

# Vicky Hernández et al. v. Honduras

## ABSTRACT<sup>1</sup>

*This case is about the murder of a transgender woman during the curfew following the 2009 coup, and the botched subsequent investigation. The Court found Honduras not only in violation of several articles of the American Convention, but also of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará).*

## I. FACTS

### A. Chronology of Events

**September 21, 1983:** Ms. Vicky Hernández is born in San Pedro Sula, Honduras and is registered at birth as Johnny Emilson Hernández.<sup>2</sup>

**Before 2009:** Ms. Hernández is forced to drop out of primary school to support her mother financially, Mrs. Rosa Argelia Hernández Martínez, and niece, Argelia Johana Reyes Ríos.<sup>3</sup> At 26 years old, Ms. Hernández works as sex worker and an activist in a transgender people's human rights group known as the TTT Collective Pink Unit (Unidad Color Rosa, Colectivo TTT).<sup>4</sup> During this period, Ms. Hernández is reported to be living with HIV.<sup>5</sup>

**April 2009:** Ms. Hernández is attacked by a security guard who hits her in the head with a machete.<sup>6</sup> Immediately after the attack, Ms. Hernández reports the incident to the police who are dismissive of her concerns.<sup>7</sup> A friend of Ms. Hernández' takes her to the hospital to treat her injuries.<sup>8</sup> Although Ms. Hernández reports the attack, the police do not investigate it.<sup>9</sup>

**June 2009:** Ms. Hernández discloses to her mother that she was attacked and threatened by another transgender person.<sup>10</sup> The person who attacked Ms. Hernández threatened to kill her if she saw her again.<sup>11</sup>

**June 27, 2009:** Ms. Hernández is seen for the last time by her mother.<sup>12</sup>

---

<sup>1</sup> Callie Keller, Author; Jenna Won, Editor; Selene Estrada-Villela, Senior IACHR Editor; Aaron Kircher, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

<sup>2</sup> Vicky Hernández et al. v. Honduras, Report on Merits, Report No. 157/18, Inter-Am. Comm'n H.R., Case 13.051, ¶ 21 (Dec. 7, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 422, ¶ 41 (March 26, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 27.

<sup>11</sup> *Id.*

<sup>12</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 42.

**June 28, 2009:** The de facto President of Honduras declares a curfew from 9:00 P.M. until 6:00 A.M. after the coup d'état overthrows the prior president.<sup>13</sup> On this same evening, Ms. Hernández goes to a friend's house.<sup>14</sup> A police patrol attempts to arrest Ms. Hernández and two of her friends while walking in the red-light district.<sup>15</sup> Ms. Hernández evades the police and ultimately loses contact with her friends who run in different directions.<sup>16</sup> Ms. Hernández's friend do not learn of her whereabouts until her body is later found.<sup>17</sup>

**June 29, 2009:** The National Criminal Investigation Directorate (Dirección Nacional de Investigación Criminal; "DNIC") is notified at 7:30 A.M. that Ms. Hernández's body was found.<sup>18</sup> Ms. Hernández's body is removed approximately two hours later at 9:15 A.M while many journalists and people are present.<sup>19</sup> Mrs. Hernández Martínez hears of her daughter's death and goes with one of Ms. Hernández's friends to the Public Prosecution Service (Ministerio Público) morgue to identify her body.<sup>20</sup>

**June 29, 2009:** The coroner notes that there are wounds with irregular edges in Ms. Hernández's left eye and on her left frontal region as well as bruising around her eye.<sup>21</sup> The coroner concludes that the cause of death is a gunshot wound to the head that likely occurred between eight and ten hours before Ms. Hernández's body was found.<sup>22</sup> Ms. Hernández is listed as a "John Doe."<sup>23</sup> The coroner's record does not indicate whether there are any signs of sexual assault, however, it is noted that a used condom and gray bullet casing was found near Ms. Hernández's body.<sup>24</sup>

An autopsy report written by Dr. Itpsa Suyem Rosales determines that the cause of death is a brain laceration and the injuries are consistent with a gunshot wound.<sup>25</sup> However, this report is not included in the evidence.<sup>26</sup> Human rights organizations claim that because Ms. Hernández had HIV, the forensic team did not perform an autopsy of Ms. Hernández's body.<sup>27</sup> The report also does not state whether officials sought any tests or inspections to determine if Ms. Hernández was a victim of physical or sexual violence.<sup>28</sup>

**July 24, 2009:** The Inter-American Commission requests information on this case under Article 41 of the American Convention from Honduras' Supreme Court.<sup>29</sup> The Supreme Court indicates that, according to a forensic report, Ms. Hernández's death was caused by strangulation and most likely from a crime of passion.<sup>30</sup>

---

<sup>13</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 42; Vicky Hernández et al. v. Honduras, Report on Merits, ¶¶ 19, 22.

<sup>14</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 23.

<sup>15</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 43.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 23.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ¶ 26.

<sup>21</sup> *Id.* ¶ 24.

<sup>22</sup> *Id.*; Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 45.

<sup>23</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 45.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* ¶ 46; Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 25.

<sup>26</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 46.

<sup>27</sup> *Id.* ¶ 25.

<sup>28</sup> *Id.* ¶ 24.

<sup>29</sup> *Id.* ¶ 29.

<sup>30</sup> *Id.*

**March 16, 2011:** The Crimes Against Life Unit (“CLU”) at the Public Prosecutor's Office requests autopsy reports from the Regional Director of Forensic Medicine on homicide cases of transgender people including Ms. Hernández, but the request is ignored.<sup>31</sup>

**March 30, 2011:** The Public Prosecutor's Office CLU requests that the DNIC produce photographs of potential suspects, criminal background records, and witness statements to help determine a motive for Ms. Hernández's death.<sup>32</sup> The CLU also requests that the DNIC conduct a forensic analysis of the used condom found at the scene of the crime.<sup>33</sup>

**May 3, 2011:** Police obtains a statement from Mrs. Hernández Martínez.<sup>34</sup>

**May 8, 2011:** The CLU sends a request to the DNIC for Ms. Hernández's criminal record, a photographic album, and a crime scene sketch relating to her case.<sup>35</sup> However, the DNIC does not follow up on this request.<sup>36</sup> On this same date, the CLU sends a request to the Bureau of Immigration and Foreign Status for Ms. Hernández's immigration record.<sup>37</sup>

**May 17, 2013-June 23, 2013:** The Red Lésbica “CATRACHAS” and Women's Human Rights Center (Centro de Derechos Humanos de las Mujeres; “CEDEHM”) (hereinafter “petitioners”) make multiple attempts to request court records from the Office of the General Coordinator for Prosecutors, the Office of the Regional Coordinator for Northern Zone Prosecutors, and Special Prosecutor for Common Crimes of Tegucigalpa, to no avail.<sup>38</sup>

**July 13, 2013:** The Regional Coordinator of Forensic Medicine allegedly sends a copy of Ms. Hernández's autopsy report to the Public Prosecutor's Office.<sup>39</sup>

**July 23, 2013:** The Special Prosecutor for Crimes Against Life lists the steps taken to investigate Ms. Hernández's death in a report.<sup>40</sup> In the report, the Special Prosecutor indicates that (1) a preliminary report was written on the removal of Ms. Hernández's body, (2) a death certificate was obtained, (3) Ms. Hernández's identification card was photocopied, (4) the site of the crime was inspected, (5) a copy of the autopsy request was sent, (6) a statement from Ms. Hernández's mother's was obtained, (7) a police record in Ms. Hernández's name was generated, (8) a request for crime scene photos was made, and (9) a record was made with descriptions of Ms. Hernández's movements.<sup>41</sup> The report also states that Dr. Dixiana Rosales, who performed the autopsy, was no longer an employee at the forensic department.<sup>42</sup> For this reason, the department needed to locate Dr. Dixiana Rosales and obtain a statement.<sup>43</sup>

---

<sup>31</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 30.

<sup>32</sup> *Id.* ¶ 31.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* ¶ 32.

<sup>35</sup> *Id.* ¶ 33.

<sup>36</sup> *Id.*

<sup>37</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 33.

<sup>38</sup> *Id.* ¶ 35.

<sup>39</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 55.

<sup>40</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 34.

<sup>41</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 52.

<sup>42</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 34.

<sup>43</sup> *Id.*

**October 2013:** Ms. Rita Isabel Romero represents Mrs. Hernández Martínez in domestic proceedings.<sup>44</sup>

**October 14, 2013:** Ms. Romero interviews Mrs. Hernández Martínez and Ms. Hernández's next of kin.<sup>45</sup> These relatives report that there were no marks on Ms. Hernández's body at burial that could indicate an autopsy had been done.<sup>46</sup> Ms. Romero subsequently discovers that Ms. Hernández's death is not registered in the Civil Records office, and thereafter registers her death.<sup>47</sup>

**October 16, 2013:** Ms. Romero goes to the Public Prosecutor's Office and examines Ms. Hernández's case file but does not obtain a copy.<sup>48</sup> The following day, Ms. Romero requests a photocopy of the case file as well as confirmation as to whether Dr. Itpsa Suyem Rosales or Dr. Dixiana Rosales performed the autopsy.<sup>49</sup>

**October 18, 2013:** The Regional Coordinator of Forensic Medicine indicates that the autopsy report was sent to the Public Prosecutor's Offices on July 13, 2013.<sup>50</sup>

**October 28, 2013:** The Social Impact Homicide Unit at the Public Prosecutor's Office requests the autopsy report and pictures of the autopsy from the Regional Director of Forensic Medicine for the second time.<sup>51</sup> Additionally, the CLU rejects Ms. Romero's request for Ms. Hernández's case file because it may impede the ongoing investigation.<sup>52</sup>

**October 30, 2013:** Ms. Romero again requests the case file and autopsy report from a higher-ranking prosecutor at the CLU.<sup>53</sup>

**November 4, 2013:** The CLU presents a report including the most recent activity in the investigation, which included a record of calls made to the case's contacts and the second autopsy record request.<sup>54</sup> The prosecutor assigned to the case also attempted to contact Mr. Oscar Almendarez, the Episcopal Ministry, Unidad Color Rosa, and Ms. Hernández's friends and family, but their numbers were disconnected.<sup>55</sup>

**November 12, 2013:** The Social Impact Homicide Unit sends the report to the Special Unit for Crimes against Life Examination.<sup>56</sup>

**November 20, 2013:** The Public Prosecutor's Office indicates Ms. Romero and Ms. Hernández's mother are entitled to a copy of the investigation file.<sup>57</sup>

---

<sup>44</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 36.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* ¶ 37.

<sup>49</sup> *Id.*

<sup>50</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 38.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* ¶ 39.

<sup>55</sup> *Id.*

<sup>56</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 40.

<sup>57</sup> *Id.*

**March 12, 2015:** Ms. Romero informs the Special Prosecutor for Crimes against Life that the case file had not changed since October 2013 and that numerous important documents were not included.<sup>58</sup>

**February 22, 2017- March 2, 2017:** Representatives of Mrs. Hernández Martínez make multiple attempts to request an updated copy of the case file without success.<sup>59</sup>

### B. Other Relevant Facts

#### 1. General Context of Discrimination and Violence Against the LGBTQIA+ Community

Discrimination and violence against the LGBTQIA+ community has been noted with concern by the Inter-American Commission on Human Rights (the “Commission” or “IACHR”), the office of the UN Special Rapporteur on Violence Against Women, and the United Nations Human Rights Council (UNHRC).<sup>60</sup>

IACHR received reports stating that sixty-nine victims of the 174 recorded violent murders of LGBTQIA+ people in Honduras between 2009 and 2014 were transgender.<sup>61</sup> CEJIL recorded 214 crimes against LGBTQIA+ people between May 2003 and July 2012 in Honduras, and forty-seven of these crimes were perpetrated by police.<sup>62</sup> This report highlighted that Tegucigalpa and San Pedro Sula were the most dangerous cities for LGBTQIA+ individuals which meant that the State had the highest relative murder rate of transgender people from 2008 to 2016.<sup>63</sup> The report cited that transwomen specifically suffer more violence when they are perceived to work in sex work and the bodies of these transgender individuals were found or disposed of in public places.<sup>64</sup>

The IACHR noted the extensive police abuse, both in detainment and attempted extrajudicial executions, against the LGBTQIA+ community encourages others to harm the community freely.<sup>65</sup> CEJIL also indicated that many transgender women and individuals who cross dress may engage in sex work due to prejudice in finding other employment.<sup>66</sup> In addition to this, the most arbitrary detentions of transgender women engaging in sex work are by police and military who demand sexual services and do not pay.<sup>67</sup> Transgender people who are engaged in human rights activism and sex work are particularly vulnerable to violence from both the public and state due to their identity, employment and activism.<sup>68</sup>

In investigating these cases, the IACHR found the victim’s sexual orientation, gender identity and expression are not considered factors when identifying motives or suspects.<sup>69</sup> However, considering these factors could lead to cases being abandoned or unfinished, especially when the police may be perpetrators of these crimes.<sup>70</sup> Specifically, the IACHR has found that murders are not usually punished and that only thirty of the 141 violent deaths from

---

<sup>58</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 59.

<sup>59</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 42.

<sup>60</sup> *Id.* ¶ 12.

<sup>61</sup> *Id.* ¶ 13.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* ¶ 15.

<sup>65</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 15.

<sup>66</sup> *Id.* ¶¶ 15-16.

<sup>67</sup> *Id.* ¶ 16.

<sup>68</sup> *Id.* ¶ 18.

<sup>69</sup> *Id.* ¶ 17.

<sup>70</sup> *Id.*

2010-2014 were prosecuted.<sup>71</sup> The State reported that only 4% of homicides of those in the LGBTQIA+ community from between 2009 and 2013 had a final court decision.<sup>72</sup>

## 2. The June 28, 2009, Coup D'état and Following Human Rights Violations

On June 28, 2009, the National Congress received former President Zelaya's letter of alleged resignation.<sup>73</sup> Roberto Micheletti Bain, the President of Congress at the time, was appointed to be the President of Honduras for the remaining term, declaring a state of emergency and curfew.<sup>74</sup> Over the following days, there were numerous protests with thousands of arrests and nine deaths as the protests were repressed with excessive force.<sup>75</sup>

Since the coup, both the IACHR and UN Special Rapporteur highlighted that the LGBTQIA+ community suffered severe violence.<sup>76</sup> CEJIL conducted a study and concluded that the coup and corresponding rise of violence increased numbers of crimes against LGBTQIA+ individuals.<sup>77</sup> Many murders occurred in months following the coup where state security forces were trying to maintain control and a large presence in the streets.<sup>78</sup> Those killed, particularly transgender people in sex work, were found in public places.<sup>79</sup> Due to these factors, activists believe that many murders were committed by the State security forces.<sup>80</sup>

The petitioners highlighted that six of seven founding members of Unidad Color Rosa, Colectivo TTT were murdered and that fifteen of the twenty-seven transgender women murdered between 2012 and 2015 were affiliated activists, like Ms. Hernández.<sup>81</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**December 23, 2012:** The Red Lésbica “Catrachas” and Women’s Human Rights Center (Centro de Derechos Humanos de las Mujeres; “CEDEHM”), collectively the “petitioners”, send a petition to the Commission.<sup>82</sup>

**December 6, 2016:** The Commission adopts the Admissibility Report No. 64/16, which declares the petition admissible.<sup>83</sup>

**December 7, 2018:** The Commission publishes Merits Report No. 157/18 where it makes recommendations to the State.<sup>84</sup> The Commission finds the State in violation of Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 11 (Right to Privacy), 13 (Right to Equal Protection), 24 (Freedom of Thought and

---

<sup>71</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 14.

<sup>72</sup> *Id.*

<sup>73</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 37.

<sup>74</sup> *Id.*

<sup>75</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 38.

<sup>76</sup> *Id.* ¶ 20.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 45.

<sup>82</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 2.

<sup>83</sup> *Id.* ¶ 2(a).

<sup>84</sup> *Id.* ¶ 2(b).

Expression), and 25(1) (Right of Recourse Before a Competent Court) all in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.<sup>85</sup> Additionally, the Commission finds that the State violated Article 7 of the Inter American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.<sup>86</sup>

**January 30, 2019:** The State is notified about the Merits Report and given two months to comply with the recommendations.<sup>87</sup> The State requests and is granted an extension to report to the Commission but ultimately does not file the report or an extension request.<sup>88</sup>

### B. Before the Court

**May 29, 2019:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>89</sup>

**September 2020:** Eighteen people and organizations submit amici curiae briefs to the Court.<sup>90</sup> Those submitting amici curiae briefs include: Parliamentarians for Global Action; María Helena Luna Hernández; the International Service for Human Rights; José Benjamín González Mauricio; the United Nations High Commissioner for Human Rights; Human Rights Watch; the Committee of Relatives of Disappeared Detainees in Honduras (the Comité de Familiares de Detenidos Desaparecidos en Honduras; “COFADEH”); the Reflection, Research and Communication Team of the Society of Jesus in Honduras and the Legal Team for Human Rights (Equipo de Reflexión, Investigación y Comunicación of the Society of Jesus in Honduras and the Equipo Jurídico por los Derechos Humanos); the Latin America and Caribbean Coalition of LGBTTTI organizations; the Pakta Foundation of Ecuador; the Human Rights Clinic at the University of Santa Clara; the Law, Justice and Society Study Center – Dejusticia; Colombia Diversa; Equis Justicia para las Mujeres, A. C., and Casa de las Muñecas Tiresias, A.C.; Intersectional Rights Office (Oficina de Derechos Interseccionales; ODR); Lawyers without Borders, Canada; the RedTraSex, and Pedro DiPietro.<sup>91</sup>

**November 12, 2020:** The Court ordered the State to adopt provisional measures to protect the rights to life and personal integrity of Ms. Hernández’s family and the Red Lésbica “Cattrachas” group members through all appropriate means.<sup>92</sup>

#### 1. Violations Alleged by Commission<sup>93</sup>

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 11 (Right to Privacy)

Article 13 (Freedom of Thought and Expression)

---

<sup>85</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 101.

<sup>86</sup> *Id.*

<sup>87</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 2(c).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* ¶ 4.

<sup>90</sup> *Id.* ¶ 8.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* ¶ 9.

<sup>93</sup> Vicky Hernández et al. v. Honduras, Report on Merits, ¶ 5.

Article 24 (Right to Equal Protection)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

And Article (7) of the Convention of Belém do Pará.

## 2. Violations Alleged by Representatives of the Victims<sup>94</sup>

Same Violations Alleged by Commission.

### III. MERITS

#### A. Composition of the Court

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

Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

Romina I. Sijniensky, Deputy Secretary

#### B. Decision on the Merits

**March 26, 2021:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>95</sup>

The Court unanimously accepted that the State had acknowledged their violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in relation to Articles 1(1) and 2 of the Convention, to the detriment of Ms. Hernández's family,<sup>96</sup> because:

*The State conceded to the facts relating to Ms. Hernández's death and the subsequent investigation.<sup>97</sup> However, the State continued to dispute the events prior, as well as the allegations that the police and Honduran authorities discriminated against the LGBTQIA+ community in conducting the investigation.<sup>98</sup> The Court also acknowledged that the State did not accept responsibility for violating Article 7(b) of the Convention of Belém do Pará.<sup>99</sup> The Court determined that the State's acknowledgement positively contributed to the proceedings, helped the victims achieve reparations, and reflected the Convention's principles.<sup>100</sup>*

<sup>94</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶¶ 7-8, n.7. Indira Mendoza Aguilar, Angelita Baeyens, Astrid Ramos, Nadia Mejía and Kacey Mordecai served as representatives of Ms. Vicky Hernández.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* "Declares" ¶ 1.

<sup>97</sup> *Id.* ¶ 17.

<sup>98</sup> *Id.* ¶¶ 17-18.

<sup>99</sup> *Id.* ¶ 20.

<sup>100</sup> *Id.* ¶ 23.



The Court found unanimously that Honduras had violated:

Article 4.1 (Prohibition of Arbitrary Deprivation of Life), in relation to Articles 1(1), 8, and 25 of the Convention, as well as Article 5(1) (Right to Physical, Mental, and Moral Integrity) of the Convention, to the detriment of Ms. Hernández,<sup>101</sup> because:

*The Court established that the right to life is an essential foundation for other rights.<sup>102</sup> The State must use appropriate means to protect and preserve this right, which requires that no one is arbitrarily deprived of their life.<sup>103</sup> Additionally, Article 5 prohibits torture or cruel, inhuman or degrading treatment or punishment in order to respect one's physical, mental and moral integrity.<sup>104</sup> The Court also noted that even in exceptional situations such as curfews or suspensions of guarantees, where the State can sometimes restrict rights and freedoms, state authorities must still act lawfully.<sup>105</sup>*

*The Court also recognized that when Ms. Hernández was killed, the people of Honduras were subject to a curfew that restricted them to their homes.<sup>106</sup> The State had absolute control over public spaces and movement, allowing only police patrols and armed forces on the streets during night.<sup>107</sup> Additionally, there had been increasing violence against the LGBTQIA+ community, and the police were perpetrators in many of these cases.<sup>108</sup> Ms. Claudia Spellmant Sosa's witness testimony referred to arbitrary detentions, ill treatment, extortion, and police killings of transgender women in San Pedro Sula and the State.<sup>109</sup> As the former director of the Colectivo Unidad Color Rosa, Ms. Sosa recounted a specific incident where, out of two women who had denounced these police killings, one was murdered and the other was forced into exile.<sup>110</sup> Ms. Sosa also testified to the police beatings that she and Ms. Hernández suffered; the frequent raids in sex work districts; and Ms. Hernández reporting her arrest and police beating to the Colectivo Unidad Color Rosa.<sup>111</sup> Finally, Ms. Sosa stated that she learned about Ms. Hernández's death from two friends at her wake, which matched conversations that Ms. Hernández's mother had heard.<sup>112</sup>*

*The Court also highlighted that the State failed to conduct an adequate and diligent investigation, consistent with the ongoing impunity for violence – specifically against the LGBTQIA+ community and transgender women engaging in sex work.<sup>113</sup> This inaction also reflected the ongoing failure to prosecute and punish those responsible for violence.<sup>114</sup> The State's failure to investigate was reflected by increasing rates of violence, and lack of police record when Ms. Hernández reported that she was assaulted by a security guard.<sup>115</sup> The Court*

---

<sup>101</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, “Declares” ¶ 2.

<sup>102</sup> *Id.* ¶ 85.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* ¶ 86.

<sup>105</sup> *Id.* ¶ 88.

<sup>106</sup> *Id.* ¶ 87.

<sup>107</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 87.

<sup>108</sup> *Id.* ¶ 89.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* ¶ 90.

<sup>112</sup> *Id.* ¶¶ 91-92.

<sup>113</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 93.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* ¶¶ 94-95.

also noted the *Colectivo Unidad Color Rosa*'s goals to file and monitor complaints because the police did not want to receive and investigate claims made by those in sex work.<sup>116</sup>

The Court emphasized the important of investigating Article 1(1) violations.<sup>117</sup> In addition to preventing human rights violations, the State must investigate said violations to identify and punish perpetrators, as well as make adequate reparations to victims.<sup>118</sup> The State needs an effective system of justice to accomplish these obligations.<sup>119</sup> The Court also established higher standards for investigating violations against human rights defenders during curfews, where police and military are the only ones present.<sup>120</sup>

The Court listed the following factors suggesting the State's responsibility, including: (1) Ms. Hernández's murder occurred during a military and police-controlled curfew; (2) the context of violence against the LGBTQIA+ community and transgender women in sex work; (3) the general association of police violence against the LGBTQIA+ community and transgender women in sex work; (4) increased deaths associated with bias against gender identity and expression; (5) Ms. Hernández's experience of being assaulted by police while working; (6) indirect testimony that the night before Ms. Hernández's death, a police patrol had tried to arrest her and two friends; (7) general impunity for violence against transgender women; and (8) inadequate investigations to determine the events and responsible parties.<sup>121</sup>

Thus, Court concluded that the State violated Article 4(1) by failing to investigate violence against Ms. Hernández and likely participating in violence against the LGBTQIA+ community.<sup>122</sup> Additionally, Ms. Hernández's suffering, evidenced by the signs of sexual violence and her bodily injuries, violated her physical and moral integrity under Article 5(1).<sup>123</sup>

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Ms. Hernández Martínez, Ms. Rápalo Hernández and Ms. Reyes Ríos,<sup>124</sup> because:

Although the State partially acknowledged responsibility for violating Articles 8(1) and 25, the Court found it necessary to analyze the obligation to investigate.<sup>125</sup> The Court established that the right of access to justice in reasonable time must satisfy victims or their next of kin.<sup>126</sup> The State must take all necessary steps to investigate, prosecute, or punish those found guilty.<sup>127</sup> This obligation includes obtaining evidence and investigating logical leads.<sup>128</sup> The Court has established guidelines for criminal investigations which include: (1) recovering and preserving evidence; (2) identifying witnesses and taking their statements; (3) determining the cause, manner, location, and time of the investigated fact; (4) thorough examinations of the crime

<sup>116</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 95.

<sup>117</sup> *Id.* ¶ 97.

<sup>118</sup> *Id.* ¶ 96.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* ¶ 98.

<sup>121</sup> *Id.* ¶ 100.

<sup>122</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶¶ 100-101.

<sup>123</sup> *Id.* ¶ 102.

<sup>124</sup> *Id.* "Declares" ¶ 3.

<sup>125</sup> *Id.* ¶ 105.

<sup>126</sup> *Id.* ¶ 103.

<sup>127</sup> *Id.*

<sup>128</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 106.

scene; (5) proper tests by professionals with appropriate procedures; and (6) maintaining a proper chain of custody for evidence.<sup>129</sup>

*When investigating violent crimes, the State must use reasonable measures to uncover any existing discrimination, through impartial and objective decisions that do not omit facts.*<sup>130</sup> The Court noted that failure to investigate discriminatory motives constitutes a form of discrimination.<sup>131</sup>

*The Court then examined the State's only attempt at investigation, which sought to identify Ms. Hernández's assailant.*<sup>132</sup> Investigators only obtained Mrs. Hernández Martínez's statement two years after the murder, and did not consider state actors' potential roles or motivations regarding Ms. Hernández's gender identity, work, or activism.<sup>133</sup> The investigation also failed to consider the possibility of sexual assault or the overall pattern of discrimination and violence against the LGBTQIA+ community, specifically against transgender women who are engaged in sex work.<sup>134</sup>

Articles 3 (Right to Juridical Personality), 7 (Right to Personal Liberty), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), and 18 (Right to a Name and to Surname of Parents), in relation to Article 1(1), 8, 24, 25 of the Convention, to the detriment of Ms. Hernández,<sup>135</sup> because:

*The Court recognized that a variety of rights - including privacy, freedom of expression, equality, gender identity and non-discrimination - were violated when Ms. Hernández was murdered and her death was investigated in addition to the State failing to recognize her gender identity.*<sup>136</sup>

*The Court first discussed the factors reasonably suggesting that Ms. Hernández was killed because of her gender expression or identity.*<sup>137</sup> These factors, which also suggested sexual violence, include: (1) the broader context of discrimination of the LGBTQIA+ community; (2) an apparently used condom found near Ms. Hernández's body; (3) the public display of her body while dressed in clothing used during her sex work; (4) her activism and defense of LGBTQIA+ rights; and (4) her injuries, including the irregular wounds on her left eye and left frontal region, as well as bruising around her eyes.<sup>138</sup>

*The State recognized the authorities' failure to conduct satisfactory investigations and thereby violating Articles 8(a) and 25.*<sup>139</sup> The Court further acknowledged that the State failed to investigate the connection between Ms. Hernández's death and her activism under Colectivo Unidad Color Rosa; failed to investigate her death as a possible hate crime; classified her murder a crime of passion; failed to determine whether she experienced sexual violence; and

---

<sup>129</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 106.

<sup>130</sup> *Id.* ¶ 107.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* ¶ 108.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, "Declares" ¶ 4.

<sup>136</sup> *Id.* ¶ 111.

<sup>137</sup> *Id.* ¶ 112.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* ¶ 113.

*failed to recognize her gender by recording her sex and gender as male.*<sup>140</sup> *The Court recalled that personal prejudices and gender stereotypes could impact the objectiveness of investigations.*<sup>141</sup> *For example, biased state officials could have altered perceptions on whether violence had occurred, or skewed evaluations of witness and victim credibility.*<sup>142</sup>

*The Court also categorized a person's right to define their sexual and gender identity under Articles 7 and 11(2), concerning free development of personality; Article 11(2), concerning the rights to privacy; Article 3, concerning recognition of juridical personality; and Article 18, concerning recognition of a name.*<sup>143</sup> *In previous cases, the Court indicated that Articles 7 and 11(2) protect gender affirmation, which is thus linked to the broader rights of liberty, privacy, and self-determination.*<sup>144</sup> *Thus, State must recognize gender identity to allow transgender people to fully exercise and enjoy their rights.*<sup>145</sup> *Article 13 obligates the State to respect and ensure that people are able to express themselves, be treated in accordance with their identity, and display their persona in accordance with their identity.*<sup>146</sup> *To protect these rights in accordance with the obligation of non-discrimination, States must offset societal prejudice and address third parties that create, continue, or enable discrimination.*<sup>147</sup> *The Court recognized that the LGBTQIA+ community has historically suffered structural discrimination, violence, stigma, and denial of fundamental rights.*<sup>148</sup> *These burdens violate not only the right to life and personal integrity, but also the rights to gender identity and expression.*<sup>149</sup>

*The Court reasoned that Ms. Hernández's death occurred due to her gender presentation, and found that the State violated her right to gender identity.*<sup>150</sup> *Additionally, the investigation, stereotyping, and prejudices of State authorities, along with the State's refusal to recognize Ms. Hernández's gender identity, systematically fostered discrimination and social exclusion.*<sup>151</sup> *Further, the State preventing Ms. Hernández from displaying her gender identity and chosen name on her identification likely impacted the investigation.*<sup>152</sup> *Formally recognizing the right to gender identity and expression then prohibits any state law, decisions, or practice that diminishes an individual's rights based on their sexual identity, gender identity or expression.*<sup>153</sup> *As a result, the State must allow and ensure that everyone can change their name and other components of their identity without interference.*<sup>154</sup>

*To conclude, the Court found that the State must allow people to assume a desired chosen identity, rather than force them to continue living with a different, non-representative identity.*<sup>155</sup>

---

<sup>140</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 113.

<sup>141</sup> *Id.* ¶ 114.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* ¶ 115.

<sup>144</sup> *Id.* ¶ 116.

<sup>145</sup> *Id.*

<sup>146</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 117.

<sup>147</sup> *Id.* ¶ 118.

<sup>148</sup> *Id.* ¶ 119.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* ¶ 120.

<sup>151</sup> *Id.* ¶ 121.

<sup>152</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 122.

<sup>153</sup> *Id.* ¶ 124.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Ms. Rosa Argelia Hernández Martínez, Ms. Merelin Tatiana Rápalo Hernández and Ms. Argelia Johana Reyes Ríos,<sup>156</sup> because:

*Ms. Hernández's family suffered due to her death, the recurring discrimination she faced, and the specific facts of her murder.<sup>157</sup> Specifically, the Court considered Ms. Hernández's mother's statements that she was profoundly sad and not prepared to lose her daughter, especially knowing that her daughter was killed for being transgender.<sup>158</sup> Mrs. Hernández Martínez stated that she felt despair and wanted to die, and would frequently start crying.<sup>159</sup> She also had trouble sleeping because she could not stop thinking of her daughter and how she was killed.<sup>160</sup> Similarly, Ms. Hernández's sister, Ms. Merelin Tatiana Rápalo Hernández, had trouble sleeping when she thought of how Ms. Hernández was killed and how she suffered without a support system.<sup>161</sup>*

*Both Ms. Hernández's mother and sister described Ms. Hernández's experiences as a transgender sex worker.<sup>162</sup> Mrs. Hernández Martínez recounted (1) when a security guard hit Ms. Hernández in the head and arm, claiming that he hated prostitutes and that they should not exist; (2) the police's mistreatment when Ms. Hernández filed a complaint, including their comments that she could die and that as far as the police were concerned, she did not exist and was worthless; (3) how she was mistreated and taken advantage of as though anyone could do anything to her; and (4) that she had been raped.<sup>163</sup> Similarly, Ms. Rápalo Hernández recounted how Ms. Hernández said it was difficult living with constant discrimination and mistreatment.<sup>164</sup> Ms. Rápalo Hernández experienced this treatment firsthand when going out with her sister, as people stared, insulted Ms. Hernández and threw things at her.<sup>165</sup>*

*The Court thus concluded that the State violated Article 5(1) for causing Ms. Hernández's family great suffering due to her death, the discrimination against her, and the impunity for her murder.<sup>166</sup>*

The Court found by five votes to two that the State had violated:

Article 7(a) (Duty to Refrain from Acts of Violence) of the Convention of Belém do Pará, to the detriment of Ms. Hernández,<sup>167</sup> and Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the same Convention to the detriment of Ms. Rosa Argelia Hernández Martínez, Ms. Rápalo Hernández and Ms. Reyes Ríos,<sup>168</sup> because:

---

<sup>156</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, “Declares” ¶ 5.

<sup>157</sup> *Id.* ¶ 143.

<sup>158</sup> *Id.* ¶ 141.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 142.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* ¶ 143.

<sup>167</sup> *Id.* “Declares” ¶ 6.

<sup>168</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, “Declares” ¶ 6.

*The State was found in violation for its inaction during the events leading to Ms. Hernández's death and lack of due diligence when investigating her murder.*<sup>169</sup> *The Convention of Belém do Pará was adopted to protect women's right to live a life without violence.*<sup>170</sup> *The State is obligated to eliminate violence in both public and private situations by condemning all forms of violence and pursuing policies to prevent, punish, and eradicate this violence.*<sup>171</sup> *Article 1 acknowledges that violence in a patriarchy results from gender stereotypes and historical power inequality between women and men.*<sup>172</sup> *The Court considered violence based on gender identity and expression to be violence based on gender, because it results from social constructs of gender identity, socially defined attributes, and socially assigned roles.*<sup>173</sup> *The Court noted that violence against LGBTQIA+ individuals is especially violent in comparison to other bias-motivated violence.*<sup>174</sup> *Thus, adequate and effective response to gender identity-based violence must take into account any particular patterns behind such violence and discrimination.*<sup>175</sup> *Article 9 acknowledges that different aspects of women's backgrounds, such as race, migrant status, or ethnicity, may increase vulnerability to gender-based crimes and violence.*<sup>176</sup> *The Court recognized that gender identity and sex are internal and individual experiences, that are protected, free, and autonomous decisions.*<sup>177</sup>

*The Court discussed other views that advocate for the inclusion of transgender women when considering gender-based violence.*<sup>178</sup> *For example, the Commission advocated for an interpretation of Article 9 to include unlisted intersectional factors.*<sup>179</sup> *Additionally, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) advocated for an interpretation of gender discrimination that includes gendered causes of violence – such as violence against lesbian, bisexual, transgender and or intersex women.*<sup>180</sup> *Further, the Follow-up Mechanism to the Convention of Belém do Pará (Mecanismo de Seguimiento de la Convención de Belém do Pará; “MESECVI”) instructs the Convention to analyze the frequency of violence and hate crimes against girls, adolescents, adults, and older women, including those who are lesbian and or have diverse gender identities.*<sup>181</sup> *As a result, the Court adopted an evolutionary interpretation of the Convention of Belém do Pará that includes transgender women and Ms. Hernández.*<sup>182</sup>

*The Court also obliged the State to exhibit due diligence by applying a gender perspective when investigating and prosecuting violence against women.*<sup>183</sup> *The State must also avoid chronic impunity, which would discourage further violence.*<sup>184</sup> *The Court once again emphasized the violence against Ms. Hernández; her murder; her activism for transgender women; her identity as a transgender women engaged in sex work; the State's heightened*

---

<sup>169</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶¶ 126-127.

<sup>170</sup> *Id.* ¶ 127.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* ¶ 128.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 128.

<sup>176</sup> *Id.* ¶ 129.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* ¶¶ 130-132.

<sup>179</sup> *Id.* ¶ 130.

<sup>180</sup> *Id.* ¶ 131.

<sup>181</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 132.

<sup>182</sup> *Id.* ¶ 133.

<sup>183</sup> *Id.* ¶ 134.

<sup>184</sup> *Id.*



*responsibility to investigate; and the State's failure to consider gender identity to determine Ms. Hernández particularly vulnerable to violence and discrimination.*<sup>185</sup>

### C. Dissenting and Concurring Opinions

#### 1. Dissenting Opinion of Judge Elizabeth Odio Benito

In a separate opinion, Judge Odio Benito partially dissented, stating that the State did not comply with its obligations under Article 7(a) and Article 7(b).<sup>186</sup> Judge Odio Benito also disagreed that the State should be obligated to enact a law allowing people to change their sex on public record without a note, as well as to analyze violence against transgender people.<sup>187</sup> Judge Odio Benito reasoned that the confusion of gender identity and sex in political and academic debate; historic and permanent violence against women and violence to other groups; and the historical development of Convention of Belém do Pará require understanding in order to address structural and historical issues concerning violence against vulnerable groups.<sup>188</sup> Judge Odio Benito concluded that the Court's approach was erroneous because it did not benefit either women or transgender women, and hinders the State's ability to determine the causes of violence.<sup>189</sup>

#### 2. Concurring Opinion of Judge L. Patricio Pazmiño Freire

Judge L. Pazmiño Freire disagreed with the reasoning used to establish transwomen's rights under the Convention of Belém do Pará.<sup>190</sup> Judge Pazmiño Freire stated that by categorizing transwomen as women, the Court indicated that self-perception determines identification.<sup>191</sup> Additionally, Judge Pazmiño Freire noted the importance of law evolve with developments in social sciences, psychology, and medicine.<sup>192</sup> Judge Pazmiño Freire commented how this case, which was within the Court's region, was paradigmatic as it involved the structural, systematic, and internationally-recognized violence based on gender identity.<sup>193</sup> Judge Pazmiño Freire opined that the majority's statements were correct, but required analysis of case law from Advisory Opinion OC-24, where the Court first departed from cisnormativity.<sup>194</sup>

#### 3. Dissenting Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi disagreed that the State violated Article 7(a) and 7(b) because the convention only applied to biological women.<sup>195</sup> Judge Vio Grossi stated that this treaty and its articles should be interpreted under Article 31(1) of the Vienna

<sup>185</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 135.

<sup>186</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Separate Opinion of Judge Elizabeth Odio Benito, Inter-Am. Ct. H.R. (ser. C) No. 422, ¶ 1 (Mar. 26, 2021).

<sup>187</sup> *Id.* ¶ 3.

<sup>188</sup> *Id.* ¶¶ 4, 39.

<sup>189</sup> *Id.* ¶ 42.

<sup>190</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Separate Opinion of Judge L. Patricio Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 422, ¶ 1 (Mar. 26, 2021).

<sup>191</sup> *Id.* ¶ 1.

<sup>192</sup> *Id.* ¶ 2.

<sup>193</sup> *Id.* ¶¶ 6-7.

<sup>194</sup> *Id.* ¶¶ 11-12.

<sup>195</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 422, ¶ 2 (Mar. 26, 2021).

Convention on Law of Treaties.<sup>196</sup> Article 31(1) requires good faith interpretation of a given treaty's terms using their ordinary meanings in light of the treaty's context, object, and purpose.<sup>197</sup> According to Judge Vio Grossi, the plain meanings of Articles 1 and 3 of the Convention of Belem do Pará cannot interpret women to include transgender women.<sup>198</sup> Judge Vio Grossi stated that the State's obligation to address violence based on gender identity should result from Articles 1 and 5(1) of the American Convention, which could be stronger and more expansive if interpreted to include this obligation.<sup>199</sup> Judge Vio Grossi noted that the Convention anticipated this interpretation because the Convention includes protocols and instruments which could strengthen and expand provisions while the Convention of Belem do Pará requires amendments.<sup>200</sup> Judge Vio Grossi concluded that while reform or expansion of international law is slow and difficult, international human rights law can effectively regulate inter-American society and increase respect in the normative and judicial functions of the Convention and the Court.<sup>201</sup>

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

##### A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

##### 1. Judgment as Form of Reparation

The Court established that this Judgment serves as a form of reparation.<sup>202</sup>

##### 2. Investigate

The Court emphasized that the State must prioritize reinvestigating Ms. Hernández's death by giving the case special attention and new expedition measures as a part of reparations owed to the victims.<sup>203</sup> The Court indicated that the new investigation must be commenced within a reasonable time by officials trained in cases involving victims of discrimination and violence against transgender people.<sup>204</sup> The Court noted that the new investigation must not re-victimize Ms. Hernández's family and must not follow discriminatory stereotyping as it did before.<sup>205</sup> Specifically, the new investigation must consider Ms. Hernández's gender identity, her role as a LGBTQIA+ rights defender, and her work.<sup>206</sup> In addition to this, the State must consider the culpability of public servants and agents in the prior investigation and the administrative, disciplinary and criminal liabilities of these actors.<sup>207</sup>

---

<sup>196</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, ¶ 4.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* ¶ 31.

<sup>199</sup> *Id.* ¶ 32.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* ¶ 33.

<sup>202</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, "And Establishes" ¶ 7.

<sup>203</sup> *Id.* ¶ 152.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*



### 3. Publish the Judgment

The State must publish the following in legible and appropriate font: (1) the official summary of this judgment in the Official Gazette; (2) the official summary in a widely circulated, national newspaper; (3) and the full judgment on an official State website for one year.<sup>208</sup> The State must do this within six months of notification of this judgment and notify the Court immediately once it has done so.<sup>209</sup>

### 4. Public Acknowledgement of International Responsibility

The Court noted that the State partially acknowledge international responsibility in the public hearing before the Court.<sup>210</sup> However, the Court still required that the State organize a public act to fully acknowledge responsibility of human rights violations as established through the decision.<sup>211</sup> Additionally, this acknowledgement must have senior state officials, including the highest ranking police members, present, as well as the victims and their representatives if they wish.<sup>212</sup> Therefore, the State, the victims and/or their representatives must agree on the organization and details for the public acknowledgement.<sup>213</sup> The Court ordered that this acknowledgement be held at “Colectivo Unidad Color Rosa” if Ms. Hernández’s family agreed.<sup>214</sup> To enable the victims to be present, the State must cover transportation costs.<sup>215</sup> This public acknowledgement must also be widely publicized including through media.<sup>216</sup> The Court determined that Honduras had one year to comply with this requirement.<sup>217</sup>

### 5. Scholarship for Ms. Reyes Ríos

The Court highlighted that Ms. Hernández provided financial support to her family, and for this reason her death negatively impacted their financial situation.<sup>218</sup> In concluding that the State was responsible for Ms. Hernández’s death, the Court required that Honduras provide Ms. Reyes Ríos a scholarship to cover her school expenses and technical or university education.<sup>219</sup> The Court stipulated that this scholarship would be paid monthly and must be granted as soon as she requests the scholarship, until she discontinues her studies.<sup>220</sup> The scholarship must additionally cover any associated costs for her education.<sup>221</sup> Ms. Reyes Ríos or a legal representative must inform the State within six months of notification of the judgment if she intends to accept the scholarship.<sup>222</sup> The State must also remain informed of when Ms. Reyes Ríos completes her secondary education and the career she intends to follow, and whether she will pursue a career at a technical school or university.<sup>223</sup>

---

<sup>208</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 155.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* ¶ 157.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* ¶¶ 157-158.

<sup>213</sup> *Id.* ¶ 158.

<sup>214</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 158.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> *Id.* ¶ 161.

<sup>219</sup> *Id.*

<sup>220</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶¶ 161-162.

<sup>221</sup> *Id.* ¶ 162.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

#### 6. Documentary About Discrimination and Violence Against Transgender Women in Honduras

When considering the larger context of violence against transgender women, the Court ordered the State to create a documentary.<sup>224</sup> The Court stated this documentary must include the facts of this case and ensure that the victims have an active role throughout the documentary's production.<sup>225</sup> The State is required to pay for the production and distribution of the documentary among the victims, their representatives, police and military training facilities, schools, and universities.<sup>226</sup> The purpose of the documentary is to inform Hondurans about this case and the overall experience of transgender women in Honduras.<sup>227</sup> The State is required to broadcast the documentary on a national television channel at prime time at least once and publish the documentary on the National Police's website.<sup>228</sup> The State has six months to present a progress report to the Court and a year to produce and distribute this documentary.<sup>229</sup>

#### 7. "Vicky Hernández" Scholarship Created for Transgender Women

The Court noted that the discrimination against transgender women also limits their access to education.<sup>230</sup> As a result, the Court ordered the State to create a scholarship program named after Ms. Hernández for all the expenses for one person to study in a public institution for a year which is annually reviewed.<sup>231</sup> The victims or representatives will choose a group or organization which helps transgender women to coordinate the scholarship and set objective conditions for the merit based scholarship.<sup>232</sup> The victims or their representatives have six months to designate an organization for the scholarship.<sup>233</sup> The State has two years to fully comply with this measure.<sup>234</sup>

#### 8. Provide Adequate Mental Health for Ms. Hernández's Family

The Court acknowledged the violations of personal integrity that members of Ms. Hernández's family suffered throughout this case.<sup>235</sup> As a result, the Court ordered the State to pay for the psychological care of Ms. Hernández's family.<sup>236</sup>

#### 9. Train Law Enforcement

The Court ordered the State to create and integrate a permanent training program for law enforcement that would: (1) raise awareness of respect for sexual orientation and gender throughout their interactions with civilians; (2) train law enforcement on investigations for violence against the LGBTQIA+ community; (3) emphasize the discriminatory nature of

---

<sup>224</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 163.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 164.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* ¶ 166.

<sup>236</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 166.

stereotypes and impact on those who identify as LGBTQIA+; and (4) educate about the rights of those who are employed in sex work, human rights' defenders of those in the LGBTQIA+ community, those who are HIV positive and how law enforcement should perform their duties with these individuals.<sup>237</sup> This training program must be created and implemented within two years and transgender people's rights groups and organizations must be involved in planning and executing this training.<sup>238</sup>

#### 10. Recognize Gender Identity

The Court determined that the State must adopt a procedure to recognize gender identity on documents and public records within two years of notification of this judgment and report every six months on steps to comply.<sup>239</sup> The Court required that this procedure reflect Advisory Opinion OC-24-17's requirements.<sup>240</sup> The Court specified that this procedure must allow for the correction of gender, sex or name change, new photographs in records, or identifying documents and that those interested have a procedure which: (1) allows complete correction of gender identity in documents; (2) is based on the individual's free and informed consent rather than medical, psychological and or other unreasonable or pathologizing certifications; (3) is confidential so that gender changes are not reflected on identity documents and records; (4) is quick and free or as affordable as possible; (5) does not require surgery or hormone therapy; and (6) need not be regulated by laws.<sup>241</sup>

#### 11. Special Investigation Protocols

The Court highlighted the State's need to specify criteria from both this judgment and from other international institutions for investigations that involve prejudice-based crimes.<sup>242</sup> The Court required the State to adopt a protocol for investigations and criminal proceedings for cases of violence against LGBTQIA+ people within two years of notification of the judgment.<sup>243</sup> The Court noted that this protocol should be binding in domestic law and should address all public officials including public and private health personnel involved in investigation and or criminal proceedings.<sup>244</sup> Additionally, the Court emphasized the importance for state officials not to use stereotypes and presumptions throughout the investigation process.<sup>245</sup>

#### 12. Collect, Analyze and Disseminate Patterns of Violence and Discrimination

The State must design and implement a system to collect data and information about violence against LGBTQIA+ people to assess the prevalence and patterns of violence and discrimination by sorting this data using a variety of factors including ethnicity, religion or beliefs, age, class, migratory status, economic class or health.<sup>246</sup> This system must be designed

---

<sup>237</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 168.

<sup>238</sup> *Id.* ¶¶ 168-169.

<sup>239</sup> *Id.* ¶¶ 172-173.

<sup>240</sup> *Id.* ¶ 173.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.* ¶ 176.

<sup>243</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 176.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.* ¶ 179.

and implemented within one year.<sup>247</sup> The State must also protect the victims' identity in a yearly published, publicly accessible report for the first three years.<sup>248</sup>

### B. Compensation

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court required the State to pay the lost wages and consequential damages to Ms. Hernández's family.<sup>249</sup> Specifically, the Court awarded \$20,000 to Ms. Hernández Martínez and \$10,000 to Ms. Rápalo Hernández.<sup>250</sup>

#### 2. Non-Pecuniary Damages

In recognition of the nature and gravity of the case as well as length of time since Ms. Hernández's death, the Court ordered the State to pay \$100,000 to Ms. Hernández and split among her heirs according to the State's inheritance laws.<sup>251</sup> Additionally, the Court ordered the State to pay \$50,000 to Ms. Hernández Martínez, \$30,000 to Ms. Rápalo Hernández, and \$20,000 to Ms. Reyes Ríos.<sup>252</sup> The money for Ms. Reyes Ríos must be held until she is no longer a minor or when otherwise decided by a competent judicial authority.<sup>253</sup> If the money is not claimed within ten years of Ms. Reyes Ríos reaching proper maturity, the money must return to the State with interest.<sup>254</sup> Additionally, the Court required the State to pay \$18,000 for any psychological treatment for Ms. Hernández's family without any requirements that it be accounted for.<sup>255</sup>

#### 3. Costs and Expenses

The Court ordered the State to pay \$30,000 to Red Lésbica "Cattrachas" for expenses incurred from acting as representatives of the victims since December 23, 2012, when the case appeared before the Commission.<sup>256</sup> Additionally, the Court ordered the State to pay \$15,000 to the Robert F. Kennedy Human Rights organization for expenses incurred when joining as legal representatives since 2015.<sup>257</sup> The Court also indicated that it could later require additional reimbursements for the victims or representatives for reasonable expenses incurred at the monitoring compliance stage.<sup>258</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$293,000

---

<sup>247</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 179.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.* ¶ 187.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.* ¶ 191.

<sup>252</sup> *Id.*

<sup>253</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 191.

<sup>254</sup> *Id.* ¶ 192.

<sup>255</sup> *Id.* ¶ 193.

<sup>256</sup> *Id.* ¶ 197, n.189.

<sup>257</sup> *Id.* ¶ 197, n.190.

<sup>258</sup> *Id.* ¶ 197.

### C. Deadlines

The State must pay the costs and expenses, pecuniary and non-pecuniary damages to the individuals and organizations entitled to reparations within a year.<sup>259</sup> Additionally, within one year of being notified of this judgment, the State must submit a report on the measures taken to comply with this judgment.<sup>260</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[NONE]

## VI. COMPLIANCE AND FOLLOW-UP

**September 9, 2022:** The Court determined that Honduras fully complied with its obligations to publish the judgment and official summary, publicly acknowledge international responsibility, and pay for the victim's required psychological and/or psychiatric medical care.<sup>261</sup> Honduras only partially complied with paying damages to Ms. Hernández, Ms. Hernández Martínez and Ms. Rápalo Hernández, but did not comply in paying damages to Ms. Reyes Ríos.<sup>262</sup>

## VII. LIST OF DOCUMENTS

### A. Inter-American Court

#### 1. Preliminary Objections

[NONE]

#### 2. Decisions on Merits, Reparations and Costs

Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 422 (Mar. 26, 2021).

Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Separate Opinion of Judge Elizabeth Odio Benito, Inter-Am. Ct. H.R. (ser. C) No. 422, (Mar. 26, 2021).

Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Separate Opinion of Judge L. Patricio Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 422, (Mar. 26, 2021).

Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 422, (Mar. 26, 2021).

---

<sup>259</sup> Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, ¶ 198.

<sup>260</sup> *Id.* "And Establishes" ¶ 20.

<sup>261</sup> Vicky Hernández et al. v. Honduras, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶ 9(1), "Resolves." (Sept. 9, 2022).

<sup>262</sup> *Id.*

3. Provisional Measures

Vicky Hernández et al. v. Honduras, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) “View,” > (Nov. 12, 2020).

4. Compliance Monitoring

Vicky Hernández et al. v. Honduras, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Sept. 9, 2022).

5. Review and Interpretation of Judgment

[NONE]

*B. Inter-American Commission*

1. Petition to the Commission

[NONE]

2. Report on Admissibility

Vicky Hernández et al. v. Honduras, Admissibility Report, Report No. 64/16, Inter-Am. Comm’n H.R., Petition No. 2332-12, (Dec. 6, 2016).

3. Provisional Measures

[NONE]

4. Report on Merits

Vicky Hernández et al. v. Honduras, Report on Merits, Report No. 157/18, Inter-Am. Comm’n H.R., Case 13.051, (Dec. 7, 2018).

5. Application to the Court

Vicky Hernández et al. v. Honduras, Letter of Submission, Inter-Am. Comm’n H.R., Case No. 13,051, (Apr. 30, 2019).