justice in cases of violence against LGBTI persons based on the standards described in the Merits Report, and (ii) to establish adequate accountability mechanisms for the State's law enforcement agencies in cases of presumed hate crimes against the LGBTI community.

181. The **representatives** added to Commission's requests, that the Court should order the State to: (a) implement a national education and employment inclusion program and organize campaigns; (b) provide "training to judicial authorities and prosecutors on the content of crimes included in the law";¹⁸⁵ (c) prepare and publish a special report on factors that have contributed to impunity in this case; (d) implement a periodic accountability system and establish an independent observatory on violence against the LGBTI community; (e) establish a center to provide comprehensive care to trans women in San Pedro Sula; (f) introduce reforms to derogate the laws that currently prohibit equal marriage and the recognition of common-law unions between persons of the same sex pursuant to the interpretation of the American Convention made in Advisory Opinion 24/17; (g) introduce reforms that ensure the right to conjugal visits between persons of the same sex in the country's prisons under the same conditions as for cisnormative couples, pursuant to the interpretation of the American Convention made in Advisory Opinion 24/17; (h) amend the new Criminal Code so that it expressly includes as an aggravating factor the perpetration of a hate crime based on gender identity, sexual orientation, gender expression or sexual characteristics, and amend other offenses that discriminate against LGBTI persons as regards the exercise of rights; (i) amend the Police and Social Coexistence Act in order to derogate the articles that authorize temporary detention to protect public morals and that, in reality, have made the LGBTI community vulnerable to discrimination by the police; (j) introduce the crime of transfemicide into the country's laws as a new crime that includes among its subjective elements the very special crime of gender violence based on prejudice, vilification and discrimination against the gender and identity assumed by victims and the fact of being trans women, and (k) adopt legislative and other measures to suspend, definitively and in all instances, the effects of Legislative Decree No. 2-2010 on amnesty and return to their previous status all the judicial proceedings

¹⁸⁴ Cf. *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 252.

¹⁸⁵ They indicated that in view of the lack of response of judicial authorities and prosecutors to the human rights violations experienced by LGBTI persons it was necessary for the Court to order the State to educate judicial authorities and prosecutors on the content of crimes based on sexual orientation, gender identity and gender expression, especially those involving public incitement of discrimination, so that the perpetrators, including political or religious leaders, could be prosecuted and convicted, and that the sentences imposed were effectively executed.

on human violations to which this legislative decree has been applied.¹⁸⁶

182. The **State** indicated that, if certain measures were granted, these must be ordered precisely. It also considered that measures such as the preparation of a special report on the factors that contributed to impunity in the case was inadmissible because publication of the judgment would be ordered. In addition, it asked that the Court reject measures relating to legislative and administrative reforms, such as modifications in the civil registries, amendments concerning equal marriage, and conjugal visits to persons of the same sex in prison, because these had no causal nexus with the facts of the case. As for the amnesty decree, it indicated that it had no causal nexus with the alleged violations in this case.

183. Regarding the requests to amend the law in relation to equal marriage and conjugal visits to persons of the same sex in the country's prisons, the Court considers that they have no causal nexus with the violations declared in this case; therefore, it does not find it necessary order measures in this regard. In the case of the other measures requested by the Commission and the representatives, the Court considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to redress the violations suffered by the victims. Therefore, it does not find it necessary to order additional measures, without prejudice to the State deciding to adopt them and grant them at the domestic level.

F. Compensation

F.1 Pecuniary damage

184. The **Commission** required that the State provide full reparation for the pecuniary aspect of the human rights violations declared in its report. The **representatives** asked the Court to establish, in equity, the amount that the State must pay for consequential damage owing to "the difficulty to specify the exact amount of the expenses that the family of Vicky Hernández have incurred" for this concept. Regarding loss of earnings, they indicated that, at the time of her death, Vicky Hernández was paying for her own expenses and those of her family by her sex work. In particular, with her income, Vicky covered the rental expenses of the family home, the water and electricity services, and the infant formula, nappies, medicines and, in general, all the expenses for her niece, Argelia, who was only a baby at the time. On this basis, they asked the Court to establish, in equity, the amount that the State should pay for loss of earnings.

185. The **State** asked that the Court take into consideration that, based on the facts of the case, it had not been possible to prove that Vicky Hernández had been extrajudicially executed or deprived of liberty by state agents and, therefore, the Court should establish the amount corresponding to pecuniary damage in conformity with the facts of the case and its case law.

186. In its case law, this Court has established that pecuniary damage supposes the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.¹⁸⁷

187. Based on the circumstances of this case, the Court finds it reasonable to order the State to pay compensation for pecuniary damage owing to loss of earnings and consequential damage in favor of Vicky Hernández's family. Bearing in mind that the information provided by the representatives does not allow the Court to establish with certainty the amount of the

¹⁸⁶ They indicated that Legislative Decree No. 2-2010 published on February 2, 2010, had permitted numerous human rights violations committed in the context of the coup d'état in Honduras to remain in impunity, in complete disregard of the international obligations derived from the American Convention and other instruments to which the Honduran State is a party.

¹⁸⁷ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Casa Nina v. Peru, supra*, para. 143.

damage caused by the facts examined in this case, the Court establishes, in equity, the amounts of US\$20,000.00 (twenty thousand United States dollars) in favor of Rosa Argelia Hernández Martínez, and US\$10,000.00 (ten thousand United States dollars) in favor of Tatiana Rápalo Hernández.

F.2. Non-pecuniary damage

188. The **Commission** required that the State provide full reparation for the non-pecuniary aspect of the human rights violations declared in its report.

189. The **representatives** asked the Court to order the State of Honduras, in order to make full reparation, to make the following compensation payments: (a) US\$200,000 (two hundred thousand United States dollars) in favor of Vicky Hernández, to be delivered to her heirs in accordance with the inheritance laws in force in Honduras; (b) US\$75,000 (seventy-five thousand United States dollars) in favor of Rosa Argelia Hernández Martínez, Vicky Hernández's mother; (c) US\$50,000 (fifty thousand United States dollars) in favor of Tatiana Rápalo Hernández, Vicky Hernández's sister, and (d) US\$50,000 (fifty thousand United States dollars) in favor of Argelia Johana Reyes Ríos (niece, a minor).

190. In its case law, this Court has developed the concept of non-pecuniary damage, and has established that this may include both the suffering and afflictions caused to the direct victims and their direct family, and also the impairment of values of great significance for the individual, as well as alterations of a non-pecuniary nature in the living conditions of the victims or their families.¹⁸⁸

191. Considering the circumstances of this case, the importance, nature and gravity of the violations committed, the sufferings caused to the victim and the members of her family, as well as the time that has elapsed since the facts occurred, the Court finds it appropriate to order the payment of compensation for non-pecuniary damage. Consequently, the Court establishes, in equity, that the State must grant, in equity, for non-pecuniary damage compensation of US\$100,000 (one hundred thousand United States dollars) in favor of Vicky Hernández, to be delivered to her heirs in accordance with the inheritance laws in force in Honduras. Similarly, the State must pay, for the concept of non-pecuniary damage, the sum of US\$50,000 (fifty thousand United States dollars) in favor of Rosa Argelia Hernández Martínez, Vicky Hernández's mother; US\$30,000 (thirty thousand United States dollars) in favor of Tatiana Rápalo Hernández, Vicky Hernández's sister, and US\$20,000 (twenty thousand United States dollars) in favor of Argelia Johana Reyes Ríos, Vicky Hernández's niece.

192. In the case of the compensation ordered in favor of Argelia Johana Reyes Ríos, the State must deposit this in a solvent Honduran financial institution in United States dollars or in national currency. The investment must be made within one year, in the most favorable conditions permitted by banking law and practice, while the beneficiary is a minor. She may withdraw this sum when she comes of age or before this, if this is considered in the best interests of the child as established by a decision of a competent judicial authority. If the corresponding compensation is not claimed ten years after the child has come of age, the sum will be returned to the State with the interest accrued.

193. The Court also establishes that the State must pay the sum of US\$18,000 (eighteen thousand United States dollars) so that the members of Vicky Hernández's family can cover the costs of any necessary psychological treatment (*supra* para. 166). This amount must be paid by the State without any conditions or need for it to be accounted for.

¹⁸⁸ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs. Judgment of May 26, 2001*. Series C No. 77, para. 84, and *Case of Casa Nina v. Peru, supra*, para. 151.

G. Costs and expenses

194. The **representatives** requested the reimbursement of: (a) the expenses incurred by the Red Lésbica "Cattrachas,"¹⁸⁹ and (b) the expenses incurred by Robert F. Kennedy Human Rights.¹⁹⁰

195. The Court recalls that, based on its case law, costs and expenses form part of the concept of reparation, because the activities deployed by the victims in order to obtain justice at both the national and the international level entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment convicting it. Regarding the reimbursement of costs and expenses, it is incumbent on the Court to make a prudent assessment of their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction and also those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the equity principle and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.¹⁹¹

196. This Court has indicated that "the claims of the victims or their representatives for costs and expenses, and the evidence that supports these, must be presented to the Court at the first procedural moment granted them; that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently, in keeping with the new costs and expenses incurred owing to the proceedings before this Court."¹⁹² Furthermore, the Court reiterates that is not sufficient merely to forward probative documents; rather, the parties must include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.¹⁹³

197. Taking into account the amount requested for each organization and the expense vouchers presented, the Court decides to establish, in equity, the payment of: US\$30,000 (thirty thousand United States dollars) for costs and expenses in favor of the Red Lésbica "Cattrachas," and US\$15,000 (fifteen thousand United States dollars) for costs and expenses in favor of Robert F. Kennedy Human Rights. These amounts must be delivered directly to the said organisations. At the stage of monitoring compliance with this judgment, the Court may

¹⁸⁹ They indicated that the Red Lésbica "Cattrachas" had acted as the representative of the victims since the start of the processing of the case before the Inter-American Commission on December 23, 2012. Since then it had conducted the litigation of the case during the international proceedings, incurring expenses that included travel from Tegucigalpa to San Pedro Sula and accommodation, and expenses related to communications, stationery and the mailing of documents. They also mentioned that they had incurred expenses corresponding to the work of research, compilation and presentation of evidence, preparation of briefs and legal analysis, which had entailed trips to Washington D.C. from Tegucigalpa on two occasions. They indicated that these disbursements amounted to a total of US\$47,814.57.

¹⁹⁰ They indicated that Robert F. Kennedy Human Rights joined the legal representation of the victims in this case on September 22, 2015. They added that, in this capacity, the organization's legal team and, in particular, three of its lawyers, had made a substantial contribution to the preparation of the legal briefs related to the processing of the case starting with the admissibility stage before the Inter-American Commission, including the preparation of observations on the merits and the actual brief. Based on its legal contributions since it joined the case, they asked the Court to establish, in equity, the sum that the State should pay for this concept and that this amount be reimbursed directly to Robert F. Kennedy Human Rights.

¹⁹¹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, paras. 82, and 244, and *Case of Casa Nina v. Peru, supra*, para. 157.

¹⁹² Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, para. 79, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 193.

¹⁹³ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*, para. 277, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 193.

establish that the State must reimburse the victims or their representatives for any reasonable expenses they incur at that procedural stage.¹⁹⁴

H. Method of complying with the payments ordered

198. The State shall make the payments for the compensation of pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons or organisations indicated herein, within one year of notification of this judgment and pursuant to the following paragraphs, although it may make full payment prior to this.

199. If any of the beneficiaries is deceased or dies before the respective amount is delivered to them, it shall be delivered directly to their heirs pursuant to the applicable domestic law.

200. The State shall comply with the monetary obligations by payment in United States dollars or the equivalent in national currency, using the exchange rate published or calculated by a pertinent banking or financial authority on the day nearest to the date of payment to make the respective calculation.

201. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the amounts in their favor in a deposit account or certificate in a solvent Honduran financial institution in United States dollars and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed within ten years the amounts shall be returned to the State with the interest accrued

202. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses shall be delivered to the persons and organization indicated in full, as established in this judgment, without any deductions derived from possible taxes or charges.

203. If the State should incur in delay, it shall pay interest on the amount owed corresponding to banking interest on arrears in Honduras.

IX OPERATIVE PARAGRAPHS

204. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To accept the acknowledgement of international responsibility made by the State in the terms of paragraphs 16 to 24 of this judgment.

DECLARES,

Unanimously that:

¹⁹⁴ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Casa Nina v. Peru, supra*, para. 158.

2. The State is responsible for the violation of the right to life contained in Article 4(1) of the American Convention on Human Rights, in relation to Articles 1(1), 8 and 25 of this instrument, as well as for the violation of the right to personal integrity contained in Article 5(1) of the American Convention on Human Rights to the detriment of Vicky Hernández, pursuant to paragraphs 85 to 102 of this judgment.

Unanimously that:

3. The State is responsible for the violation of the rights to judicial guarantees and judicial protection contained in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Rosa Argelia Hernández Martínez, Merelin Tatiana Rápalo Hernández and Argelia Johana Reyes Ríos, pursuant to paragraphs 103 to 110 of this judgment.

Unanimously that

4. The State is responsible for the violation of the rights to recognition of juridical personality, personal liberty, privacy, freedom of expression and a name contained in Articles 3, 7, 11, 13 and 18 of the American Convention on Human Rights, in relation to Articles 1(1), 8, 24 and 25 of this instrument, to the detriment of Vicky Hernández, pursuant to paragraphs 111 to 125 of this judgment.

Unanimously that:

5. The State is responsible for the violation of the right to personal integrity contained in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Rosa Argelia Hernández Martínez, Merelin Tatiana Rápalo Hernández and Argelia Johana Reyes Ríos, pursuant to paragraphs 140 to 143 of this judgment.

By five votes to two, that:

6. The State is responsible for failure to comply with the obligations established in Article 7(a) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women to the detriment of Vicky Hernández, and Article 7(b) of this instrument to the detriment of Rosa Argelia Hernández Martínez, Merelin Tatiana Rápalo Hernández and Argelia Johana Reyes Ríos, pursuant to paragraphs 126 to 136 of this judgment.

Dissenting Judge Elizabeth Odio Benito and Judge Eduardo Vio Grossi.

AND ESTABLISHES:

Unanimously that:

7. This judgment is *per se* a form of reparation.

8. The State shall continue and expedite the extensive, systematic and thorough investigations that are necessary to determine, prosecute and punish, as appropriate, the persons responsible for the murder of Vicky Hernández, pursuant to paragraphs 152 and 153 of this judgment.

9. The State shall make the publications indicated in paragraph 155 of this judgment, within six months of its notification.
10. The State shall hold a public act to acknowledge international responsibility for the facts of this case pursuant to paragraphs 157 and 158 of this judgment.
11. The State shall grant Argelia Johana Reyes Ríos a scholarship consisting in a monthly stipend that covers all the expenses related to her studies in a public secondary education institution followed by technical or university education in Honduras, pursuant to paragraphs 161 and 162 of this judgment.
12. The State shall make an audiovisual documentary on the situation of discrimination and violence experienced by trans women in Honduras, pursuant to paragraph 163 of this judgment.
13. The State shall establish the "Vicky Hernández" study grant for trans women, pursuant to paragraph 164 of this judgment.
14. The State shall create and implement a permanent training program for the members of the State's law enforcement agencies pursuant to paragraphs 168 and 169 of this judgment.
15. The State shall adopt a procedure for the recognition of gender identity that permits people to adapt their identity data on their identity documents and in the public records pursuant to paragraphs 172 and 173 of this judgment.
16. The State shall adopt a protocol for investigation and administration of justice during criminal proceedings in cases of LGBTI persons who are victims of violence, pursuant to paragraph 176 of this judgment.
17. The State shall design and implement a system to compile data and figures relating to cases of violence against the LGBTI community in order to assess precisely and uniformly the type, prevalence, tendencies and patterns of violence and discrimination against LGBTI persons pursuant to paragraph 179 of this judgment.
18. The State shall pay the amounts established in paragraphs 187, 191, and 197 of this judgment for the concepts of pecuniary and non-pecuniary damage and to reimburse costs and expenses pursuant to paragraphs 191, 192 and 198 to 203 hereof.
19. The State shall pay the amount to provide psychological and/or psychiatric treatment to the victims who require this pursuant to paragraph 193 of this judgment.
20. The State shall provide the Court with a report, within one year of notification of this judgment, on the measures taken to comply with it, without prejudice to the provisions of paragraphs 163, 164 and 173 of this judgment.
21. The Court will monitor full compliance with this judgment in exercise of its attributes and in fulfillment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

Judge L. Patricio Pazmiño Freire informed the Court of his concurring opinion. Judge Elizabeth Odio Benito informed the Court of her partially dissenting opinion. Judge Eduardo Vio Grossi informed the Court of his partially dissenting opinion.

DONE at San José, Costa Rica, on March 26, 2021, in the Spanish language.

I/A Court HR. *Case of Vicky Hernández et al. v. Honduras*. Merits, reparations and costs. Judgment of March 26, 2021. Judgment adopted in San José, Costa Rica, in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary

**PARTIALLY DISSENTING OPINION
OF JUDGE ELIZABETH ODIO BENITO**

CASE OF VICKY HERNÁNDEZ ET AL. V. HONDURAS

**JUDGMENT OF MARCH 26, 2021
(Merits, reparations and costs)**

I. INTRODUCTION

1. While expressing my respect for the decisions of the Inter-American Court of Human Rights (hereinafter “the Court”), I will also explain the reasons why I disagreed with the majority decision determining that the State of Honduras was responsible for failing to comply with the obligations established in Article 7(a) and 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (sixth operative paragraph of the judgment to which I will refer below).

2. The judgment delivered in the case of *Vicky Hernández et al. v. Honduras*¹ (hereinafter “the judgment”) is, without doubt, a significant judgment due not only to the issue it addresses (and, in particular, the necessary visibilization in the international sphere of the atrocious context of violence against the LGBTI community in Honduras²), but, above all, to the international recognition of the intolerable violations of the human rights protected by the Pact of San José suffered by Vicky Hernández and her family, Rosa Argelia Hernández Martínez, Merelin Tatiana Rápalo Hernández and Argelia Johana Reyes Ríos, as well as the important series of reparations determined in the judgment.

3. Even though I agree with a substantial part of what was determined in this judgment, my dissent is focused on the conclusion adopted by the majority of my colleagues regarding the existence of certain violations of the aforementioned Convention of Belém do Pará and its application to the case of Vicky Hernández. Furthermore, I also disagree with the decision taken concerning the State’s obligation, on the one hand, to enact a “gender identity” law that permits a person to change their sex in the public records without noting this change and, on the other hand, that the State should compile statistics on violence against trans persons. It would be impossible for the State to comply with both obligations simultaneously.

4. Contrary to the decision taken in the judgment with regard to the application of Article 7 of the Convention of Belém do Pará to the instant case, I will now explain why, in my opinion, this regional instrument is not applicable to the facts of this case. To this end, I will begin this partially dissenting opinion by outlining (i) the necessary distinction between sex (biological) and gender (hierarchical social construct), and the serious confusion that the erroneous equalizing of “gender identity” with sex has introduced into the academic and political debate; (ii) I will then address the dynamics of the historic and permanent violence against women because they are women (which gave rise to the Convention of Belém do Pará) and the violence suffered by other groups (transvestites, and intersexual and trans persons, for example) protected by the Pact of San José; I will continue by referring to (iii) the development and historical and practical importance of the Convention of Belém do Pará and why it is not applicable to this case, and (iv) I will conclude with some final thoughts.

¹ Cf. *Case of Vicky Hernández et al. v. Honduras. Merits, reparations and costs*. Judgment of March 26, 2021.

² See, in particular, paragraphs 30 to 35 of the judgment.

5. For the subsequent purposes of this dissenting opinion it is essential to establish from the start that, in my opinion, the so-called "gender identity" is a vague expression that, today, seeks erroneously to substitute "sex" for that "identity" and, on the basis of this substitution, erase the feminine sex with all its biological properties and mix everything up in a single subjective and self-proclaimed category.

6. This Court's Advisory Opinion No. 24 of November 2017 (in which I participated) recognized, irrevocably, the fundamental rights of all human beings to live freely in accordance with their sexual orientation and their personal convictions, as well as the right to the protection of private life without discrimination. The interrogatives expressed in this opinion do not challenge recognition of the rights to equality and non-discrimination of every person. In this opinion, I will refer exclusively to the right of women and other groups (trans women, the LGBTI community, queers) to live a life free of violence.

7. It is also important to mention that when the said OC-24 was issued and published almost four years ago, many of the rights it included had not suffered the surprising and, to my mind unexpected, social and political deployment that today perplexes and bewilders us. Personally, I distance myself from these effects, which I was unable to anticipate, as I will explain below.

II. SEX, GENDER AND GENDER IDENTITY

8. First, I must include some essential and fundamental clarifications of basic concepts that form the basis of this opinion: sex, gender and gender identity. Sex and gender are categories that were never interchangeable because they are not and never were synonymous. With the development of psychology and the social sciences, especially the whole feminist theory of the mid-twentieth century, it began to be clearly determined that sex is biological; supported by science, it is defined by the anatomical, genetic and physiological differences between men and women, never a social construct or even less a subjective matter or a feeling. Meanwhile, gender is a social construct. It refers to the patterns of behavior usually attributed to men and women. It is composed of prejudices, stereotypes, hierarchies, and differences in power relations between men and women. It is rooted in the patriarchal and religious tradition of more than 20 centuries. It is flexible and could well change if someday the prejudices and stereotypes, hierarchies and discriminations are culturally eliminated.

9. The aforementioned Advisory Opinion 24/17 explains these differences between sex and gender. I cite: "Sex: biological differences between men and women, their physiological characteristics, the sum of biological characteristics that define the spectrum of humans as females and males, or a biological construct referring to the genetic, hormonal, anatomical and physiological characteristics based on which an individual is classified at birth as either male or female."³ Meanwhile gender was defined as "socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences."⁴ Gender is used as a tool by science and law to analyze and censure the structure of the patriarchal system that places women in a situation of subordination in relation to men. Subordination is discrimination; inequality in the enjoyment and exercise of all the fundamental rights and freedoms. Feminist theory explains these discriminations and inequalities that we women suffer just because we are women –

³ Cf. *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. State Obligations in relation to Change of Name, Gender Identity, and Rights deriving from a relationship between Same-Sex Couples (Interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights)*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 32.

⁴ *Idem*.

which are closely linked to the reproductive function and responsibility as carers of the whole family group - from a gender perspective.

10. In this opinion, we now have to examine the category of "gender identity." In Advisory Opinion 24, this new expression – at that time – is defined as "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function through medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."⁵

11. At the time, and speaking for myself, I thought that, in OC-24, we were recognizing the fundamental human rights of trans persons (women and men), transvestites, intersex groups, and similar groups to live a full and free life, without prejudices or humiliations, protected and recognized by international human rights law and domestic laws.

12. But what has occurred since then, and this is revealed in the Court's judgment in the *Vicky Hernandez case*, is radically different. Without any scientific basis, it is being claimed that "gender identity" – a feeling that can change even from one day to the next – substitutes and erases the sex with which a person was born. There will be no further mention of women and men with their inherent characteristics, but rather of "persons" – neutral, undefined. It appears that "gender" – a cultural construct – also disappears. Everything tends towards the concept that only "gender identity" exists; the individual and personal experience of each of us, with the further difficulty that gender was never considered an identity.

13. The decades of uphill battles against discrimination and inequality, not only by women against the patriarchal system, but also by all those who have challenged racism, prejudice, cultural patterns, disappear. I have to admit that I do not understand these new concepts that, under the guise of struggles by historically marginalized groups, which is absolutely true, seek to erase what is also irrefutable: the concept of sex.

14. Here, it is worth recalling that feminism is a political theory and a social movement that has had, and still has, as its goal the eradication of inequality between men and women in all social structures (political, economic, and those related to health, education and language); a historic discrimination whose most humiliating and grotesque expression is the violence of every kind experienced by women. As a social and political theory, its common and basic goal is the fight to achieve equality between women and men; that is, eradicate sexism in all its forms - the historical and persistent sexism that, even today, the *Real Academia Española de la Lengua* includes in its sacrosanct dictionary, by including the expression the "weak sex."⁶

15. To conclude this part of the analysis, I reiterate my position that the central issue of feminism (and, in this case, the violence against women due to being women) is *women* and the specific oppression that they suffer, its origin and impact. If we confuse the feminist struggle and substitute the subject of feminism, if the subject of feminism is no longer the biological woman and becomes a strange and confused variable of subjective identities, we should reflect on and raise the issue of the more than probable negative impact that it would have on decades of feminist theory and struggle. Moreover, not only feminism would disappear, but also the theory of human rights that is also based on objective and scientific categories, rather than on feelings or self-perceptions. Thus, we should ask ourselves: if sex,

⁵ *Idem*.

⁶ Even today and, in my opinion, in a way that is totally anachronistic, the *Real Academia de la Lengua Española* defines women as a whole ("el conjunto de mujeres") as the "weak sex" ("el *sexo débil*").

as a substantive and scientific category disappears, absorbed by "gender identity," an individual subjective perception, what would gender violence be based on? And what would the feminine sex be reduced to? How would rape and other crimes of sexual violence against women be documented? How would the violence suffered by trans persons be documented if the sex change is something confidential that cannot be documented? And salary differences? And discrimination in access to formal and informal education at all levels? Many more questions arise. But these few are sufficient to reveal the chaos and retrogression that we are facing.

III. DYNAMICS OF THE HISTORICAL VIOLENCE AGAINST WOMEN. ITS DIFFERENCES FROM THE VIOLENCE SUFFERED BY VULNERABLE SOCIAL GROUPS BASED ON THOSE PERCEPTIONS THAT TODAY ARE REFERRED TO AS "GENDER IDENTITY"

16. The global awareness of the hierarchical discrimination and violence against women that was the essence of the patriarchal system, and that feminism contributed to twentieth-century social science, formed the basis for the worldwide struggle that women have waged and continue to wage against all expressions of sexism, machismo and misogyny.

17. It is also opportune to recognize that, in our societies, which continue to be dominated by patriarchal structures under which patterns of male violence prevail, trans, LGBTI and queer persons or groups also experience individual or collective marginalization and violence. Their defiance of "normality" leads them to be victims of all kinds of violations of their dignity and physical, mental and moral integrity. They are pursued, humiliated, segregated, tortured and murdered.

18. A close examination of the global phenomenon of the sexual violence suffered by women in all armed conflicts since the most remote prehistory and the equally ancient domestic violence, clearly reveals that women are raped and humiliated in the course of all the manifestations of these national and international crimes because they are women. It is their feminine sex that is at the origin of that violence. It is evident that factors relating to ethnicity, sexual orientation, religion, politics, etc. also intervene; but all the victims have in common that they are women. Gender roles are also important components of this criminality, but these are not essential factors owing to the subordination of women.

19. In the case of the violence and discrimination experienced by trans persons and the groups that defy the parameters and paradigms of heterosexuality, the origin of the violence goes beyond the sex with which they were born. The discrimination, humiliation and violence that they must face originates in their challenge to the existence of only two sexes and only one acceptable sexual orientation; namely, heterosexuality.

20. For several years now, different regional and international human rights bodies have established the unquestionable rights of trans persons. In this regard, since 2008, the General Assembly of the Organization of American States (OAS) has adopted nine resolutions on the protection of persons against discrimination based on sexual orientation and "gender identity."

21. Since 2013, these resolutions also refer to discriminatory treatment based on "gender expression" which, in my opinion, only adds confusion to the protection of rights that previously were effectively protected in our region by the Pact of San José. This analysis evidently reveals that the individualized and differentiated treatment of the violence suffered by specific groups based on their self-determined "gender identity" makes it urgent to provide a differentiated treatment to the violence suffered by women because they are women;

however, this is not achieved in the judgment at issue by applying certain articles of the Convention of Belém do Pará and declaring them violated. Placing in a single category biological women and groups who are subject to discrimination and violence for different reasons merely leads to confusion and ends up by not providing adequate protection to anyone. They each require their own solution and they are not interchangeable.

IV. THE ORIGIN AND PURPOSE OF THE CONVENTION OF BELÉM DO PARÁ

22. Having made the preceding clarifications, we must now examine the applicability of the Convention of Belém do Pará to the instant case, the main focus of my partially dissenting opinion.

23. The classification of women's rights as human rights has been marked by a long and arduous struggle for progress and achievements. Although the advent of human rights on the international scene and as a list of obligations of States towards their citizens arose in the middle of the twentieth century (that is, from the ashes of the Second World War), it was not until the 1990s that women's rights and the specific problems linked to their situation of discrimination appeared on the agenda of the States and became visible in the international arena. The Inter-American Commission of Women (hereinafter CIM) detected a void in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) because it did not specifically contemplate the issue of violence against women. Therefore, it agreed to design a comprehensive strategy to deal with this social scourge and, for this reason, in July 1990, at its twenty-fifth Assembly of Delegates, it adopted the "Declaration on the Elimination of Violence against Women," the preamble of which indicates:

"Recognizing that violence against women is a manifestation of the historically unequal power relations between women and men that has led to the domination of women and discrimination against them by men and prevented the full advancement of women, and that violence against women is one of the fundamental social mechanisms by which women are forced into a situation of subordination with regard to men."

24. In 1991, the OAS General Assembly adopted resolution AG/RES. 1128 (XXI-0/91) "Protection of Women against Violence," in which it resolved to support the CIM initiative to prepare a draft inter-American convention for the eradication of violence against women.

25. As a parenthesis, at the regional level we should not forget that, at the same moment, during the transcendental World Conference on Human Rights held in Vienna in 1993, the nature of women's rights as human rights was given express international recognition with the adoption of the "Vienna Declaration and Programme of Action" which called on the States and on the United Nations itself to ensure that "treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings."

26. Following up on the above, in 1994, a Special Assembly was convened in Belém do Pará, Brazil, to consider the draft convention for the eradication of violence against women. The text was adopted by the votes of 19 countries with two abstentions and, by acclamation, it was decided to forward it to the OAS General Assembly. During the Assembly, eight countries signed the Convention of Belém do Pará, and this initiated the process of ratification and entry into force. Currently, the Convention has been ratified by 32 of the 34 OAS Member States, an indication of the broad consensus that exists in the region against misogynist violence.

27. The Convention of Belém do Pará was the result of an unwavering feminist movement, aware of the hierarchies of power derived from sex and gender, the most extreme discriminatory manifestation of which was the violence perpetrated against women merely because they were women; in other words, due to their sex and gender. In addition, the Convention was an evident milestone in the struggle against misogynist violence. First, owing to its broad definition of the concept of violence against women. Second, because it was, finally, through this regional instrument that the violence perpetrated against women was removed from the domestic sphere and converted into a *res publica*. This reveals that, when ratifying this treaty, the States had the intention of combating a very specific violence that, as explained above, arises from certain concrete and well-defined dynamics due to historical and structural reasons based on sex and gender.

28. The fact is that, for years, the human rights of girls, adolescents and women in different areas of their relations with the State were not recognized as human rights because everything that took place in a private space was, at best, considered to be the competence of other branches of law (such as family law, for example) and, at worst, as a matter that did not concern the State. Thus, the Convention of Belém do Pará placed the daily reality faced by the region's women and girls under the magnifying glass of international human rights law and required the States to adopt measures to prevent, punish and eradicate this social scourge.

29. Having made the preceding observations, I will now present the arguments concerning my discrepancy with my colleagues as regards the application of this regional treaty to the facts of this judgment. This partial dissent is based on a teleological – and also pragmatic – reason, as well as on two more technical reasons.

30. Regarding the first reason, I must address the main facts of the case. Thus, the judgment that is the subject of this critical examination relates, *inter alia*, to the execrable acts of violence to which Vicky Hernández, a trans woman, was subjected in the context of the coup d'état that took place in Honduras in 2009, and that resulted in her tragic death. That said, as I have argued throughout this opinion, this violence is very different from the daily violence that women are subjected to merely because they are women.

31. The Convention of Belém do Pará itself leaves it very clear in its preamble, in which it underlines concern because "violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men." In addition, the violence suffered by women, as indicated in Article 1 of this Convention is a violence based on her "gender"; in other words, on the gender of a person of the female sex. Therefore, it is clear that the Convention of Belém do Pará is specifically addressed at attacking the violence that has occurred historically, and continues to occur, against women based on their sex and gender.

32. But also, in its description of the facts, the judgment itself recognizes the different origin of the specific violence suffered by Vicky Hernández, closely related to her gender identity. Thus, paragraph 100 of the judgment stresses several indications of the State's participation that are directly and exclusively linked to Vicky Hernández's condition as a member of the LGBTI community, such as that: (i) at the time of the facts there was "a general context of violence against the LGBTI community in Honduras and, in particular, against trans women who are also sex workers"; that (ii) "within this context the Police have been associated with acts of violence against LGBTI persons and against trans women sex workers, and that (iii) at the time of Vicky Hernández's death, "an alarming increase in deaths associated with the gender identity and expression of the victims began to be recorded." In addition, the judgment itself describes acts of violence that Vicky Hernández had suffered

that were related to her “gender identity,” such as the death threat proffered by a private individual after he had assaulted her, and who called her a “transvestite.” Furthermore, the domestic authorities treated her death as a specific case of the murder of a trans person.

33. Therefore, the violence that the judgment itself emphasizes as proven was not due to the fact of being a woman (as in other cases before the Court such as the case of the *Miguel Castro Castro Prison v. Peru*, the case of *González et al. (“Cotton Field”) v. Mexico*, or one of the more relatively recent cases, *López Soto et al. v. Venezuela*), but to her “gender identity,” due to the violent dynamic that seeks to punish identities, expressions or bodies that differ from the patriarchal norms and roles. As I have discussed in the previous sections, this dynamic of violence clearly has a different origin and possesses very different characteristics to the gender-based violence suffered by women because they are women.

34. Understanding the causes of violence against vulnerable groups (in this case, women and trans persons) is essential in order to attack the root of the problem. Mixing up or even merging these different realities merely leads to confusion – and, therefore, a hindrance – that does not benefit either of the two groups. This is why the judgment, by equating “gender” with “gender identity” commits the error of ignoring the differentiating elements between these types of violence and completely distorts the analysis of the causes and consequences of such violence. In sum, it is my opinion that the judgment that is the subject of the critical analysis should have focused on the violence perpetrated against Vicky Hernández due to the fact that those who attacked her perceived her to be a trans person, and not for being a woman.

35. Furthermore, there are two technical reasons why I consider that the Convention of Belém do Pará should not have been applied to this case. Thus, the judgment relates the application of the Convention of Belém do Pará to the facts by referring to Article 9 of this treaty, which reads as follows:

“With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.”

36. As can be seen, the article is of an accessory nature. Therefore, it is logical to consider that this article only comes into play if, first, it is determined whether the measures contained in the said article are applicable to Vicky Hernández. In my opinion, from a hermeneutic perspective, the judgment suffers from the lack of the corresponding and necessary substantiation of this premise – that is, whether the victim in this case was covered by the protection of the Convention of Belém do Pará – without which neither the conclusion or the consequence – that is, the subsequent and necessary analysis of intersectionality that should be applied to each specific case – is applicable.

37. As a second technical observation, I have a problem with the logical-legal sequence followed to include the category of “gender identity” as a category protected by the Convention of Belém do Pará. For example, in paragraph 129, the judgment reads as follows:

“Article 9 of the Convention of Belém do Pará urges States, when adopting measures to prevent, punish and eradicate violence against women, to take into account “the vulnerability of women to violence by reason of, among others, their race or ethnic background, or their status as migrants, refugees or displaced

persons.” This list of factors is not *numerus clausus*, as indicated by the use of the expression “among others.” Thus, it may be considered that, in certain circumstances such as those of this case which relates to a trans woman, gender identity constitutes a factor that may contribute, intersectionally, to the vulnerability of women to gender-based violence. Indeed, the Court has determined that sexual orientation and gender identity are categories protected by the American Convention and that any discriminatory law, act or practice based on a person’s sexual orientation or gender identity is prohibited. In addition, the Court has indicated that gender identity is “the internal and individual experience of gender as each person feels it, which may or may not correspond to the sex assigned at birth,” so that “recognition of gender identity is necessarily linked to the idea that sex and gender should be perceived as being part of the constructed identity that is the result of the free and autonomous decision of each person and without this having to be subject to their genitalia.”

38. As can be observed, after indicating that the categories protected by Article 9 do not constitute *numerus clausus*, a majority of my colleagues concluded - without making the desirable exercise of interpretation (over and above the reference to an “evolutive” criterion) - that the category of trans should be included in the sphere of protection of this article and, therefore, was also covered by the umbrella of the whole Convention of Belém do Pará. Thus, although the categories indicated in the said Article 9 do not constitute an exhaustive list of factors on which oppression may be based, in reality an additional category is not being included, which would be perfectly acceptable; rather, the judgment includes a person who is not contemplated in Article 1 of the Convention when it stipulates that “violence against women is any act or conduct based on her gender, ...”; in other words, any act or conduct against a person of the female sex and gender.

V. FINAL THOUGHTS

39. Understanding the difference between the concepts of “sex,” “gender” and “gender identity” is essential to be able to attack the structural and historical problems that result in violence against different vulnerable groups. With this dissenting opinion, I wish to make clear that there can be no doubt about the social, institutional and systematic violence suffered by trans women and the LGBTI community in general. That said, the legitimate desire to combat this violence cannot undermine, render invisible or obstruct the combat against other types of violence, such as violence against women based on their sex and gender; that is, for being women.

40. As I have argued in this opinion, violence against women is a result of the social hierarchy established according to the gender roles assigned on the basis of the biological sex, while the violence that was perpetrated against Vicky Hernández (and the proven facts in the instant case attest to this) was due to her non-conformity and act of resistance against the social and cultural dictates of heteropatriarchy. This has also been ratified by the United Nations High Commissioner for Human Rights, who has indicated (and the judgment itself refers to this) that transphobic violence “constitute[s] a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.”

41. In this opinion, I must insist on the need to treat each type of violence in keeping with its specific causes and consequences. This means that it is essential that the public authorities in general, and this Court in particular, address separately gender violence against women on the one hand and, on the other, the violence derived from “gender identity” that arises when this is not adapted to or defies the dictates of the heteropatriarchy. And this is because, in the absence of that distinction, there is a risk that violence against women becomes invisible or is diluted by other violence and violations and is not adequately analyzed when designing

policies as a structural phenomenon related to the system of domination and gender stereotyping of women. *Sensu contrario*, the analysis of violence against trans persons from a perspective that only analyzes violence against women because they are women is plainly counterproductive and ineffective since it does not examine the origin of the specific violence suffered by the said group.

42. In sum, the application of the Convention of Belém do Pará in this case, even though it represents a well-meaning initiative by my colleagues, entails an erroneous approach to the different dynamics of violence. Moreover, not only does it not benefit either of the two groups, but it also hinders the fight against the root of such violence.

Elizabeth Odio Benito
Judge

**CONCURRING OPINION OF
JUDGE L. PATRICIO PAZMIÑO FREIRE**

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF VICKY HERNÁNDEZ ET AL. V. HONDURAS

**JUDGMENT OF MARCH 26, 2021
(Merits, reparations and costs)**

1. In this opinion, more than a discordant or dissenting opinion – because I agree with the majority of the Court – I wish to present my considerations, thoughts and arguments on why I find the judgment in the *case of Vicky Hernández v. Honduras* especially relevant for advances in the progressivity of the human rights of everyone without discrimination. Even though I am essentially in agreement with the decisions taken in the judgment, I would like to place on record that I dissent partially from the line of argument used to consider that the rights of trans women are protected by the Convention of Belém do Pará, as I will explain below and for a compelling reason: trans women are women. The relevant point as regards their identification, as the Court has already indicated in its consistent case law, is their self-perception as such.

2. This case includes a series of decisions that have sought to protect the rights of the LGBTI community based on a progressive and comprehensive vision of sexual orientation, gender identity and gender expression, in keeping with the most recent developments of law, as well as of the social sciences, psychology and medical science. In addition, these decisions directly addressed a harsh reality: the exclusion, marginalization and violation faced daily by those with diverse gender identities or sexual orientations. Ultimately, what is law but a response to reality. What is our role as judges if we are unable to protect the human rights of those who have been systemically and structurally excluded.

3. In a line of case law that was developed to its fullest extent in Advisory Opinion OC-24 “Gender identity, and Equality and Non-Discrimination with regard to Same-Sex Couples,” the Court has been a pioneer in addressing these concepts which relate to a problem made invisible and marginalized by our legal systems. In the expert opinion she provided to this case, Marlene Wayar emphasized that trans women have “faced [...], throughout history, [a] marginalization by the States founded on and substantiated by the constitution of a heterosexual and binary (man-woman) citizenry that, in turn, reproduces the violence and discrimination towards persons who do not fall **within that social order established since colonial times**¹ (bold added).

4. This link of continuity between exclusionary legal systems, under which those who are excluded do not even have “the right to have rights” in the words of Hannah Arendt,² should be of profound concern to the international system. And the system should be even more concerned if those structures form part of the colonial legacy that supported and justified the exploitation of our peoples based on the legal and political organization. As of their conception, human rights – those universal, indivisible and interdependent rights – were meant to be valid for every individual without any discrimination. The international or constitutional judge, or

¹ Expert opinion provided by Marlene Wayar during the public hearing in this case on November 11, 2020.

² Arendt, Hannah, *The Origins of Totalitarianism*, New York, Harcourt, 1968, p. 290

the judge of any court, can never ignore structural issues, even in the most complex legal system. In the darkest corner of the history of humanity can be found certain judicial decisions, such as that of the United States Supreme Court that, with its aberrant (there are surely worse and stronger words to describe it) doctrine of “separate but equal,” supported years of racial segregation, the latent effects of which we continue to see today.³

5. Therefore, the Inter-American Court has already recognized that the inter-American system “is a tool that promotes the empowerment and inclusion of historically or traditionally disadvantaged groups, thereby strengthening democratic institutions.”⁴ It is pursuant to this concept of law that, today as an inter-American judge, and evidently based on my powers and possibilities and recognizing the privileges inherent in my experiences as a cisgender and heterosexual man, I come to reclaim the rights of this group that see their human rights violated on a daily basis.

6. This case is the first in which the Inter-American Court directly addresses the problem of violence against trans persons. It is especially paradigmatic for two reasons. First, because the structural and systemic violence against those with a diverse gender identity has been widely documented and recognized by international bodies.⁵ In this regard, the fact that it is the first case reveals the shortcomings of our institutions as regards the celerity of the inter-American system and the lack of adequate, prompt and effective response. The system needs to conduct an exercise of harsh self-criticism and, personally, I regret profoundly that so many years have had to pass before we finally examine this issue and Vicky Hernández, her family and close relatives, obtain justice.

7. Second, this case is especially paradigmatic because it is inserted in the context of our region. Latin America is a land where diversity at all levels should be a key to democratic spaces and not an exclusionary barrier. In this regard, both Marlene Wayar in her expert opinion and the anthropologist and researcher Maya-Kaqchikel have traced the connection⁶ between patriarchy and colonialism. Both of them consider that it is inconceivable to talk of patriarchy without taking colonialism and its effects into account. Evidently, we are not trying to render invisible or relativize one fight with the other. It is not a question of an opposition between feminism and the indigenous movement, or between feminism and the LGBTI movement. Each of them contain different perspectives, currents and world views that have been developed based on individual experiences of the world’s complexities. It is not possible to speak of a single feminism, or a single LGBTI movement or a single indigenous movement.

³ In 1896, the United State Supreme Court delivered judgment in the case of Plessy v. Fergusson, in which it considered that racial segregation in public spaces was constitutional, “so long as the facilities were equal.” This aberrant doctrine was only reversed in 1954 with the case of Brown v. Board of Education, which declared that the state laws establishing separate schools for African Americans and white students denied equal educational opportunities. It was only after this that racial segregation became considered a violation “of the equal protection of the laws guaranteed by the 14th Amendment” of the United States Constitution.

⁴ *The Obligations in Matters of Human Rights of a State that has denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(I), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*. Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26, para. 54

⁵ United Nations High Commissioner for Human Rights. *Discrimination and violence against individuals based on their sexual orientation and gender identity*. A/HRC/29/23, May 4, 2015, paras. 20 to 38; United Nations High Commissioner for Human Rights. *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, November 17, 2011, paras. 20 to 37. The IACHR has indicated that “most trans women who are murdered are under 35 years of age and are particularly vulnerable to violence by the State’s law enforcement personnel.”

⁶ Cumes, Aura Estela; *Mujeres Indígenas, Patriarcado y Colonialismo: un desafío a la segregación comprensiva de las formas de dominio*, Anuario Hojas de Warml. 2012, No. 17.

Their claims will depend on each one's particularities and it would be reductionist to try and fit them into a bipolar vision of reality. The need to render these visions compatible without confronting them acquires relevance in the support that the law should provide to these claims, by understanding them in their complexity, with their nuances and many levels. As I have indicated on other occasions, over recent years our region has begun to develop, "following the nefarious phase of the dictatorships and since the 1980s, a constitutionalism that seeks not only to recognize the rights of women, of indigenous and tribal peoples and of sexually diverse groups, but also their full participation in public affairs."⁷ Therefore, it is from this point of view that the author of this opinion has assessed how to impart justice in this specific case, from an inclusive and progressive perspective of the human rights of everyone without any discrimination.

8. This preamble serves as a basis to introduce the discussion that occurred within the Court on whether, from an ontological, phenomenological or finalist perspective, trans women should be included within the sphere of protection of international law that is granted to cisgender women based on the specific international instruments and the case law that the Inter-American Court has developed on violence and discrimination against women. Evidently, any approach to this issue means that not only should the aforementioned elements be taken into consideration, but also the *pro persona* principle, and the progressivity of rights. On many occasions, I have publicly indicated that "it is my personal conviction, based on my academic training and judicial experience, that human rights are realized, guaranteed and implemented in the sphere of concrete realities, in specific social, political, legal, economic and cultural contexts;⁸ therefore, as judges it is necessary to examine closely the scope of international treaties. As in the case of the American Convention, the Convention of Belém do Pará and, in general, all human rights treaties "are living instruments that must evolve with the actual circumstances."⁹

9. The 1994 Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, known as the Convention of Belém do Pará, is an unprecedented legal instrument, whose purpose is to provide enhanced protection to the right of women to a life free of violence and to eliminate the situations of violence that may affect them in both the public and the private sphere.

10. This inter-American treaty is teleologically addressed at the protection of women in a context in which the violence is rooted in a patriarchal system the backdrop for which is the "manifestation of the historically unequal power relations between women and men."¹⁰ As developed by the Inter-American Court throughout its case law, the gender perspective and the analysis of gender stereotypes, together with the critical analytical response, are the principal tools to give real effectiveness to this treaty, as well as the American Convention. Therefore, even though I consider that the majority opinion determining that States may be held internationally responsible for failing to comply with the Convention of Belém do Pará in

⁷ Separate and partially dissenting opinion of Judge L. Patricio Pazmiño Freire to Advisory Opinion OC-26/20 on *The Obligations in Matters of Human Rights of a State that has denounced the American Convention on Human Rights and the Charter of the Organization of American States*, of November 9, 2020, para. 5

⁸ Dissenting opinion of Judge L. Patricio Pazmiño to the order of May 29, 2018, of the Inter-American Court of Human Rights, para. 4.

⁹ *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 83

¹⁰ *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 303; *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of November 26, 2009. Series C No. 205, para. 397, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs*. Judgment of June 24, 2020. Series C No. 405, para. 113.

cases of violence against trans women is correct, personally, I consider that there are some arguments missing in the majority decision.

11. In order to reach the conclusion that the State was internationally responsible for the death of Vicky Hernández under the Convention of Belém do Pará, the majority decision addressed the fact that trans women may be subjected to gender-based violence, understanding this as violence committed based on the “socially constructed identities, attributes and roles for women and men.”¹¹ Although this statement is completely correct, as is the analysis made in the judgment of the situations of vulnerability faced by trans women, these correspond to a second level of arguments. First, it would have been necessary to clarify that, according to the case law of the Inter-American Court itself, trans women are protected by the Convention of Belém do Pará because they are women. Therefore, the first step should have been to follow the case law developed by the Court in Advisory Opinion OC-24, in which it indicated the following:

[...] gender identity [is] the internal and individual experience of gender as each person feels it, which may or may not correspond to the sex assigned at birth. This includes the personal experience of the body as well as other expressions of gender, such as dress, speech and mannerisms. Thus, for this Court, recognition of gender identity is necessarily linked to the idea that sex and gender should be perceived as being a part of the constructed identity that is the result of the free and autonomous decision of each person, and without this having to be subject to their genitalia.¹²

The Court also considered that:

The sex, together with the socially constructed identities, attributes and roles that are ascribed to the biological differences regarding the sex assigned at birth, far from constituting objective and unchangeable characteristics of the civil status that individualizes a person – for these being a physical or biological fact – are merely characteristics that depend on the subjective appreciation of the person concerned, and are based on the construction of a self-perceived gender identity dependent on the free development of the personality, sexual self-determination, and the right to privacy. Consequently, those who decide to assume this self-perceived gender identity, are the holders of legally protected interests which cannot be subject to any restriction based merely on the fact that society as a whole does not share specific singular lifestyles due to fears, stereotypes, and social and moral prejudices which have no reasonable basis. Thus, regarding the factors that define the sexual and gender identity of a person, precedence is given to the subjective factor over the physical or morphological features (objective factor). In this sense, owing to the complex human nature that leads everyone to develop their own personality based on the particular way they see themselves, the psychosocial sex should be given pre-eminence over the morphological sex in order to fully respect the right to sexual and gender identity, since these are elements that, to a great extent, define both how individuals see themselves and how they project themselves in society.¹³

12. In the said Advisory Opinion 24, one of the Court’s most important contributions to international law as regards the progressivity of the rights of sexual minorities, the Court broke away from the concept of cisnormativity. In other words, the concept “that all people

¹¹ Cf. *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 32.

¹² *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 94

¹³ *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 95

are cisgender, and that those assigned male at birth always grow up to be men and those assigned female at birth always grow up to be women.”¹⁴

13. In contrast, as indicated by expert witness Carlos Zelada “[w]hen we speak of trans women and transvestites, we are speaking of women whose gender expression and identity do not usually fit in with the traditional and, above all, static notions of femininity.”¹⁵ International human rights law cannot ignore these advances, moving away from its ultimate goal which is the protection of the individual, especially recognizing the extreme vulnerability of trans women in our region. Evidently, any analysis of vulnerability and intersectionality will depend on the context and the particularities of the specific case, as in the judgment in this case – obviously without overlooking the fact that the Court had already set in stone that gender identity, gender expression and sexual orientation are categories protected by the American Convention.

14. I must also place on record in this opinion that the vulnerabilities stressed by this judgment include a systemic and systematic exclusion of trans women from the enjoyment of their economic, social and cultural rights. In her courageous testimony, witness Claudia Spellmant Sosa gave a very articulate and enlightening account not only of the police violence suffered by trans women when exercising prostitution, but their total exclusion at a very young age from their communities, social protection systems, homes and schools. Numerous reports and studies by international bodies and civil society organizations have documented that poverty and unemployment are almost the rule.¹⁶ Since formal work is almost inexistent among the women, almost 90% of them engage in sex work in serious conditions of vulnerability according to the Inter-American Commission’s figures.¹⁷ Consequently, I emphasize the measures of reparation ordered in this case; particularly, the one relating to the full recognition of gender identity in keeping with the standards of Advisory Opinion OC-24. However, I believe we could have gone a little further in seeking to break the chain of economic and social exclusion experienced by hundreds of individuals in Honduras merely because they have a diverse gender identity. The Court has ordered many measures of reparation that affect public policies by means of transformative justice at the economic and social level and this would have been a good opportunity to replicate them.¹⁸ After all, human rights, including the economic, social, cultural and environmental rights, belong to all us without discrimination.

L. Patricio Pazmiño Freire
Judge

¹⁴ *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. State Obligations in relation to Change of Name, Gender Identity, and Rights deriving from a relationship between Same-Sex Couples (Interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights)*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 32

¹⁵ Expert opinion provided by Carlos Zelada during the public hearing in this case on November 11, 2020, and document attached to his opinion (evidence file, folio 1574 bis).

¹⁶ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Data collection and management as a means to create heightened awareness of violence and discrimination based on sexual orientation and gender identity. A/HRC/41/45, May 14, 2019.

¹⁷ IACHR. *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, OAS/Ser.L/V/II rev.2 Doc. 36, November 12, 2015, para. 280

¹⁸ For example, the measures of reparation corresponding to guarantees of non-repetition in the judgment in the *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs*. Judgment of February 6, 2020. Series C No. 400.

PARTIALLY DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI
INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF VICKY HERNÁNDEZ ET AL. V. HONDURAS
JUDGMENT OF MARCH 26, 2021
(Merits, reparations and costs)

I. INTRODUCTION

1. This partially dissenting opinion is issued with regard to the judgment in reference¹ in order to indicate the reasons why I disagree with its sixth operative paragraph,² which declares that the State of Honduras³ is responsible for non-compliance with the obligations established in Article 7(a) and (b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women.⁴

2. My dissent relates to the sphere of application of the above-mentioned Convention; in other words, to the judgment's assertion that the Convention includes "trans women" in the concept of "woman" that it includes. In this opinion, I uphold the position that this instrument, over above what it is sought or wanted or desirable that it establish, only considers "women" as the beneficiary of its provisions, understood in their biological dimension; thus, consequently and specifically, it does not encompass "trans women."

II. ARTICLE 7(a) AND (b)

3. This article establishes that:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

(a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;

(b) apply due diligence to prevent, investigate and impose penalties for violence against women; ..."

4. Evidently, this treaty and, consequently, also the said article should be interpreted in light of Article 31(1) of the Vienna Convention on the Law of Treaties,⁵ which establishes that:

¹ Hereinafter, the judgment.

² "The State is responsible for failure to comply with the obligations established in Article 7(a) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women to the detriment of Vicky Hernández, and Article 7(b) of this instrument, to the detriment of Rosa Argelia Hernández Martínez, Merelin Tatiana Rápalo Hernández, and Argelia Johana Reyes Ríos, pursuant to paragraphs 126 to 136 of this judgment."

³ Hereinafter the State.

⁴ Hereinafter, Convention of Belem do Pará.

⁵ Hereinafter, the Vienna Convention.

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

a. Good faith

5. According to this fundamental rule concerning treaties such as the Convention of Belem do Pará, it is evident, according to the method of interpretation based on good faith, that, in the said Article 7(a), the States Parties agreed - in order to apply it and provide it with practical effects; that is, in order to really respect, in this regard, the rule of *pacta sunt servanda*,⁶ and, therefore, in order to adopt the policies it indicates - to refrain from the acts mentioned and to ensure that all their organs proceeded in the same way, and all this to prevent, punish and eradicate violence against "women."

b. Ordinary or textual meaning

6. Hence, the reference that the article interpreted makes to "women" leads - as regards the meaning of this term - to employing the ordinary or textual method of interpretation of treaty-based provisions and this has a bearing on the analysis of the text of the corresponding treaty, on the vocabulary used, and on the ordinary meaning of its terms. Therefore, and taking into account that the Convention of Belem de Pará does not endow the said term with a "special meaning,"⁷ it is necessary to resort to its "ordinary meaning," which means that by "women" should be understood "persons of the feminine sex." It should be added that "feminine" means "of or characteristic of women," "having qualities associated with women" or "said of an individual endowed with organs that can be fertilized."

7. With that in mind, there can be no doubt whatsoever that the provision of the Convention that is being interpreted refers exclusively to "women" based on their sex; that is, the feminine sex, omitting any reference to "trans women." The provisions of Article 1 of the Convention of Belem do Pará confirm this, by establishing that:

"For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."

8. And the same can be noted in Article 3 of this Convention, which stipulates that:

"Every woman has the right to be free from violence in both the public and private spheres."

9. That said, it is also true that the aforementioned Article 1 uses the words "women" and "gender" and the latter should be understood according to its "ordinary meaning," as "a group of beings that have one or several common characteristics" or "class or type to which persons or things belong" or "group to which human beings of each sex belong, understood from a socio-cultural instead of exclusively biological point of view."⁸

⁶ Art. 26 of the Vienna Convention: "*Pacta sunt servanda*." Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

⁷ Art. 31(4) of the Vienna Convention: "A special meaning shall be given to a term if it is established that the parties so intended."

⁸ Diccionario de la Lengua Española, Real Academia Española [Note: literal translation of the Spanish definitions].

10. However, it is also necessary to recall in this regard that the Court had indicated in an advisory opinion, that “the following concepts [among others], taken from different international sources appear to be the most up-to-date ones at the international level”; in other words, it considers them each with the special meaning indicated:

1. “Sex: Strictly speaking, the word sex refers to biological differences between men and women, their physiological characteristics, the sum of biological characteristics that define the spectrum of humans as females and males, or a biological construct referring to the genetic, hormonal, anatomical and physiological characteristics based on which an individual is classified at birth as either male or female.³⁹ Given that this word only establishes a subdivision between men and women, it does not recognize the existence of other categories that do not fit within the female/male binary system;”⁹
2. *Gender*: “this refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences”;¹⁰
3. “*Gender identity*: “[g]ender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function through medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms,”¹¹ and
4. “Transgender or trans: when the gender identity of the person does not correspond with the sex assigned at birth.”¹²

11. This being the case and considering the conceptual difference between, on the one hand, the work “sex” and, on the other, the terms “gender,” “gender identity” and “transgender or trans,” it is essential to conclude that the persons protected by the Convention of Belem do Pará are “women” and that they are protected in their condition as such; that is, based on their gender or their “socially constructed identities, attributes and roles [...] and society’s social and cultural meaning for these biological differences” from men. Obviously, if the said Convention had wanted to specifically contemplate “trans women” among the persons that it protects as “women,” it would have used the expression “gender identity” or directly that of “trans women.” But it did not do this.

12. Moreover, attention should also be drawn to the fact that the only other article (in addition to Article 1) of the Convention of Belem do Pará transcribed above that mentions the concept of “gender” is Article 8(b) as follows [Note: translated as “sexes” in the English version]:

“The States Parties agree to undertake progressively specific measures, including programs: ... to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women.”

⁹ *Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. State Obligations in relation to Change of Name, Gender Identity, and Rights deriving from a relationship between Same-Sex Couples (Interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights)*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24. para. 32(a).

¹⁰ *Idem*, para. 32(e).

¹¹ *Idem*, para. 32(f).

¹² *Idem*, para. 32(h).

13. As can be observed, this provision establishes that States must adopt programs to modify the conduct of men and women as it indicates. Therefore, it establishes an obligation of the States to counteract discriminatory conducts against men and women, which is therefore unrelated to “trans women” being protected by the Convention of Belem do Pará.

14. Consequently, according to the interpretation based on the ordinary or textual method for the interpretation of treaties, the persons that the Convention of Belem do Pará protects from violence are only “women,” a concept determined by a person’s sex, thus without reference to their gender identity.

c. Context

15. With regard to the method concerning the context or the subjective method of interpreting treaties, its use is intended to fathom the intention of the States parties to the respective treaty by the due concordance or complementarity of its different provisions and, to this end, also analyzing its *travaux préparatoires* and the subsequent actions that the States parties have taken with regard to the treaty. This method is established in Article 31(2) of the Vienna Convention as follows:

“The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

16. Bearing in mind this provision, it can be seen that, of the 25 articles of the Convention of Belem do Pará, only two refer to gender - as already stated, one is Article 1 and the other is Article 8(b) [Note: only one in the English version – see previous note regarding Article 8(b)] and this allows it to be interpreted that this relates exclusively to the unlawful act of violence committed against “women,” without any reference to gender identity.

17. In addition, of these 25 articles, 12 relate to procedural matters inherent in treaties, one concerns the interpretation of the Convention of Belem do Pará, and none of these mention “women” and, above all, gender identity. The remaining 12 articles do allude to “women” and, as indicated only one of them contains the word “gender.”

18. Furthermore, as regards the Preamble to this Convention, it is worth underscoring that, in its six paragraphs, five include the word “women,” one mentions the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and none of them mention gender or “trans women.”

19. It is also necessary to place on record that, at the time, no agreement was signed or any instrument issued as regards those established in the above transcribed Article 31(2) of the Vienna Convention.

20. Added to the foregoing are the provisions of Article 31(3) of this Convention which indicate that:

“There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.”

21. And, in this regard, it should be indicated that there is no agreement or practice of the States Parties to the Convention of Belem do Pará that permits an interpretation that it refers to gender or that it includes “trans women.” In other words, this case does not provide elements that allow the constitution, pursuant to the recently transcribed Article 31(3) and contrary to what the judgment indicates, of an “evolutive interpretation”¹³ that permits affirming that the Convention of Belem do Pará includes “trans women.”

22. Indeed, General Recommendation No. 28 of 2010, cited in the judgment¹⁴ to support its decision, was adopted by the Committee for the Elimination of Discrimination against Women (CEDAW); in other words, by a subsidiary body of the United Nations composed of experts and, consequently, without any authority to create a norm of international law or provide a binding interpretation in this regard. Not only does the General Recommendation not have the characteristics of an autonomous source of international law, such as a treaty, a custom, the general principles of law or unilateral legal acts, but neither does it have those of a supplementary source of international law, such as jurisprudence, legal doctrine or declarations of law by resolutions.¹⁵ And, the latter, because such resolutions, in addition to being non-binding recommendations, do not refer to and are unrelated to the Convention of Belem do Pará.

23. The foregoing is also applicable in relation to the Practical Guide to the System of Progress Indicators for Measuring the Implementation of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, adopted by the Follow-up Mechanism to the Convention (“MESECVI”), which is also cited in the judgment,¹⁶ because even though it refers exclusively to the said Convention, the Mechanism is composed of independent experts.

24. In synthesis, it is inadmissible to consider that the said resolutions are binding in any way; rather, they are expressions of political aspirations that may be legitimate, but are not interpretative of international legal provisions.

25. The allusion that the judgment makes to a resolution of the Inter-American Commission on Human Rights merits a slightly different consideration.¹⁷ It is true that it corresponds to this inter-American organ, as to the Court, to examine cases relating to compliance with the treaty-based obligations;¹⁸ however, this stems from its “main function

¹³ Para. 133.

¹⁴ Para. 131.

¹⁵ Article 38 of the Statute of the International Court of Justice: “1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo* if the parties agree thereto.”

¹⁶ Para. 132.

¹⁷ Para. 130.

¹⁸ Art. 33: “The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- a. the Inter-American Commission on Human Rights, referred to as “The Commission;” and
- b. the Inter-American Court of Human Rights, referred to as “The Court.”

[...] to promote respect for and defense of human rights”¹⁹ by the States Parties to the Convention and, on this basis, it is even able to encourage amendments to the laws in force. In other words, when applying the Convention, which evidently entails its interpretation, the Commission does not do so because it considers that its decisions are binding, recalling that they are mere recommendations, but in order to fulfill its function. Therefore and in any circumstance, what the Commission decides in this regard cannot be considered as an expression of valid international norms and, above all, as binding for the Court.

26. Based on the above, it is irrefutable that, as inferred from the application of the subjective method of the interpretation of treaties, the Convention of Belem do Pará does not establish its applicability to “trans women.”

d. Object and purpose

27. Regarding the functional or teleological method that seeks to determine the object and the purpose for which the treaty was signed, it is sufficient to read the sixth paragraph of the Preamble to the Convention of Belem do Pará to know this. It reads as follows:

“*CONVINCED* that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them.”

28. This object and purpose is also established in Articles 1, 3 and 7(a) of the Convention, transcribed above.

29. Therefore, applying the functional or teleological method of interpretation of treaties to the Convention of Belem do Pará also leads to the conclusion that it is exclusively related to “women” in general, without including, in particular, “trans women.”

30. Consequently, the use of the four methods for the interpretation of treaties leads to the same or a consistent result, as established in Article 31(1) of the Vienna Convention.

III. CONCLUSION

31. From everything presented previously and, particularly, owing to the provisions of Articles 1 and 3 of the Convention of Belem do Pará, what is proscribed is the “act or

¹⁹ Art. 41: “The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

(a) to develop an awareness of human rights among the peoples of America;

(b) to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;

(c) to prepare such studies or reports as it considers advisable in the performance of its duties;

(d) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

(e) to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

(f) to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

(g) to submit an annual report to the General Assembly of the Organization of American States.”

conduct" against "women" that leads to their "death or [...] harm or suffering" and that is committed owing to their gender; that is, owing to the "socially constructed identities, attributes and roles [for women ...] and society's social and cultural meaning for these biological differences" from men, a situation that, logically cannot correspond to that of "trans women."

32. Lastly, I wish to place on record that the assertions made in this opinion do not deny the protection that trans persons should receive from the State to address the problem of the violence against them based on their gender identity. However, that obligation is included in the general provisions contemplated, in particular, in Articles 1²⁰ and 5(1)²¹ of the American Convention; moreover, it could even be strengthened and expanded. The Convention itself anticipates this, by referring to the signature of protocols or other instruments that may have this purpose.²² In the case of the Convention of Belem do Pará, this contemplates the possibility of amendments.²³

33. Evidently, if it were decided to promote the reform or expansion of the said protection by the signature of new international instruments, even though this could be a slow and difficult choice, it would clearly reveal, on the one hand the trust deposited in international law and, especially, international human rights law as one of the effective regulating instruments of inter-American society and, on the other hand, respect for the respective inter-American normative and judicial or jurisdictional functions assigned, the first to the States Parties to the Convention themselves²⁴ and the second to the Court.²⁵

Eduardo Vio Grossi
Judge

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

2. For the purposes of this Convention, "person" means every human being."

²¹ "Every person has the right to have his physical, mental, and moral integrity respected."

²² Article 31. Recognition of Other Rights. Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

Art. 76. "1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification."

Art. 77: "1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.

2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it."

²³ Art. 19: "Any State Party may submit to the General Assembly, through the Inter-American Commission of Women, proposals for the amendment of this Convention.

Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification."

²⁴ *Idem*.

²⁵ Art. 62(3): "The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."