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REPORT No. 157/18
CASE 13.051
REPORT ON MERITS

VICKY HERNÁNDEZ AND FAMILY
HONDURAS

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Honduras, December 7, 2018.

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I. SUMMARY

1. On December 23, 2012, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Red Lésbica “CATTRACHAS” a feminist lesbian organization in Honduras and Centro de Derechos Humanos de las Mujeres (hereinafter “the petitioners”),^{1/2} alleging the international responsibility of Honduras (hereinafter “the Honduran State,” “the State,” or “Honduras”) to the detriment of Vicky Hernández and her family.

2. The Commission adopted Report on Admissibility No. 64/16 on December 6, 2016.³ On December 15, 2016, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement. The parties were afforded the regulation time limits to present additional observations as to merits. All information received was duly relayed between the parties.

3. The petitioners alleged that the State was responsible for the killing of Vicky Hernández, a trans woman and human rights defender who was murdered during a curfew established under the coup d'état in 2009. They argued that it was an extrajudicial execution given the high presence of military personnel and police in the area as well as the existence of a context of violence, discrimination, and police brutality toward LGBTI persons in Honduras, which intensified in the wake of the coup. They argued that the State had failed to act with due diligence to investigate the facts and identify those responsible, and that there was discrimination in terms of access to justice because of Vicky Hernández's gender identity.

4. The State contended that it had fulfilled its obligation to investigate the death of Vicky Hernández and that it had made substantial efforts to get to the truth. It argued that the proceedings had been long and drawn out because the case was complex. It said that it had not been demonstrated that the State, through its agents, had acted in contravention of the Convention and that in the course of the proceedings the effort had been made to respect the victim's gender identity.

5. Based on its findings of fact and law, the Inter-American Commission has concluded that the State is responsible for the violation of Articles 4(1) (right to life), 5(1) (right to humane treatment), 8.1 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), 24 (right to equal protection and nondiscrimination), and 25(1) (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) taken in conjunction with the obligations established in Article 1(1) of the same instrument. The Commission also found that there had been a violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, (hereinafter “Convention of Belém do Pará”). The Commission made appropriate recommendations.

II. SUBMISSIONS OF THE PARTIES

A. The Petitioners

¹ In a written communication dated March 30, 2015, the CDM withdrew its representation in this case.

² Subsequently, Robert F. Kennedy Human Rights became co-petitioner.

³ IACHR, Report No. 64/16, Petition 2332-12, Admissibility, Vicky Hernández and Family, Honduras, December 6, 2016. Articles 4, 5, 8, 13, 24, and 25 were declared admissible in connection with Article 1.1 of the American convention, as was Article 7 of the Convention of Belém do Pará

6. The petitioners say that on the night of June 29, 2009, Vicky Hernández, a trans woman registered at birth as Johnny Emilson Hernández, was murdered in the city of San Pedro Sula in the context of roundups conducted by the National Police during a curfew instituted the day before, following the coup d'état in the country. They stressed that the killing occurred at a time when "the only people on the streets were security forces personnel." They said that the events were consistent with the context of discrimination and violence toward women and LGBTI persons in Honduras, noting that trans women were particularly prone to be subjected to violence by the police and other state agents, a situation that worsened and intensified in the wake of the coup.

7. In relation to the criminal investigations, they said that they had not been conducted with the proper diligence. They said that only 12 investigative procedures had been carried out, four of which were the initial actions that are taken as a matter of routine during the removal of a corpse and identification of the deceased, and that the only statement taken in the process had been that of Vicky's mother. They charged that key procedures, such as an autopsy, which was twice requested by the prosecutor's office were not carried out, and that as at March 2015 there was no record of an autopsy in the record. They said that at the time of the events, it was denounced that the refusal to conduct an autopsy was based on the presumption that the victim had HIV. They said that no witnesses were contacted that might have been able to provide relevant information and that they had not had access to a full, up-to-date copy of the record.

8. They alleged a violation of Vicky Hernández's **rights to life and humane treatment** in connection with Article 7 of the Convention of Belém do Pará. The petitioners also alleged that Honduras was responsible for violation of the **rights to a fair trial and judicial protection** taken in conjunction with Article 7(b) of the Convention of Belém do Pará, since the investigation that it opened did not adopt a gender and gender identity perspective, and that it also failed to pursue lines of inquiry in relation to the context or take into account the victim's work as an activist. They also alleged that the possibility of sexual violence was not analyzed and that the authorities failed to act with diligence in collecting and analyzing evidence. They argued that the State violated Vicky Hernández's **right to equal protection** in connection with Article 7 of the Convention of Belém do Pará, since the mere fact that she was a trans woman deprived her of her right to be accorded the proper attention by the authorities in charge of the investigation. They said that the state also violated the **right to freedom of expression** due to the fact that in the context of the proceedings the authorities made biased assumptions and registered Vicky as an individual of male sex named Johnny because Honduran law does not allow someone to be legally recognized by the gender identity that they choose for themselves. Finally, the petitioners said that the State violated the **right to humane treatment** of Vicky Hernández's mother, cousin, and niece.

B. The State

9. The State contended that in keeping with its obligation to investigate the death of Vicky Hernández it had made efforts to get to the truth. It said that the proceedings had been long and drawn out because the case was complex. It explained that the refusal to provide a complete, up-to-date copy of the record was based on the fact that such access could jeopardize the effectiveness of the inquiries. As regards investigative procedures, it said that the removal of the corpse had been carried out and an on-site inspection record prepared. It also said that it took a statement from the mother of the victim, who stated that on June 27, 2009, Vicky arrived at her house and asked to borrow some money, and that she then left, after which she did not see her again. The State said that the mother said in her statement that "her son had mentioned some weeks earlier that another trans person had robbed him and threatened him if they saw him again [Tr: sic]." The State said that subsequently several telephone calls were made to gather additional information about the facts, but that all of the telephone numbers called had been out of service. The State underscored that the area where the events occurred was one of the most violent parts of the city where the Salvatrucha gang (*mara salvatrucha*) exercised considerable control.

10. The State stressed that the lack of witnesses at the scene had made it impossible to clarify what had happened and identify those responsible. As regards the autopsy report, it said that in December 2015 it had been part of the investigation record and that it found that the characteristics of the injuries were consistent with those caused by an regular firearm projectile from a long distance. It said that in September

2017 a follow-up request was made to the Evidence Warehouse so that its laboratory might examine the evidence collected at the scene, including an apparently used condom and a bullet. It said in relation to the condom, that it had not been analyzed to determine if it contained genetic material because the genetic material could be lost if the packaging were opened and the evidence handled without there being any suspect. As regards the bullet, the State said that information on the current state of its analysis was being sought.

11. As to the **rights to life and humane treatment**, it said that it had not been demonstrated that the State, through its agents, had acted in contravention of the Convention. It considered that it was up to the petitioners to demonstrate the State's responsibility for the killing and that the fact that impunity precluded knowing who the culprits were did not mean that they were State agents and that "it is impossible for the State to control the free will of private citizens." As to the **rights to a fair trial and judicial protection**, the State said that it had complied with inter-American standards as far as investigation was concerned and that its obligation should not be considered unfulfilled simply because the investigation had not yielded satisfactory results. It said that one line of investigation sought to identify the person who had threatened the victim days prior to the events, according to their mother's statement. It said that inquiries into the involvement of State security organs were not being pursued. Finally, with regard to the **right to equal protection**, Honduras argued that the investigation had not produced sufficient reasonable evidence to believe that the case might have been a hate crime against LGBTI persons by agents of the State and that, moreover, in the course of the proceedings, the effort had been made to respect the victim's gender identity by referring to her by her trans woman's name.

III. FINDINGS OF FACT

A. CONTEXT

1. General context of discrimination and violence against LGBT persons in Honduras

12. The IACHR, the Office of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Office of the UN Special Rapporteur on violence against women have stated that discrimination and violence against members of the LGBT community in Honduras has been cause for great concern in recent years.⁴ Civil society organizations have informed the IACHR about the high number of murders of lesbian, gay, bisexual, and trans people in the country, saying that there is a "social environment ... of traditional discrimination against LGBT people, leading to violence motivated by prejudice."⁵ In January 2011, the United Nations Human Rights Council, in the context of its Universal Periodic Review, called on the State to respond to the increasingly worse situation of crimes against the LGBT population in the country.⁶

13. According to reports received by the IACHR, from 2009 to December 2014 there were 174 recorded violent killings of LGBT persons in the country, 69 of whom were trans.⁷ Between May 2003 and July 2012, CEJIL registered 214 crimes against LGBT persons, including violations of the right to life, violations of the right to humane treatment, rape, and violations of the right to personal liberty. It also noted that the cities of Tegucigalpa and San Pedro Sula were the most dangerous for LGBT people.⁸ Of the 214 crimes reported, it said that at least 127 were committed against "trans or transvestite" individuals, and that,

⁴ IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II, December 31, 2015, par. 130; United Nations, General Assembly, *Extrajudicial, summary or arbitrary executions, Note by the Secretary-General*, Doc. A/57/138, 2 July 2002; United Nations, *Economic and Social Council, Report of Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences*, Doc. E/CN.4/2005/72/Add.1, 18 March 2005; *Addendum - Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Honduras*, A/HRC/37/3/Add.2.

⁵ IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II, December 31, 2015, pars. 130 and 132; IACHR, Press Release, *Preliminary Observations concerning the Human Rights Situation in Honduras*, December 5, 2014.

⁶ United Nations, General Assembly, *Report of the Working Group on the Universal Periodic Review - Honduras*, Doc. A/HRC/16/10, 4 January 2011.

⁷ IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II, December 31, 2015, par. 130.

⁸ CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, p. 128 (in Spanish only).

of those, police were said to be responsible in 47 incidents.⁹ According to another report, between 2008 and 2016, there were 89 recorded killings of trans persons, with Honduras as the country with the highest relative murder rate of trans individuals worldwide, with 10.77 per million inhabitants.¹⁰ CEJIL has also said that trans women, in particular, suffer violence doubly, especially when they are perceived as engaging in sex work.¹¹ It said that the bodies of murdered “trans women or transvestites” in Honduras are often dumped in public places, in full sight of people, and that “the majority of documented assaults and murders were committed with a firearm.”¹²

14. In relation to investigations into cases of violence against LGBT persons, the IACHR has received information indicating that the murders tend to go unpunished, and that such cases are tainted from the start by prejudices based on the sexual orientation, gender identity or gender expression of the victims.¹³ According to information received by the IACHR, of 141 violent deaths reported between 2010 and 2014, only 30 cases had been prosecuted.¹⁴ The State itself informed the IACHR that in only 4 percent of homicides of LGBT persons between 2009 and 2013 had a final decision had been rendered by the courts.¹⁵ The organization Global Rights and the International Human Rights Clinic at the University of Virginia published a report in which they concluded that the criminal justice system discriminates against LGBT persons and fails to protect them. Their murders are not investigated and go unsolved, allowing the perpetrators to remain unpunished. The report also highlighted repeated violations against members of the LGBT community committed by members of the police, particularly unlawful detention and misuse of authority.¹⁶

15. The IACHR has expressed concern about police abuses against LGBT persons, saying that police involvement “leads others to believe that they can harm persons of non-normative sexual orientations and gender identities with impunity.”¹⁷ It has found that “[n]umerous reports indicate that trans women and trans sex workers are particularly vulnerable to police abuse and are regularly subjected to inhumane treatment by law enforcement when detained.”¹⁸ The IACHR has received information about attempted extrajudicial executions of trans persons by members of the police in Honduras.¹⁹ The IACHR has said that the most commonly reported forms of abuse are extortion and the demand for sexual favors; use of excessive force; vicious beatings; the use of firearms to hurt or incapacitate victims; instances in which trans women are forced to strip fully naked in public; and constant hostility and acts of humiliation such as forcible removal of wigs, misgendering, and constant verbal abuse.²⁰

16. According to CEJIL, there is a recurring pattern of arbitrary arrests and assaults committed by the police against trans persons in Honduras.²¹ Red Lésbica Cattrachas has noted that trans women are easy targets for the Honduran authorities because of their vulnerable socioeconomic situation, and that, according to civil society and international entities, they are “are constant victims of violence at the hands of the police.”²² CEJIL has said that trans persons and transvestites are commonly engage in sex work on the

⁹ CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, p. 120 (in Spanish only).

¹⁰ See https://transrespect.org/wp-content/uploads/2017/03/TvT_TMM_TDoV2017_PR_EN.pdf.

¹¹ CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, p. 126 (in Spanish only).

¹² CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, p. 119 (in Spanish only). See also: Annex XX, Red Lésbica Cattrachas, *Informe sobre muertes violentas de la comunidad LGTTBI*, October 2016, Appended to the petitioners’ brief of April 21, 2017.

¹³ IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II, December 31, 2015, par. 137.

¹⁴ IACHR, *Situation of Human Rights in Honduras*, OEA/Ser.L/V/II, December 31, 2015, par. 138.

¹⁵ IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, November 12, 2015, par. 447.

¹⁶ Global Rights & International Human Rights Clinic at the University of Virginia School of Law, *Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Honduras*, 2006.

¹⁷ IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, November 12, 2015.

¹⁸ IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, November 12, 2015, par. 131; IACHR, Press Release, *IACHR Expresses Concern about Mob Attacks, Police Abuse and other Forms of Violence against LGTBI Persons*, October 24, 2013.

¹⁹ IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, November 12, 2015, par. 116.

²⁰ IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, November 12, 2015, par. 132.

²¹ CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, p. 124 (in Spanish only).

²² Human Rights Watch, “Not Worth a Penny Human,” *Human Rights Abuses against Transgender People in Honduras*, 2009, p. 10.

streets because of the difficulty of finding other forms of employment, which, coupled with existing prejudices, “has been a determining factor in increasing their exposure to crimes, whether at the hands of the police or of members of the public.”²³ Most arbitrary detentions of trans women sex workers occur during encounters with police and military personnel who seek sexual services from them and then refuse to pay.²⁴

17. The IACHR has found that in most cases, the victim’s sexual orientation or gender identity or expression are completely disregarded in the investigation, despite their potential usefulness in identifying possible motives or suspects. In other instances, such discriminatory assumptions or prejudice may also lead to an abandonment or unsuccessful conclusion of the investigation, or may even prevent there being any investigation at all.²⁵ According to Human Rights Watch, “[p]rejudices within law enforcement agencies may lead to bias in police investigations of crimes against transgender people. Investigative independence may also be at risk when the perpetrators are members of the police force.”²⁶

18. The IACHR noted that “defenders of the human rights of trans persons are in a situation of extreme vulnerability to suffering violence by state and non-state actors, as a reprisal for their human rights activism and the carrying out of sex work. Trans women human rights defenders are ... subjected to arbitrary arrest, extortion and threats from police officers.”²⁷ This context is relevant, given that, as is described hereinbelow, Vicky Hernández, was a defender of the human rights of trans persons.

2. General context of the coup and violations of the rights of LGBT people

19. On June 28, 2009, the democratically elected president was overthrown in Honduras and the constitutional order, interrupted.²⁸ In relation to that, the IACHR reported that “violations of the rights to life, humane treatment, freedom of assembly and association, personal liberty, judicial guarantees, freedom of expression, political rights, the rights of women and the rights of minority groups were exacerbated by the absence of democratic institutions capable of processing complaints, investigating facts, punishing those responsible and making reparations to the victims.”²⁹ The interruption of the constitutional order caused by the coup d’état “was coupled with a heavy military presence in various areas of civilian life, suspension of guarantees with enforcement of curfews, and the ineffectiveness of judicial remedies in safeguarding people’s fundamental rights.”³⁰ The IACHR concluded that repeated curfews, the militarization, the primacy of military power over civilian power, and the inefficacy of the judicial mechanisms, all placed the entire population in a defenseless situation, which created a favorable climate for the perpetration of human rights violations.³¹

20. Since the coup d’état in Honduras, the IACHR³² and the UN Special Rapporteur on the situation of human rights defenders³³ have found that LGBT persons were among the groups suffering severe violence in Honduras.³⁴ The Special Rapporteur indicated that the persistence of such acts could indicate a pattern of hate crimes, primarily committed by the police and private security guards.³⁵ CEJIL conducted a study that analyzed the rise in killings and concluded that the coup generated a general climate of violence and insecurity and marked a tipping point in terms of a worsening of crimes against life of members of the LGBT population. In terms of statistics, it stated that by “late 2009, the documented figures for such acts were

²³ CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, p. 120 (in Spanish only).

²⁴ Human Rights Watch, “Not Worth a Penny Human,” *Human Rights Abuses against Transgender People in Honduras*, 2009, p. 10.

²⁵ IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, November 12, 2015, par. 484.

²⁶ Human Rights Watch, “Not Worth a Penny Human,” *Human Rights Abuses against Transgender People in Honduras*, 2009.

²⁷ IACHR, *Preliminary Observations concerning the Human Rights Situation in Honduras*, December 5, 2014.

²⁸ IACHR, *Honduras: Human Rights and the Coup d’État*, OEA/Ser.L/V/II, December 30, 2009.

²⁹ IACHR, *Honduras: Human Rights and the Coup d’État*, OEA/Ser.L/V/II, December 30, 2009, par. 14.

³⁰ IACHR, *Honduras: Human Rights and the Coup d’État*, OEA/Ser.L/V/II, December 30, 2009, par. 22.

³¹ IACHR, *Honduras: Human Rights and the Coup d’État*, OEA/Ser.L/V/II, December 30, 2009, par. 164.

³² IACHR, *Honduras: Human Rights and the Coup d’État*, OEA/Ser.L/V/II, Doc. 55, December 30, 2009, pars. 10, 198, 206 and 265.

³³ United Nations, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum, Mission to Honduras*, A/HRC/22/47/Add.1. December 13, 2012, par. 90.

³⁴ IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II.rev.2, November 12, 2015, par. 141.

³⁵ United Nations, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum, Mission to Honduras*, A/HRC/22/47/Add.1. December 13, 2012, par. 90.

double those of 2008, three times as high as those of 2007, and exponentially higher than the numbers for previous years, such as 2005 or 2006 ... [T]he number LGBT persons murdered in 2009 and 2010 was almost as high as the total documented number between 2003 and 2008.” It added:

(...) during the seven-month de facto government of Roberto Micheletti, the incidence of crimes against life targeting members of the LGBT population by semester increased fivefold (with 23 killings in the six-month period; that is, more than three crimes of that type per month). It is worth noting that during the multiple curfews instituted in the months following the coup, the state security forces maintained tight control and a heavy presence on the streets, and it was precisely during such periods that murders were committed of LGBT persons (particularly trans people and transvestites engaging in sex work), whose bodies were then also found on streets and in other public places. Given the situation, a number of activists believe that there is a strong probability that many of the murders committed in that context can be attributed to the state security forces.³⁶

B. Regarding Vicky Hernandez and her Immediate Family

21. Vicky Hernández was born in San Pedro Sula, Honduras, on September 21, 1983, and was registered at birth as Jonhy Emilson Hernández.³⁷ She went to school until the sixth grade of primary, when she was forced to drop out in order to get a job and support her mother financially, as well as contributing to her niece's education costs.³⁸ The petitioners say that Vicky was a sex worker and a recognized activist within the *Unidad Color Rosa, Colectivo TTT*, an organization that defends the human rights of trans persons in Honduras.³⁹ They said that at the time of the events, Vicky was 26 years old and lived in San Pedro Sula with her mother, Rosa Argelia Hernández Martínez; her cousin, Tatiana Rápalo Hernández;⁴⁰ and her three-year-old niece, Argelia Johana Reyes Ríos.⁴¹ The petitioners say that Vicky was enjoyed a good relationship with her siblings and was very close to her relatives, especially her niece Andrea Ríos.⁴² According to the socioeconomic report, Vicky was living with HIV. The same document reports that Mrs. Rosa Argelia mentioned that two months before she was murdered, her daughter was the victim of an attack by a security guard who dealt her a machete blow to the head. She said that Vicky went immediately to the police station, where the police told her, “For all we care, you can die.” A friend later took at the hospital.”⁴³

C. Facts in the Case

22. On the night of June 28, 2009, at a press conference held on the premises of the National Congress, the de facto president, Roberto Micheletti declared a curfew in the context of the coup d'état. The measure was in effect from 9:00 p.m. to 6 a.m. over the course of the next 48 hours. The IACHR has said that there is no information regarding the legal instrument on which the curfew was based.⁴⁴

23. In a statement, Vicky's mother said that on the morning of June 27, 2009, Vicky asked to borrow 100 lémpiras. Then she left and she never saw her again.⁴⁵ The petitioners said that, according to information that Mrs. Rosa Argelia provided to Cattrachas, Vicky was last seen on the afternoon of June 28,

³⁶ CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, pp. 131-133.

³⁷ Annex 1. Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

³⁸ Annex 1. Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

³⁹ Petitioners' brief of April 21, 2017.

⁴⁰ According to the petitioners, Tatiana Rápalo Hernández was the alleged victim's cousin, but she was registered in the national register with Vicky's mother's surname, which is why she regards her as her youngest daughter. She said that Vicky and Tatiana were very close, and that she was the first person he spoke to about her transgender identity.

⁴¹ Petitioners' brief of April 21, 2017.

⁴² Annex 1. Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

⁴³ Annex 1. Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

⁴⁴ IACHR, *Honduras: Human Rights and the Coup d'État*, OEA/Ser.L/V/II, December 30, 2009, par. 89.

⁴⁵ Annex 2. Investigation Record 1057-09 presented on November 20, 2013, Statement of Rosa Argelia Hernández Martínez, May 3, 2011. Appended to the petitioners' brief of April 1, 2015.

2009, leaving the home of Marimar, a trans friend and sex worker whom she had gone to visit.⁴⁶ At 7:30 a.m. on June 29, 2009, after the curfew had ended, investigators at the National Bureau of Criminal Investigation (DNIC) were informed of the discovery of the lifeless corpse of Vicky Hernández on public view at No. 3 Calle 7 y 8, Avenida Colonia Ruiz, San Pedro Sula. DNIC personnel arrived at the scene of the crime at 9:15 a.m. to carry out the removal of the corpse.⁴⁷ The record of the removal of the corpse noted that "there was a large number of curious onlookers and journalists" at the scene.⁴⁸

24. The coroner at the scene of the crime noted a wound with irregular edges in Vicky's left eye, a wound with irregular edges on the left frontal region, and bruising around her eye. The coroner concluded that Vicky was murdered with a firearm and determined a postmortem interval of 8 to 10 hours prior to the discovery of her body at 9:10 a.m. She was registered as "John Doe" [*desconocido (sexo masculino)*].⁴⁹ The record also reported the discovery of a bullet and an apparently used condom next to the body.⁵⁰ The investigation record does not say whether any tests were performed or if any signs of sexual violence were found on Vicky's body.

25. In the wake of the incident, human rights organizations denounced that forensic authorities refused to carry out an autopsy, on the pretext that the victim was presumed to be living with HIV.⁵¹ According to information provided by the State in December 2015, the investigation file contains a transcript of the autopsy report prepared by Dr. Itpsa Suyem Rosales, "which determined that the cause of death was a brain laceration and described the injuries found as caused by a firearm projectile, as well as an entry and exit wound."⁵² The record provided by the petitioners does not contain the report.

26. According to the statement provided by Mrs. Rosa Argelia, on the afternoon of June 29, a trans woman called Alicia, who was murdered some time afterwards, called her to let her know that her daughter had been found dead. She said that on receiving the news she thought it was a joke and asked one of her sons to investigate what had happened; he later confirmed that Vicky's body had been found.⁵³ According to the socioeconomic report, Mrs. Rosa Argelia went to the Public Prosecution Service (*Ministerio Público*) morgue with Fredy, a friend of Vicky's who was living with them at the time, to identify the body.⁵⁴

27. According to the report containing Rosa Argelia's statement, she said that "one week before her son was killed he had told her that another transvestite, whose name she did not recall, had attacked him and threatened him, saying that if he saw him again he would kill him. According to Mrs. Hernández, she did not know the transvestite's physical appearance or his name or alias."⁵⁵

28. Vicky's wake was held at the offices of Unidad Color Rosa, Colectivo TTT in San Pedro Sula and she was later buried at La Puerta cemetery.⁵⁶ The record shows that Vicky's death was not registered in the National Civil Records Office until 2013.⁵⁷

⁴⁶ Annex 1. Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

⁴⁷ Annex 3, Investigation Record 1057-09 presented on November 20, 2013, Preliminary inspection. Appended to the petitioners' brief of April 1, 2015.

⁴⁸ Annex 4. Investigation Record 1057-09 presented on November 20, 2013, Record of removal of corpse. Appended to the petitioners' brief of April 1, 2015.

⁴⁹ Annex 4. Investigation Record 1057-09 presented on November 20, 2013, Record of removal of corpse. Appended to the petitioners' brief of April 1, 2015.

⁵⁰ Annex 4. Investigation Record 1057-09 presented on November 20, 2013, Record of removal of corpse. Appended to the petitioners' brief of April 1, 2015.

⁵¹ CIPRODEH. *Reporte de violaciones a derechos humanos después del golpe de Estado político-militar del 28 de junio de 2009*, July 17, 2009, p. 8.

⁵² Annex 5. Official Letter FGR No. 667-2015, Office of the Public Prosecutor of the Republic, October 14, 2015. Appended to the State's brief of December 7, 2015.

⁵³ Annex 2. Investigation Record 1057-09 presented on November 20, 2013, Statement of Rosa Argelia Hernández Martínez, May 3, 2011. Appended to the petitioners' brief of April 1, 2015.

⁵⁴ Annex 1. Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

⁵⁵ Annex 2. Investigation Record 1057-09 presented on November 20, 2013, Statement of Rosa Argelia Hernández Martínez, May 3, 2011. Appended to the petitioners' brief of April 1, 2015.

⁵⁶ Annex 1, Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

⁵⁷ Annex 6, Mission report, October 14-18, 2013. Appended to the petitioners' brief of April 21, 2017.

A. DOMESTIC PROCEEDINGS

29. The case of the Public Prosecution Service was registered as a proceeding against unknown persons for the crime of homicide of Jhony Emilson Hernández Martínez.⁵⁸ The State said that the case was under the jurisdiction of the Office of the Special Prosecutor for Crimes against Life and, since 2013, the Social Impact Homicide Unit (*Unidad de Muertes de Impacto Social*).⁵⁹ The preliminary inspection and record of removal of the corpse were done on June 29, 2009.⁶⁰ On July 24, 2009, the IACHR requested the Supreme Court of Justice of Honduras for information on the case under Article 41 of the American Convention.⁶¹ As the IACHR noted in its report *Honduras: Human Rights and the Coup d'État*, the Supreme Court made the following reply:

In the case of the death of Jonhy Emilson (Sonny Emilson) Hernández Martínez alias "Vicky Hernández Castillo," a member of the LGTTB community identification number 0501-1983-08333, a native and resident of the Sunserly neighborhood of San Pedro Sula, Cortés, age 26. The forensics report found that the cause of death was strangulation; the case is currently under investigation. Thus far, the motive for the crime is unknown although the most likely theory is that this was a crime of passion.⁶²

30. On March 16, 2011, the Crimes against Life Unit of the Prosecutor's Office requested the Regional Director of Forensic Medicine for the autopsy reports on at least six homicides of trans women, including the case of Vicky Hernández.⁶³ The record contains no reply to that request.

31. On March 30, 2011, the investigating prosecutor at the Crimes against Life Unit requested the DNIC to conduct more investigative procedures in the case of Vicky Hernández, including:

1. Identify the suspects, including their legal particulars.
2. Forward photographs of the suspects.
3. Request the Department of Forensic Pathology for the autopsy report on the victim.
4. Request criminal records for the suspects and the victim.
5. Take statements from witnesses to the criminal act.
6. Take statements from the aggrieved (the victim's relatives).
7. Investigate whether semen was obtained from exhibit No. 1 "allegedly used condom and its wrapper" in order to perform the relevant forensic analysis.
8. Establish the motive for the homicide of the deceased.
9. Any other necessary procedure to clarify the criminal act.

The foregoing should be sent to this prosecutor's office as a matter of urgency.⁶⁴

32. On May 3, 2011, the DNIC took a witness statement from Vicky Hernández's mother.⁶⁵ The Commission notes that in the preliminary inspection procedure, under the heading "Witnesses and Family Members," in addition to the home address of Rosa Argelia Hernández, also provided are information on two of Vicky's friends and the address of the Unidad Color Rosa group.⁶⁶ One, whose name was given as Milton Torres, was a trans woman by the name of Michelle Torres who was murdered with a firearm on August 30, 2009 in San Pedro Sula, but was never interviewed.⁶⁷

⁵⁸ Annex 7, Investigation Record 1057-09 presented on November 20, 2013, Appended to the petitioners' brief of April 1, 2015.

⁵⁹ State's brief of November 3, 2017.

⁶⁰ Annexes 3 and 4, Investigation Record 1057-09 presented on November 20, 2013, Preliminary inspection and record of removal of corpse. Appended to the petitioners' brief of April 1, 2015.

⁶¹ IACHR, *Honduras: Human Rights and the Coup d'État*, OEA/Ser.L/V/II, December 30, 2009, par. 238.

⁶² IACHR, *Honduras: Human Rights and the Coup d'État*, OEA/Ser.L/V/II, December 30, 2009, par. 238.

⁶³ Annex XX, Official Letter, Crimes against Life Unit, March 16, 2016, Investigation Record 1057-09 presented on November 20, 2016. Appended to the petitioners' brief of April 1, 2015.

⁶⁴ Annex 8, Investigation Record 1057-09 presented on November 20, 2013, Official Letter, Investigating Prosecutor's Office, Crimes against Life Unit, March 30, 2011. Appended to the petitioners' brief of April 1, 2015.

⁶⁵ Annex 2, Investigation Record 1057-09 presented on November 20, 2013, Statement of Rosa Argelia Hernández Martínez, May 3, 2011. Appended to the petitioners' brief of April 1, 2015.

⁶⁶ Annex 3, Investigation Record 1057-09 presented on November 20, 2013, Preliminary inspection. Appended to the petitioners' brief of April 1, 2015.

⁶⁷ Annex 9, Investigation Record 1057-09 presented on November 20, 2013, Official Letter, Crimes against Life Unit, March 16, 2016. Appended to the petitioners' brief of April 1, 2015, and Annex XX, Petitioners' brief of April 21, 2017.

33. In May 2011, a request was made to the DNIC for Vicky Hernández's criminal record.⁶⁸ On March 8, 2013, the Office of the Prosecutor for Crimes against Life urgently requested the DNIC to send the photographic album and crime scene sketch for the Vicky Hernández case to the Sexual Diversity and Social Impact Homicide Unit.⁶⁹ Based on the information available, it is not known if that request was followed up. On that same date, the Office of the Special Prosecutor for Crimes against Life requested the Bureau of Immigration and Foreign Status to notify it of Vicky Hernández's migratory movements as a matter of urgency.⁷⁰

34. On July 23, 2013, a criminal investigation analyst with the Sexual Diversity and Social Impact Homicide Unit submitted a report containing a list of procedures carried out and informing that the autopsy, numbered A-1384-09, had been performed by Dr. Dixiana Rosales, who no longer worked for the Directorate of Forensic Medicine, for which reason efforts were underway to locate her and take her statement.⁷¹

35. On May 17 and 18, and on June 6, 10, and 23, 2013, the petitioners made multiple attempts with the Office of the General Coordinator for Prosecutors, the Office of the Regional Coordinator for Northern Zone Prosecutors, and the Special Prosecutor for Common Crimes, Tegucigalpa to obtain a copy of the judicial record, without receiving any response.⁷²

36. In October 2013, the lawyer Rita Isabel Romero became attorney for Rosa Argelia Hernández in the domestic proceeding.⁷³ In an interview with Vicky Hernández's mother and next-of-kin on October 14, 2013, they told Ms. Romero that "they themselves prepared [Vicky's] body for burial and they know for a fact that there were no marks on her neck, chest, or anywhere else on her body to indicate that she had undergone an autopsy."⁷⁴ The lawyer Romero also found that Vicky Hernández's death had not been registered in the Civil Records Office and undertook the necessary formalities for her death to be registered.⁷⁵

37. On October 16, 2013, the Ms. Romero went to the Public Prosecution Service to obtain a complete copy of the record and was granted approval to examine it.⁷⁶ On October 17, 2013, the lawyer Romero formally requested a photocopy of the record.⁷⁷ She also requested the Regional Director of Forensic Medicine, taking into account the report of July 23 of that year, to corroborate whether the doctor who performed the autopsy in the Vicky Hernández case was Dr. Dixiana Ferrufino or Dr. Itpsa Rosales.⁷⁸ Finally, she asked that the request of the Crimes against Life Unit of the Prosecutor's Office of March 16, 2011, be fulfilled, stating that as of October 16, 2013, the autopsy report that had been requested two years earlier was nowhere to be found in the record.⁷⁹

⁶⁸ Annex 10. Investigation Record 1057-09 presented on November 20, 2013, Criminal record. Appended to the petitioners' brief of April 1, 2015.

⁶⁹ Annex 11. Investigation Record 1057-09 presented on November 20, 2013, Official Letter 053-13, Office of the Prosecutor for Crimes against Life, March 8, 2013. Appended to the petitioners' brief of April 1, 2015.

⁷⁰ Annex 12. Investigation Record 1057-09 presented on November 20, 2013, Official Letter 055-13, Office of the Prosecutor for Crimes against Life, March 8, 2013. Appended to the petitioners' brief of April 1, 2015.

⁷¹ Annex 13. Investigation Record 1057-09 presented on November 20, 2013, Report, Office of the Special Prosecutor for Crimes against Life, UEMIS, July 23, 2013. Appended to the petitioners' brief of April 1, 2015.

⁷² Annex 14. Communications with lawyers prosecutor's office requesting a copy of the judicial record. Appended to the petitioners' brief of August 23, 2013.

⁷³ Annex 15. Investigation Record 1057-09 presented on November 20, 2013, Power of attorney granted by Rosa Argelia Hernández Martínez to the lawyer Romero. Appended to the petitioners' brief of April 1, 2015.

⁷⁴ Annex 6. Mission report, October 14-18, 2013. Appended to the petitioners' brief of April 21, 2017.

⁷⁵ Annex 6. Mission report, October 14-18, 2013. Appended to the petitioners' brief of April 21, 2017.

⁷⁶ Annex 16. Investigation Record 1057-09 presented on November 20, 2016, Procedure report, Office of the Special Prosecutor for Crimes against Life, October 16, 2013. Appended to the petitioners' brief of April 1, 2015.

Mission report dated October 22, 2013, prepared by Rita Isabel Romero, Annex C.

⁷⁷ Annex 17. Investigation Record 1057-09 presented on November 20, 2013, Request for a copy of record 1057-09 by the lawyer Rita Romero, October 17, 2013. Appended to the petitioners' brief of April 1, 2015.

⁷⁸ Annex 18. Request to the Regional Directorate Forensic Medicine, October 17, 2013. Appended to the petitioners' brief of April 1, 2015.

⁷⁹ Annex 18. Request to the Regional Directorate Forensic Medicine, October 17, 2013. Appended to the petitioners' brief of April 1, 2015.

38. On October 18, 2013, the Regional Coordinator of Forensic Medicine informed the Special Prosecutor for Crimes against Life that the autopsy report prepared by Dr. Itpsa Rosales in the Vicky Hernández case had been sent to the Homicide Prosecution Unit on July 13, 2013.⁸⁰ On October 28, 2013, the Office of the Prosecutor of the Social Impact Homicide Unit sent a second request to the Regional Director of Forensic Medicine, asking that the report and photographs of the autopsy prepared by Dr. Rosales be sent as a matter of urgency.⁸¹ In a reasoned decision of that same date, the Office of the Prosecutor for Crimes against Life refused the request of the lawyer Romero for a photocopy of the record, saying that the case was under investigation and, therefore, "it would jeopardize the investigation."⁸² On October 30, 2013, the lawyer Romero again requested the Special Prosecutor for Crimes against Life for a record of the investigation as the hierarchical superior.⁸³ On that same date, she formally requested the same prosecutor to locate the autopsy report in the Vicky Hernández case and include it in the record of the investigation.⁸⁴

39. On November 4, 2013, a criminal investigation analyst at the Sexual Diversity and Social Impact Homicide Unit prepared a report for the prosecutor of the Sexual Diversity and Social Impact Homicide Unit on the steps taken in the investigation, saying that several calls had been made to the telephone number of Vicky's mother but that the person who answered provided no information about her.⁸⁵ The IACHR notes that the petitioners said that Mrs. Rosa Argelia is still living at the address provided in the record of the investigation.⁸⁶ In a procedure report of that same date, the Office of the Prosecutor for Crimes against Life indicated that it had attempted to make telephone calls to Oscar Almendarez, the Episcopal Ministry, and Unidad Color Rosa but that all the numbers had sounded "disconnected."⁸⁷

40. On November 12, 2013, the Social Impact Homicide Unit Sent the record to the Special Unit for Crimes against Life Examination.⁸⁸ On November 20, 2013, in a reasoned decision, the special prosecutor of the Crimes against Life Prosecution Unit recognized the mother's right to obtain a copy of the record.⁸⁹

41. In March 2015, the lawyer Romero had another opportunity to examine the record and found that there was no evidence that the authorities were continuing to conduct investigative procedures.⁹⁰ She also noted that the following documents had not been incorporated into the record: (i) the autopsy report, (ii) the note dated October 18, 2013, from the Forensic Medicine Service to the Office of the Special Prosecutor for Crimes against Life, informing that said autopsy "was sent to the Homicide prosecution unit on July 13, 2013," and (iii) the requests submitted by her on October 17 and 30, 2013.⁹¹ Accordingly, on March 12, 2015, the Ms. Romero reiterated the formal request that the autopsy report be included in the record.⁹²

42. The petitioners said that subsequently, on February 22 and March 2, 2017, formal requests were submitted by the representatives of Rosa Argelia to be given access to an updated copy of the record but

⁸⁰ Annex 19, Official letter, Regional Coordinator of Forensic Medicine, October 18, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸¹ Annex 20. Investigation Record 1057-09 presented on November 20, 2013, Official letter 322-13, Social Impact Homicide Unit Prosecutor, October 28, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸² Annex 21. Investigation Record 1057-09 presented on November 20, 2013, Reason decision, Office of the Prosecutor for Crimes against Life, October 28, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸³ Annex 22. Investigation Record 1057-09 presented on November 20, 2013, Request for a copy of record 1057-09 by the lawyer Rita Romero, October 30, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸⁴ Annex 23, Request to the Office of the Special Prosecutor for Crimes against Life, October 30, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸⁵ Annex 24. Investigation Record 1057-09 presented on November 20, 2013, Report, Office of the Special Prosecutor for Crimes against Life UEMIS, November 4, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸⁶ Petitioners' brief of April 21, 2017.

⁸⁷ Annex 25. Investigation Record 1057-09 presented on November 20, 2013, Procedure report, Office of the Special Prosecutor for Crimes against Life, November 4, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸⁸ Annex 26. Investigation Record 1057-09 presented on November 20, 2013, Memorandum No. 80-13, Social Impact Homicide Unit, November 12, 2013. Appended to the petitioners' brief of April 1, 2015.

⁸⁹ Annex 27. Investigation Record 1057-09 presented on November 20, 2013, Reason decision, Office of the Head of the Crimes against Life Prosecution Unit, November 20, 2013. Appended to the petitioners' brief of April 1, 2015.

⁹⁰ Annex 28. Reiteration of the request of October 30, 2013, March 12, 2015. Appended to the petitioners' brief of April 1, 2015.

⁹¹ Annex 28. Reiteration of the request of October 30, 2013, March 12, 2015. Appended to the petitioners' brief of April 1, 2015.

⁹² Annex 28, Reiteration of the request of October 30, 2013, March 12, 2015. Appended to the petitioners' brief of April 1, 2015.

that the State has systematically refused to allow them access to it.⁹³ The state argued that “private citizens cannot be allowed access to investigative procedures because they may hinder them.”⁹⁴ The State said that on September 13, 2017, a request was made to the “Evidence Warehouse for a report on the exhibits collected at the scene so as to know the location of each one and the laboratory in charge of them.” It said that the purpose in doing so was to redirect the requests for expert opinions and reports.⁹⁵

43. The petitioners said that at the time of submitting their observations on the merits of the case in April 2017, they did not have a complete and up-to-date copy of the record of the investigation.⁹⁶

44. The petitioners said that Vicky's murder was an appalling emotional blow to her mother, whose suffering from the loss of her daughter continues to this day.⁹⁷ They said quite apart from the close relationship that Mrs. Rosa Argelia enjoyed with her daughter, Vicky's murder worsened her economic situation because Vicky contributed to the upkeep and education of her niece Argelia Johanna Reyes, who remained under the guardianship of her grandmother Rosa Argelia.⁹⁸ The petitioners say that all three continue to suffer from the emotional harm caused by the violent circumstances of Vicky's trans-femicide.⁹⁹ They said that those feelings have been aggravated by the authorities' obstruction in the course of the investigation, and that Mrs. Rosa Argelia says that state agents were responsible for her daughter's murder.¹⁰⁰

45. The petitioners said that Vicky's trans-femicide had a powerful impact on the sexual diversity community in Honduras. They said that Vicky's fellow activists continue the struggle to bring clarity to the circumstances of her death and helped Vicky's mother to obtain legal representation in 2013 in order to have the case reviewed and to promote access to justice for Vicky and her next-of-kin.¹⁰¹ Six of the seven women who founded Unidad Color Rosa, Colectivo TTT, the group to which Vicky belonged, have been murdered; and of the 27 trans women murdered in Honduras between 2009 and 2012, 15 were activists of that group.¹⁰²

IV. LEGAL ANALYSIS

A. Rights to life,¹⁰³ humane treatment,¹⁰⁴ privacy,¹⁰⁵ freedom of expression,¹⁰⁶ equality and nondiscrimination¹⁰⁷ and to live free from violence¹⁰⁸ [Article 4(1), 5(1), 11, 13,

⁹³ Petitioners' brief of April 21, 2017.

⁹⁴ State's brief of November 3, 2017.

⁹⁵ State's brief of November 3, 2017.

⁹⁶ Petitioners' brief of April 21, 2017.

⁹⁷ Petitioners' brief of April 21, 2017.

⁹⁸ Annex 1. Socioeconomic report, Cattrachas, March 2, 2017. Appended to the petitioners' brief of April 21, 2017.

⁹⁹ Petitioners' brief of April 21, 2017.

¹⁰⁰ Annex 6. Mission report, October 14-18, 2013. Appended to the petitioners' brief of April 21, 2017.

¹⁰¹ Annex 6, Mission report, October 14-18, 2013. Appended to the petitioners' brief of April 21, 2017.

¹⁰² REDLACTRANS, *La Noche Es Otro País - Impunidad y Violencia contra las Mujeres Transgénero Defensoras de Derechos Humanos en América Latina*, 2012, pp. 28-29.

¹⁰³ Article 4(1). Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

¹⁰⁴ Article 5(1). Every person has the right to have his physical, mental, and moral integrity respected.

¹⁰⁵ The pertinent portions of that article provide: 1. 1. Everyone has the right to have his honor respected and his dignity recognized; 2. No one may be the object of arbitrary or abusive interference with his private life, his family, or his correspondence, or of unlawful attacks on his honor or reputation.

¹⁰⁶ The pertinent portions of Article 13 of the American Convention state: Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

¹⁰⁷ Article 24. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

¹⁰⁸ Article 7 of the Convention of Belém do Pará provides: 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 [...].

24 and 1(1) of the American Convention and 7(a) and (b) of the Convention of Belém do Pará]

1. General Considerations on right to life and the obligation to respect and ensure rights

46. The Commission recalls that the right to life is a prerequisite for the enjoyment of all other human rights and if it is not respected all other rights are meaningless.¹⁰⁹ Compliance with Article 4, in combination with Article 1(1) of the American Convention, “not only requires that no person be deprived of his life arbitrarily, but also that the States take all appropriate measures to protect and preserve the right to life, as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.”¹¹⁰

47. In its very first judgment in a contentious case, the Inter-American Court ruled:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights that can be attributed, under the rules of international law, to the act or omission of any public authority constitutes an act imputable to the State and which entails its responsibility as established in the Convention.¹¹¹

48. The international responsibility of the State may be based on the acts or omissions of any branch of government or organ thereof that violate the American Convention, and it arises immediately with the attributed international wrongful act. In such circumstances, to establish a violation of the rights enshrined in the Convention one need not determine, as in domestic criminal law, the guilt of its agents or their intent, nor need one individually identify the agents to which the violations are attributed. It is sufficient to demonstrate “that acts or omissions have been verified that have allowed the perpetration of these violations or that a State obligation exists that the State has failed to meet.”¹¹²

49. In the course of their work, the Commission and the Court have sought to define the content of the obligations to respect and ensure rights in accordance with Article 1(1) of the Convention. With respect to the obligation to respect rights, the Court has stated: “According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.”¹¹³

50. As the Court has found, this conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority. Under international law, a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.¹¹⁴

51. For its part, the Commission has determined that a violation of the human rights protected by the Convention may engage the international responsibility of a state party, either because the violation is perpetrated by its own agents, or—even if the violations initially are not directly attributable to the State because they were committed by a private individual—when it has not been possible to determine who committed it due to a lack of diligence of the State in reasonably preventing the violation or in treating it in

¹⁰⁹ IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 185.

¹¹⁰ IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 186; I/A Court H.R., Case of Zambrano-Vélez et al. v. Ecuador. *Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, par. 80.

¹¹¹ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras, *Merits, Judgment of July 29, 1988, Series C No. 4, par. 164*.

¹¹² I/A Court H.R., Case of Gonzalez Medina and Family v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment of February 27, 2012, Series C No. 240, par. 133; I/A Court H.R., Case of the Massacre of Pueblo Bello v. Colombia, Judgment of January 31, 2006, Series C, No. 140, par. 112.

¹¹³ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras, *Merits, Judgment of July 29, 1988, Series C No. 4, par. 169*; see also, IACHR, *Report No. 11/10, Case 12.488, Merits, Members of the Barrios Family, Venezuela, March 16, 2010, par. 91*.

¹¹⁴ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras, *Merits, Judgment of July 29, 1988, Series C No. 4, par. 170*.

accordance with the provisions of the Convention. The important thing is to determine if the illegal act involved the participation, support or tolerance of state agents or resulted from the failure of the State to meet its obligation to reasonably prevent human rights violations, conduct a meaningful investigation to identify and punish those responsible, and provide adequate reparation to the victim or their family members for the harm caused.¹¹⁵

52. As regards the obligation to ensure rights, the Court has determined that this obligation refers to the duty of the States to organize the entire government apparatus and, in general, all the structures through which public authority is exercised, so that they are able to ensure by law the free and full exercise of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.¹¹⁶

53. Those obligations are also applicable in relation to possible acts by nonstate actors. Specifically the Inter-American Court has held that “the State’s international responsibility may arise from attribution to the State of human rights violations committed by third parties or individuals, within the framework of the State’s obligations to guarantee respect for those rights between individuals,¹¹⁷ [...] *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individual.¹¹⁸ “These obligations devolve upon all subjects of international law and presumptions of non-compliance must be determined in function of the need for protection in each particular case.”¹¹⁹

54. Specifically, regarding the duty to prevent violations, the court has said: “A State cannot be responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature *erga omnes* of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals,¹²⁰ because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by (i) whether the State was aware or should have been aware of a situation of risk, (ii) if that risk was real and imminent, and (iii) if the State adopted measures that could reasonably have been expected to avert that risk.¹²¹

55. In short, insofar as establishing the international responsibility of the state is concerned, what is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, what is required is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention.¹²²

2. General considerations with regard to violence based on prejudice toward a person's gender identity and gender expression

¹¹⁵ IACHR, Report No. 65/01, Case 11.073, Merits, Juan Humberto Sánchez, Honduras, March 6, 2001, par. 88.

¹¹⁶ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras, Merits, Judgment of July 29, 1988, Series C No. 4, par. 166.

¹¹⁷ I/A Court H.R., Case of the Pueblo Bello Massacre, Judgment of January 31, 2006, Series C. No. 140. par. 113.

¹¹⁸ I/A Court H.R., Case of the “Mapiripán Massacre,” Judgment of September 15, 2005, Series C. No. 134, par. 111.

¹¹⁹ I/A Court H.R., Case of the Pueblo Bello Massacre, par. 117.

¹²⁰ I/A Court H.R., Case of the Pueblo Bello Massacre, par. 117.

¹²¹ In several of its judgments, the Inter-American Court has relied on the jurisprudence of the European Court with respect to the aforesaid elements of the duty to prevent violations. In that connection, see: I/A Court H.R., Case of the Pueblo Bello Massacres v. Colombia, Judgment of January 31, 2006, Series C. No. 140, par. 124; I/A Court H.R. Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009, Series C No. 205, par. 284; I/A Court H.R., Case of Luna López v. Honduras, Merits, Reparations and Costs, Judgment of October 10, 2013. Series C. No. 269, par. 75. 124.

¹²² I/A Court H.R., Case of Velásquez Rodríguez v. Honduras, Merits, Judgment of July 29, 1988, Series C No. 4, par. 173.

56. The Commission has reiterated the link between discrimination and violence against LGBT persons, referring to the concept of prejudice based on sexual orientation,¹²³ gender identity, or gender expression as a means of understanding violence against LGBT persons, as it makes it possible to identify the social context in which such violence manifests itself.¹²⁴

57. In that connection, the Commission has given particular attention to violence based on prejudice toward the gender identity and gender expression of trans persons, especially trans women. It has reiterated that the majority of trans women are caught up in a cycle of violence, discrimination, and criminalization that generally starts at a very early age owing to the exclusion and violence suffered at home, in the community, and at school. According to data collected by the IACHR, 80% of trans persons killed were 35 years of age or younger.¹²⁵ It also found that they are particularly vulnerable to violence at the hands of State security forces charged with law enforcement.¹²⁶

58. The Commission has stated that when someone who is lesbian, gay, bisexual or trans, or perceived as such, is attacked or killed, the State must conduct an investigation to determine whether the crime was committed based on the real or perceived sexual orientation or gender identity of the victim or victims.¹²⁷ Determining whether or not violence against LGBT persons is based on prejudice requires an exhaustive investigation of the reasons for the violence, carried out under the principle of due diligence.¹²⁸

59. Without seeking to suggest that it is an exhaustive list, the Commission considers that the following elements, among others, may be indicative of a crime based on prejudice, particularly when they occur in combination: (i) the presence of a known bias against LGBT persons on the part of the perpetrator, or situations in which the perpetrator is part of a group which is considered to be biased against LGBT persons; (ii) the brutality of the crime and signs of animosity; (iii) the victim's status as an activist in LGBT issues or a defender of LGBT persons and their rights; or (iv) the nature or significance of the place where the violence or incident took place, or from where the victims were lured (for example, a place known to be frequented by LGBT persons, or an area where sex work involving trans persons is known to take place).¹²⁹ The Commission has also stressed that what is decisive for the purposes of establishing the extent of the State's obligation is that from the very beginning of the investigation there be an examination of the motives of the attack, and that this examination include consideration of the relevance of the victim's sexual orientation or gender identity, whether real or perceived. A hypothesis that the crime was motivated by prejudice can thereby be confirmed or ruled out during the course of the investigation.¹³⁰ The Commission found that in murders of LGBT persons or people perceived as such, trans women and trans persons with female gender identities are more likely to be killed by firearms, and their bodies were more likely to be found in the streets or other public spaces, and sometimes in situations linked to sex work.¹³¹

¹²³ The IACHR has said: "Crimes based on prejudice are rationalizations or justifications of negative reactions, for example, to non-normative expressions of sexual orientation or gender identity." In that connection, the Commission has considered that "the concepts of prejudice and stereotype are linked" and that "hate crime" is another useful concept that has been developed to characterize violence against LGBT persons. 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, pars. 41-44.

¹²⁴ 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, par. 43.

¹²⁵ 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, par. 276.

¹²⁶ 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, par. 26.

¹²⁷ 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, par. 46.

¹²⁸ 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, par. 45.

¹²⁹ 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, par. 504.

¹³⁰ 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, par. 505.

¹³¹ 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, par. 119.

60. In light of the foregoing, the Commission considers that inter-American jurisprudence developed in cases such as *Cotton Field v. Mexico*¹³² and *Velásquez Paiz v. Guatemala* are wholly applicable to the analysis of cases of prejudice-based violence within the terms of the context described above, for the purposes of clarifying acts of violence or attacks presumably motivated by reasons of gender and, in keeping with the present analysis, prejudice, and that particular consideration should be given to the possible "discriminatory connotations" that may have motivated that violence.¹³³ Indeed, the IACHR has already taken into account considerations made at the international level that violence against LGBT persons constitutes "a form of gender-based violence, driven by a desire to punish those seen as defying gender norms."¹³⁴ The IACHR has also said that sexual violence may acquire a particular significance when perpetrated against LGBT persons, as it can be used as a way to punish and debase victims for being who they are.¹³⁵

61. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that "a considerable proportion of the incidents of torture carried out against [LGBT persons] suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault, in order to "punish" them for transgressing gender barriers or for challenging predominant conceptions of gender roles."¹³⁶ Likewise, it has been considered that "[t]he purpose and intent elements of the definition of torture ... are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality."¹³⁷ In a more recent report, the current rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment noted: "Gender stereotypes play a role in downplaying the pain and suffering that certain practices inflict on women, girls, and lesbian, gay, bisexual and transgender persons. Furthermore, gender intersects with other factors and identities, including sexual orientation, disability and age, that may render a person more vulnerable to being subjected to torture and ill-treatment."¹³⁸

62. In light of the foregoing, the Commission recalls that gender identity and expression, as well as sexual orientation are fundamental components of the private life of an individual,¹³⁹ and therefore the right freely to express that gender identity must be respected as part of the free development of personality, essential to a person's life project, dignity, and liberty.¹⁴⁰ In that sense, when the underlying motive of violence is prejudice based on gender identity, that also constitutes an affront to the right of all persons "to self-determination and to freely choose the options and circumstances that give meaning to his or her existence, in accordance with his or her own choices and convictions."¹⁴¹

3. Analysis of the case

¹³²See: I/A Court H.R., *Case of Velásquez Paiz et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 19, 2015, Series C. No. 307, par. 146.

¹³³ I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009, Series C. No. 205, par. 293, citing ECHR, *Case of Angelova and Iliev v. Bulgaria*, Judgment of 26 July 2007, para. 98.

¹³⁴ OHCHR, 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. 20, cited in: 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, par. 27.

¹³⁵ 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, par. 166.

¹³⁶ UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, 3 July 2001, para. 17. cited in: 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, par. 27.

¹³⁷ UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para. 8.

¹³⁸ UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para. 9.

¹³⁹ IACHR, *Application to the Inter-American Court of Human Rights in the Case of Karen Atala and Daughters v. Chile*, September 17, 2010, par. 111.

¹⁴⁰ I/A Court H.R., *Case of Atala Riffo and Girls. v. Chile*, Merits, Reparations and Costs, Judgment of February 24, 2012, Series C. No. 239, par. 133. See also Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2006, Principle 3.

¹⁴¹ I/A Court H.R., *Case of Atala Riffo and Girls. v. Chile*, Merits, Reparations and Costs, Judgment of February 24, 2012, Series C. No. 239, par. 136.

63. The Commission will analyze, first, if elements emerge from the facts in the case that would allow the acts to be characterized as violence based on prejudice toward Vicky Hernández's gender identity and expression. Second, the IACHR will analyze if the Honduran State bears international responsibility for her death.

64. As regards the former, as noted above, certain elements analyzed jointly are indicative of whether or not a crime was committed out of prejudice. In that connection, some of the elements that the Commission has examined and which are recurrent in cases of violence based on prejudice toward trans people, particularly trans women, have to do with inflicting sexual violence on the victims as a form of punishment for their gender identity and expression that fail to conform to social norms relating to gender and sexuality, as well as the *modus operandi* of those who commit such crimes. In this case, the Commission observes that the record of removal of the corpse mentioned the discovery of an apparently used condom next to the body. The Commission believes that fact could be indicative of sexual violence, yet it finds that there is no information in the record to suggest that the relevant tests were carried out to rule out if Vicky Hernández was a victim of such violence. The Commission also notes that Vicky Hernández was murdered with a firearm and that her body was found in a public place, both elements consistent with what the IACHR has found as regards the manner in which most prejudice-based crimes against trans women are committed, quite often in situations connected with sex work, as occurred in this case.

65. In addition, the Commission finds that the facts in this case are framed by a context of violence and discrimination against LGBT persons in Honduras. As described in the section on proven facts, that context has been recognized by the IACHR, the United Nations Human Rights Council, and various civil society organizations. As the Commission has established, in that context around the time of Vicky Hernández's death, an alarming increase began to be recorded in killings connected with the victims' gender identity and expression. The IACHR reiterates what was mentioned in the section on context precisely regarding the fact that San Pedro Sula, where the events occurred, is one of the most dangerous places for LGBT persons and registers a particularly high incidence of such crimes. A recurring pattern of police violence has also been widely documented in that context. Another important element of this analysis concerns Vicky Hernández's activities as a sex worker and her activism on such issues.

66. In light of the preceding elements taken together, the Commission finds that under the aforementioned standards, given the nature and manner of the violence inflicted on Vicky Hernández and bearing in mind the additional *indicia* suggested by the considerations as to the context in which the events occurred, what happened to Vicky Hernández can be characterized as a murder based on prejudice toward her gender identity and expression as a trans woman and, therefore, a trans-femicide.

67. As to the second aspect, next, the IACHR will determine if Vicky Hernández's murder is attributable to the State, in light of its obligation to respect and ensure rights.

68. Thus, in relation to the duty to respect rights, the Commission finds that the aforementioned context of violence based on prejudice in Honduras intensified amid the 2009 coup, which was characterized by a strong military presence in different spheres of civilian life as well as the suspension of guarantees through the implementation of curfews in which the state's security forces maintained tight control and a heavy presence on the streets. The Commission also concluded that the curfews, the militarization of the country, the primacy of military power over civilian power, and the inefficacy of the judicial mechanisms, all placed the entire population in a defenseless situation, "which created a favorable climate for the perpetration of human rights violations." The Commission cannot help but note that, according to information gathered by various civil society organizations, people from the LGBT community, especially trans sex workers, were murdered during the multiple curfews instituted during the coup and reportedly found in public places and on the streets.

69. By virtue of the foregoing, the IACHR considers that the context of violence against LGBTI persons in Honduras, along with the high incidence of participation by security 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 state security agents, amount to strong circumstantial evidence of direct state involvement in the events.

70. In controversies alleging the participation of the State in gross human rights violations, such as the violent killing of a person, the Commission has stated that faced with evidence of this nature, which would appear directly to engage the State's international responsibility, the authorities in charge of the investigation should have made every effort to clarify any possible responsibility or involvement on the part of State authorities in a violation of the right to life.¹⁴² Thus, it is up to the State to carry out a thorough, meaningful, and diligent investigation to prove or disprove the evidence of involvement of State agents. Where that has not happened, the Commission has accorded probative force to such circumstantial evidence when inadequately investigated.

71. In similar fashion, the Inter-American Court, having established a failure of diligence in the investigation of indications of state participation, has found it:

... reasonable to assess as evidence the indications contained in the case file ... that point to the involvement of state agents in these events, particularly those handled by the very state agencies that were in charge of the investigation which have not been disproven by the State. Reaching any other conclusion would entail allowing the State to resort to its own negligence or inefficacy [in] the criminal investigation to release itself from responsibility for the violation of Article 4(1) of the Convention.¹⁴³

72. Likewise, the Court has reiterated that failure to investigate alleged violations committed against someone when there are suggestions of involvement of state agents "prevents the State from presenting a satisfactory and convincing explanation of the [facts] alleged, and disproves the arguments concerning its responsibility, with adequate probative elements."¹⁴⁴ The Court has considered such failure to clarify the facts as a factor to be born in mind in accrediting alleged violations and the attendant international and responsibility.¹⁴⁵

73. In this case, as is analyzed in detail below, the Commission finds that the State has not carried out a thorough, meaningful, and diligent investigation to prove or disprove the evidence of involvement of State agents in the murder of Vicky Hernández. The Commission notes that the Honduran State has neither outlined nor exhausted lines of inquiry that take into account the context of violence based on prejudice toward trans women sex workers in Honduras and the pattern of police violence against them. In that regard, the record suggests that the State has not even outlined or considered a hypothesis of possible participation by state agents in the events, bearing in mind the context that framed them, specifically with regard to the fact that they occurred during a curfew in which it is proven that the military maintained a strong presence and control on the streets.

74. The Commission finds that, that aside, the only line of inquiry that the State did pursue—one tending to demonstrate that the events occurred in the context of a dispute between private citizens—has not yielded any results that would disprove the evidence of involvement of state agents.

75. In light of the foregoing the Commission considers that the lack of a diligent investigation—as will be analyzed below—prevented the State from offering a satisfactory and convincing explanation based on adequate elements of proof to disprove the allegations of its agents' responsibility in the events in this case. Owing to the failings in the investigation, the Commission has nothing to counter the aforementioned

¹⁴² IACHR, Report No. 120/10, Case 12.605, Merits, Joe Luis Castillo González, Venezuela, October 22, 2010, par. 109.

¹⁴³ I/A Court H.R., Case of Kawas-Fernández v. Honduras, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, par. 97.

¹⁴⁴ I/A Court H.R., Case of J v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 27, 2013, Series C No. 275, par. 353.

¹⁴⁵ I/A Court H.R., Case of J v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 27, 2013, Series C No. 275, par. 354.

strong circumstantial evidence and concludes, therefore, that the State breached its obligation to respect Vicky Hernández's rights to life and humane treatment. Furthermore, as the incident qualifies as an act of violence based on prejudice for the victim's gender identity and expression, the Commission finds that that breach also extended to the right to privacy, the right to freedom of expression, and the principle of equal protection and nondiscrimination.

76. In addition, given the circumstances and context of this case, the IACHR considers that it involves a breach both of the duty to respect rights and of the obligation to ensure them. In relation to the latter, the Commission finds that the Honduran State was aware of the existence of the context of historical discrimination against LGBT people, particularly against trans persons, which has resulted in violence motivated by prejudice in Honduras, as has been documented over the past several years by civil society organizations¹⁴⁶ and by the United Nations.¹⁴⁷ Despite that, the State provided no information regarding steps taken to address that context and prevent it from continuing. Indeed, trans persons in Honduras are still not recognized by their gender identity and expression. In that connection, the Commission underscores that the failure legally to recognize the gender identity and expression of trans persons is to deny their very existence. As the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has noted, the vast majority of trans and gender-diverse persons in the world do not have access to gender recognition by the State. They live in a legal vacuum where stigma and prejudice create a climate that tacitly permits, encourages and rewards with impunity acts of violence and discrimination against them, creating a situation of de facto criminalization.¹⁴⁸

77. Nor does the Commission have access to any information about specific preventive measures in the context of the curfew declared at the time of the coup, despite the State having knowledge of the lack of protection with which LGBT persons found themselves, according to the findings as to context. On the contrary, the case of Vicky Hernández was framed, rather, by an increase in violence based on prejudice against trans women in Honduras in the aforementioned context, which denotes a generalized environment of defenselessness.

78. Compounding the foregoing, the Commission underscores that, according to information provided by the petitioners which the state has not contested, two months before she was murdered, Vicky Hernández went to a police station to report that she had been assaulted by a security guard who struck her in the head with a machete, to which the officers responded, "For all we care, you can die." This information is consistent with the context described in this report, in terms both of the violence and of the lack of an effective response to complaints and the attendant impunity and repetition.

79. Based on the foregoing, the Commission finds that Vicky Hernández was murdered in circumstances where she was clearly defenseless and unprotected against the threats of violence to her as a trans woman and sex worker in the context analyzed above, which also amounts to a breach of the duty to ensure rights.

80. In light of the considerations set out in this section, the Commission concludes that the Honduran State is responsible for violating the rights to life, humane treatment, privacy, freedom of expression, equal protection and nondiscrimination, as well as to live free from violence, recognized at Articles 4(1), 5(1), 11, 13, and 24 of the American Convention taken in conjunction with the obligation to respect and ensure rights enshrined in Article 1(1) of that instrument, and at Article 7 of the Convention of Belém do Pará, to the detriment of Vicky Hernández Martínez.

¹⁴⁶ CEJIL, *Diagnosis of hate crimes motivated by sexual orientation and gender identity: Costa Rica, Honduras and Nicaragua*, San José, Costa Rica, 2013, p. 128 (in Spanish only).

¹⁴⁷ Report of the Special Rapporteur on the question of torture, Theo Van Boven, *Torture and other cruel, inhuman or degrading treatment or punishment*, E/CN.4/2005/62/Add.1, 30 March 2005, pp. 153-154; Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *Intersections of violence against women and HIV/AIDS*, corr., E/CN.4/2005/72/Add.1, 18 March 2005, p. 50.

¹⁴⁸ United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, "Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity," par. 25.

B. Rights to a fair trial, equal protection and nondiscrimination, and judicial protection [Articles 8(1),¹⁴⁹ 24, and 25(1)¹⁵⁰ of the American Convention and Article 7 of the Convention of Belém do Pará]

1. General Considerations

81. According to the consistent case law of the organs of the inter-American system, as a result of the protection granted by Articles 8 and 25 of the Convention and the general obligations contained in article 1(1) thereof, the States have a duty to provide effective judicial recourses to the victims of human rights violations that must be substantiated in accordance with the rules of due process of law.¹⁵¹ That obligation, which relates to means rather than to results, must be assumed by the State as its own legal duty and not as a mere formality preordained to be ineffective.¹⁵²

82. The Court has held that when it comes to the investigation of the death of a person who was in State custody, as in this case, the relevant authorities "have a duty to initiate ex officio and without delay, a serious, impartial, and effective investigation." According to its jurisprudence, "this investigation must be conducted using all available legal means to determine the truth and to investigate, prosecute and punish all those responsible for the facts, especially when State agents are or may be involved."¹⁵³ Thus, the duty to investigate must be undertaken in a serious, have an objective, and be assumed by the State as its own legal duty, not as a step taken by private interests.¹⁵⁴

83. In that same vein, in order to ensure due diligence in the conduct of a thorough and impartial investigation of a violent death, including situations that might include State agents, the Commission underscores a number of standards contained in the Minnesota Protocol, an instrument that sets out a number of basic procedures, such as identification of the victim; recovery and preservation of evidentiary material related to the death to aid in any potential prosecution of those responsible; identification of possible witnesses and collection of statements from them concerning the death; determination of the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; distinction between natural death, accidental death, suicide and homicide; identification and apprehension of the person(s) involved in the death; and bringing of the suspected perpetrator(s) before a competent court established by law.¹⁵⁵

84. Furthermore, under the standards of the aforementioned protocol, it is a generally recognized principle of autopsies in cases of suspicious deaths that the work of forensic personnel, among others, is to help to ensure that the causes and circumstances of the death are clarified so that conclusions may be presented as to the cause of death and the circumstances that contributed to it. Likewise, the Protocol recognizes that there are few cases in which the cause of death can be determined on the basis of the autopsy alone without other additional information about the death; therefore the autopsy report should contain a list of the injuries discovered and offer an interpretation in respect of those injuries. Finally, the Protocol

¹⁴⁹ Article 8(1) of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹⁵⁰ Article 25(1) of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹⁵¹ I/A Court H.R., *Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 14, 2014. Series C. No. 287, par. 435.

¹⁵² I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988. Series C. No. 4, par. 177.

¹⁵³ I/A Court H.R., *Case of Mendoza et al. v. Argentina, Preliminary Objections, Merits and Reparations*, Judgment of May 14, 2013. Series C. No. 260, par. 218. See also *Cf. Velásquez Rodríguez Case v. Honduras*, Merits, pars. 177, and *Case of the Santo Domingo Massacre v. Colombia*, par. 157.

¹⁵⁴ I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*, Merits, Judgment of July 29, 1988. Series C, No. 6, par. 177.

¹⁵⁵ I/A Court H.R., *Case of Ortiz Hernández et al. v. Venezuela*, Merits, Reparations and Costs, Judgment of August 22, 2017, Series C. No. 338, par. 161.

recognizes the particular importance in such autopsies of putting together a record of images of the autopsy, by taking both appropriate photographs for documentation and independent review, and x-rays of the entire body.¹⁵⁶

85. Furthermore, with regard to the principle of a reasonable time established in Article 8(1) of the American Convention, the Inter-American Court has established that it is necessary to take into account three elements in order to determine the reasonableness of the time in which the proceedings are held: (a) the complexity of the case; (b) the procedural activity of the party concerned, and (c) the conduct of the judicial authorities.¹⁵⁷ In addition, the Commission and the Court have considered that it is also necessary to take the interest affected into consideration.¹⁵⁸

86. At the same time, the high levels of impunity and the prevalence of violence based on prejudice require that crimes against LGBT persons receive full and unbiased investigation.¹⁵⁹ States have a reinforced duty to combat generalized violence and impunity. In light of that, the IACHR considers that in such cases the duty of due diligence should be especially rigorously applied, given the historical and entrenched discrimination that this group has suffered,¹⁶⁰ and which is also closely connected with the violence that affects them in particular.¹⁶¹

87. In that regard, the IACHR has determined that problems with the investigations of crimes against LGBT persons involve, in part, failure to investigate whether or not the crime was committed by reason of the victim's gender identity or sexual orientation.¹⁶² It has also noted that when crimes are truly motivated by prejudice but are not classified as such, there is a shifting of blame toward the victim (i.e., the prejudice may result in the crime being excused or less grave on the basis of the actions or conduct of the victim). This shift renders invisible the power structures that reproduce the homophobic stereotypes that underpin the prejudice.¹⁶³ In that regard, the IACHR finds that lack of due diligence in such cases may constitute a form of discrimination against the victims and a violation of the right to equal protection.¹⁶⁴

88. In that connection, the IACHR highlights that in addition to opening lines of inquiry at the outset of the investigations in which there is important circumstantial evidence, authorities should take into account whether the crime was committed based on prejudice and conduct investigations that are free of stereotypes related to diverse sexual orientations and gender identities and expressions; States must take into account the general context of bias, prejudice, and violence against LGBT persons in their countries, which may be more profound in places outside of the major cities. In addition, in conducting these investigations, authorities should rely on expert witnesses who are able to identify the often nuanced

¹⁵⁶ *Ibid.*, pars. 148-182, 255, 264, and 266.

¹⁵⁷ I/A Court H.R., *Case of Vargas-Areco v. Paraguay*, Judgment of September 26, 2006, Series C. No. 155, par. 196; *Case of the Ituango Massacres v. Colombia*, Judgment of July 1, 2006, Series C, No. 148, par. 289; and I/A Court H.R., *Case of Baldeón García v. Peru*, Merits, Reparations and Costs, Judgment of April 6, 2006, Series C. No. 147, para. 151.

¹⁵⁸ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations and Costs, Judgment of November 27, 2008, Series C. No. 192, par. 155.

¹⁵⁹ 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, par. 489.

¹⁶⁰ See: I/A Court H.R., *Case of Atala Riffo and Girls. v. Chile*, Merits, Reparations and Costs, Judgment of February 24, 2012, Series C. No. 239, par. 92.

¹⁶¹ See: 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, par. 426.

¹⁶² 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, par. 484.

¹⁶³ 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, par. 485.

¹⁶⁴ Likewise, the European Court of Human Rights has also affirmed that the obligation to prevent "hatred-motivated violence" by third parties, as well as to investigate the existence of a possible link between a discriminatory motive and the act of violence, can fall under the obligation to put processes in place to prohibit torture (Article 3), and may also be seen to form part of the authorities' positive responsibilities under the prohibition of discrimination (Article 14). See: ECHR, *Identoba and others*, (Application no. 73235/12) v. Georgia, 12 May 2015, para. 63, cited in 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, par. 385.

discrimination and prejudice against LGBT persons that is pervasive and embedded in the societies of the region.¹⁶⁵

2. Analysis of the case

89. In first place, as mentioned earlier in this report, the Commission notes that the State did not outline or implement logical lines of inquiry based on the evidence and context that surrounded the events in this case. In that connection, the only line of inquiry that Honduras pursued was one aimed at identifying the individual who supposedly threatened Vicky Hernández, the only evidence for which is contained in a statement taken from the victim's mother two years after the incident.

90. The Commission finds that the State completely omitted from the investigation any analysis of multiple elements that suggested that the deed might be consistent with a crime prompted by prejudice and possibly involved state agents; namely that (i) she died from a gunshot wound to the head; (ii) her body was left in a public place; (iii) an apparently used condom was found at the scene; (iv) the deed took place at night during a curfew in which the streets were under military control; and (v) it occurred in a context of discrimination based on prejudice that included, *inter alia*, police violence against LGBT persons, especially trans women sex workers. The State took no steps either to confirm or exclude the involvement of the security forces or the possibility that the crime might have been motivated by prejudice. The State also failed to pursue any line of inquiry relating to Vicky Hernández's activist work as a member of the Color Rosa TTT trans collective, in spite of subsequent information regarding the continued murder of members of that same group.

91. In second place, as regards the procedures conducted as part of the sole line of inquiry adopted by the State, the Commission considers that the investigative process at the domestic level was lacking and the activities to gather evidence minimal, unjustifiably sporadic and protracted, and uncoordinated. The Commission notes that the only procedures carried out during the year in which the incident occurred were the preliminary inspection and the record of removal of the corpse. The facts in the case show that the authorities did not resume investigating until 2011, two years after the events.

92. The Commission finds that there is a factual discrepancy between the State and the petitioners regarding the autopsy report on Vicky Hernández and whether or not it was included in the record of the investigation at the domestic level. In that connection, it should be highlighted that the record provided to the Commission, which was updated on November 20, 2013, contained no such report. Likewise, the Commission notes that the facts in the case indicate that on March 12, 2015, the petitioners submitted a second formal request to the Office of the Special Prosecutor for Crimes against Life to have the autopsy report included in the record, saying that as of that date, the autopsy report had not yet been added to the record. The Commission finds that the State has not furnished sufficient proof to show that the report has actually been included in the record, nor offered a satisfactory explanation as to why that had not yet occurred in 2013.

93. On a separate matter, regarding the mention in the record of the murder's classification as a possible crime of passion, the Commission recalls the Court's positions in the cases of *Velásquez Paiz* and *Gutiérrez Hernández*:

"[...] the notion of 'crime of passion' is part of a stereotype that justifies violence against women. The inclusion of the qualifier 'passion' tends to justify the assailant's conduct. For example, 'he killed her out of jealousy' or 'in a fit of rage' are expressions that encourage condemnation of women who suffer violence. The victim is blamed and the violence of the attacker supported." (Free translation)¹⁶⁶ In that connection, the Court rejects any State

¹⁶⁵ 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, par. 28.

¹⁶⁶ I/A Court H.R., *Case of Velásquez Paiz et al. v. Guatemala*, par. 187, citing the expert opinion rendered before a notary public (affidavit) by Alberto Bovino in that case.

practice by which violence against women is justified and the blame put on them, given that appraisals of that nature betray a discretionary and discriminatory attitude based on the conduct of the victim simply for being a woman. Consequently, it considers that such gender stereotypes are incompatible with international human rights law and steps should be taken to eradicate them wherever they present themselves. (Free translation)¹⁶⁷

94. That same reasoning applies in this case, in which the classification of the deed as a crime of passion implied a justification of the violence against a trans woman.

95. Equally, the Commission finds that the State omitted to carry out key procedures for the investigation. The record of removal of the corpse noted that an apparently used condom and a bullet were found at the scene of the crime. As previously mentioned in this report, the Commission finds nothing in the record to suggest that the appropriate studies were carried out to determine if Vicky Hernández was a victim of sexual violence, nor was a scientific analysis done of the residue found in the condom, or the necessary measures adopted to preserve the evidence with a view to future comparisons with potential culprits. The record also does not show that any tests were done on the bullet found at the scene of the crime to determine its caliber, for instance, and whether that caliber matched any kind of firearm used by the State's security forces. According to information provided by the State, it was only in September 2017, eight years after the events occurred, that follow-up information about those two evidentiary exhibits was requested from the evidence warehouse. By the same token, there is no record of any steps taken to identify the State security agency were assigned to the area where the body of Vicky Hernández was found during the curfew.

96. In addition, the only witness statement taken by the DNIC in the case was that of the mother of Vicky Hernández, two years after the murder. The IACHR finds that the record of the preliminary inspection procedure, under the heading "Witnesses and Family Members," contains information on two of Vicky's friends who were never interviewed. Finally, in spite of the fact that the record of the removal of the corpse noted that at the time of the procedure there was "a large number of curious onlookers and journalists" present, nothing in the record suggests that statements were taken from any of the people present in order to identify potential witnesses.

97. Third, in relation to the issue of reasonable time, the Commission observes that nine years after the events the authorities have not yet identified those responsible or made any significant progress in terms of determining the circumstances in which the murder of Vicky Hernández occurred. The Commission finds that contrary to what the State has contended, this case cannot be termed complex since it involves a single victim and the record confirms the existence of witnesses, the presence of physical evidence, and the known context of a curfew coupled with a climate of violence against trans people, all of which are indicators that should have prompted lines of inquiry. In any event, the State has not furnished any concrete arguments to justify the overall delay, setbacks, and particular inactivity at various times in the investigation in light of the purported complexity. The commission considers it clear, rather, that the delay and lack of progress in the investigation are due to the State's failure to investigate with the diligence that was required of it in this case, not only because of the existence of evidence of violence based on prejudice, but also because of possible state involvement and the context in which it occurred.

98. In light of the preceding considerations, the Commission concludes that the State of Honduras is responsible for violating the rights to a fair trial, equal protection and nondiscrimination, and judicial protection recognized at Articles 8(1), 24, and 25(1) of the American Convention taken in conjunction with the obligations enshrined in Article 1(1) of that instrument, and at Article 7 of the Convention of Belém do Pará, to the detriment of the family members of Vicky Hernández individually identified in this report.

C. Right to humane treatment of the next-of-kin [Article 5(1) of the American Convention]

¹⁶⁷ I/A Court H.R., *Case of Gutiérrez Hernández et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 24, 2017, Series C No. 339, par. 171.*

99. The Commission and the Inter-American Court have indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims.¹⁶⁸ In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.¹⁶⁹

100. In this case, the Commission considers it reasonable to conclude that the loss of a loved one, the gravity of the acts that occurred in light of the analysis contained in this report, and the absence of clarification and an adequate and timely judicial response have produced consequences that have extended beyond the immediate victim and impacted the members of her family identified in this report. Consequently, the Commission finds that the State has also violated the right of those individuals to have their mental and moral integrity respected, as established in Article 5(1) of the American Convention, taken in conjunction with the obligations set out in Article 1(1) of the same instrument.

V. CONCLUSIONS AND RECOMMENDATIONS

101. Based on its findings of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles 4(1) (right to life), 5(1) (right to humane treatment), 8.1 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), 24 (right to equal protection and nondiscrimination), and 25(1) (right to judicial protection) of the American Convention on Human Rights, taken in conjunction with the obligations established in Article 1(1) of the same instrument. The Commission also finds a violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF HONDURAS:

1. Provide full reparation for the human rights violations found in the instant report, including both material and nonpecuniary dimensions. The state should adopt measures of economic compensation and satisfaction.
2. Arrange for the next-of-kin of Vicky Hernández to receive the necessary physical and mental health care for their rehabilitation, if they so wish and in a manner that meets with their agreement.
3. Continue the criminal investigation in a diligent and effective manner within a reasonable time in order to completely clarify the events, identify all those who bear possible responsibility, and impose the appropriate penalties for the human rights violations declared in this report. In complying with this recommendation, the State should take into consideration the multiple shortcomings identified in this report, including pursuing the logical lines of inquiry referred to herein.
4. Arrange mechanisms to ensure non-repetition that include (i) adopting legislative, administrative, or other measures to secure recognition for the self-perceived gender identity of trans persons, taking into account inter-American standards in such matters; (ii) adopting legislative, administrative, or other measures to adequately map the context of violence faced by LGBT people in Honduras and introduce a comprehensive policy for its prevention and eradication that addresses its structural causes; (iii) designing instruction, awareness, and training programs for State security bodies in relation to violence based on prejudice against LGBT persons; (iv) establishing adequate reporting

¹⁶⁸ IACHR, Report No. 11/10. Case 12.488, Merits, Barrios Family, Venezuela, March 16, 2010, par. 91. IACHR, Report on Terrorism and Human Rights. par. 227; I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 10, 2007. Series C. No. 167, par. 112; and Case of Bueno-Alves v. Argentina, Merits, Reparations and Costs, Judgment of May 11, 2007. Series C No. 164, par. 102.

¹⁶⁹ I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 10, 2007. Series C. No. 167, par. 112; and Case of Vargas-Areco v. Paraguay, Judgment of September 26, 2006. Series C. No. 155, par. 96.

mechanisms for accountability by State security bodies in response to alleged incidents of violence based on prejudice against LGBT people; and (v) adopt all necessary measures to ensure access to justice in cases of violence against LGBT persons based on the standards described in this report on merits.