



# JURISPRUDENCE BULLETIN

INTER-AMERICAN COURT OF HUMAN RIGHTS

## No2

NOVEMBER 2014 - APRIL 2015



UNIÓN EUROPEA

# PRESENTATION

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

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

In this spirit and with this encouragement, the Inter-American Court has been decisively fostering jurisprudential dialogue to ensure that inter-American justice is truly and effectively accessible. Every individual in the Americas should be aware of, take ownership of, and demand the human rights recognized in the American Convention or in the interpretations that the Inter-American Court makes of this instrument.

Accordingly, we are now publishing these bulletins as an important effort to disseminate the Court's rulings periodically and, above all, to allow more people to get to know the work and the decisions of the Inter-American Court. Thus, these bulletins, which will be published every six months in Spanish, English and Portuguese, should become a useful tool for researchers, students, human rights defenders, and all those who would like to find out about the impact of the Court's work, and about the innovative human rights standards that the Court is constantly developing.

This second edition covers the rulings made by this Court

between November 2014 and April 2015. During this period, the Court issued six judgments: four on preliminary objections, merits and reparations, and two on interpretation of judgment. In addition, the Court adopted fifteen orders on monitoring compliance with judgments and four on provisional measures.

Over this period, the issues dealt with by the Court in its decisions required it to refer to problems that it has already tackled in its case law and that continue to be relevant for the exercise of human rights on our continent. In particular, the cases decided by the Court referred to matters such as enforced disappearance of persons, extrajudicial execution, sexual violence against women during armed conflicts, and due diligence in the investigation of such acts. It is worth noting that the Court issued an innovative ruling with regard to the application of the right to judicial guarantees and protection of the right to personal liberty in proceedings held in the military jurisdiction with regard to members of the military forces on active duty and for service-related offenses, an issue that differed from matters that the inter-American system has examined previously.

This bulletin has been published with the financial support of the European Commission, under an international cooperation project with the Inter-American Court. The publication was prepared and executed by the Institute of Democracy and Human Rights of the Pontificia Universidad Católica del Perú (IDEHPUCP), in coordination with the Inter-American Court of Human Rights, under a cooperation agreement between the two institutions. The Inter-American Court would like to express its particular gratitude to Professor Elizabeth Salmón, Director of the IDEHPUCP, for her work in the drafting of this publication.

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

**Humberto A. Sierra Porto**  
**President of the Inter-American Court**

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# I. CONTENTIOUS CASES



## Number of cases<sup>1</sup> heard by the Court, by State

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

# Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia

## (enforced disappearance)

The factual context of the judgment delivered on November 14, 2014, related to the events known as the taking and retaking of the Palace of Justice in Bogota, on November 6 and 7, 1985. On those dates, the M-19 guerrilla group took over the Palace of Justice, where the Colombian Supreme Court of Justice and Council of State were located, taking hundreds of hostages, including justices, auxiliary justices, lawyers, and administrative and service personnel, as well as visitors. The response of the State's security forces to this guerrilla action known as the "taking of the Palace of Justice," is known as the "retaking of the Palace of Justice." This military operation has been described as disproportionate and excessive by both domestic courts and the Truth Commission on the events of the Palace of Justice. As a result of these events, hundreds of people died or were injured. In particular, the Court examined the alleged disappearance of twelve individuals, the alleged disappearance and subsequent execution of one person, and the presumed detention and torture of another four persons.

During the proceedings, Colombia made a partial acknowledgement of international responsibility. Although the Court appreciated this acknowledgement, considering the disputes that persisted, as well as the gravity of the facts and the alleged violations, it proceeded to make an extensive and precise determination of the events that had taken place, because this contributed to making reparation to the victims, to avoiding the repetition of similar events and, to achieving the objectives of the inter-American jurisdiction on human rights.

The State also presented two preliminary objections. The first referred to the Court's lack of competence to determine violations of international humanitarian law. Recalling its considerations starting with the case of [Las Palmeras v. Colombia](#), the Inter-American Court indicated that, although it did not have competence to determine violations of international humanitarian law, it

was able to use this corpus iuris to interpret the provisions of the American Convention. Consequently, it rejected this objection. The Court then rejected the objection presented by the State concerning the supposed enforced disappearance of one of the victims, regarding whom Colombia indicated that he had not been forcibly disappeared. The Court considered that this argument related to the merits of the case and, therefore, it was not a matter to be ruled on in a preliminary manner. Consequently, it rejected the preliminary objection.

The Court examined the presumed enforced disappearance of Carlos Augusto Rodríguez Vera, Irma Franco Pineda, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo Figueroa, Luz Mary Portela León, Lucy Amparo Oviedo Bonilla and Gloria Anzola de Lanao. It took into account the State's acknowledgement of the enforced disappearance of Carlos Augusto Rodríguez Vera and Irma Franco Pineda, as well as the fact that all the evidence that has emerged since the time of the events is consistent and leads to the sole conclusion that the other eight individuals were forcible disappeared. Therefore, the Court declared the violation of the rights to personal liberty (Article 7), personal integrity (Article 5), life (Article 4), and recognition of juridical personality (Article 3), in relation to the obligation to respect and to ensure rights (Article 1(1)), and to Article 1(a) of the Inter-American Convention on Forced Disappearance, to the detriment of the above-named persons.

Regarding Norma Constanza Esguerra Forero and Ana Rosa Castiblanco Torres, the Court indicated that evidence existed pointing to their death inside the building during the taking and retaking of the Palace of Justice. The Court concluded that Colombia was not responsible for their enforced disappearance, but rather for the violation of the obligation to ensure the right to life established in Article 4 of the American Convention, in relation to Article 1(1), to the detriment of Ana Rosa Castiblanco Torres and Norma Constanza Esguerra Forero, owing to the failure to determine the whereabouts of Ms. Castiblanco Torres for more than 15 years, and of Ms. Esguerra Forero to date. The Court then examined the case of Carlos Horacio Urán Rojas, auxiliary justice, who was disappeared and then extrajudicially executed. The Court found that Colombia was responsible for both conducts and indicated that the return of the body did not eliminate the existence of the offense of forced disappearance. Thus, it concluded that the State was responsible for his enforced disappearance and

extrajudicial execution and, therefore, for the violation of the rights to personal liberty (Article 7), personal integrity (Article 5), life (Article 4) and recognition of juridical personality (Article 3), in relation to the obligation to respect and to ensure rights (Article 1(1)).

Second, the Court examined the presumed detention and ill-treatment suffered by Yolanda Santodomingo Albericci, Eduardo Matson Ospino, José Vicente Rubiano Galvis and Orlando Quijano. It found that the deprivation of liberty of Yolanda Santodomingo Albericci, Eduardo Matson Ospino and Orlando Quijano was unlawful and arbitrary, while the detention of José Vicente Rubiano Galvis was unlawful, constituting a violation of the right to personal liberty (Article 7). In addition, it found that the ill-treatment inflicted on Yolanda Santodomingo Albericci, Eduardo Matson Ospino, José Vicente Rubiano Galvis and Orlando Quijano constituted torture in the case of the first three, and cruel, inhuman and degrading treatment in the case of the latter, violating the right to personal integrity (Article 5). Finally, the Court found that the electric shocks applied to the genitals of the victim Rubiano Galvis constituted sexual violence and, therefore, a violation of the right to privacy and the protection of honor and dignity (Article 11).

Third, with regard to the investigations that were conducted, Colombia accepted responsibility for the absence of a reasonable time and for partial non-compliance with the obligation of due diligence. In addition, the Court indicated that the State had violated the guarantee of an ordinary, independent and impartial judge (Article 8(1)), because it had allowed the military criminal jurisdiction to investigate the enforced disappearance of Irma Franco Pineda and the torture suffered by Yolanda Santodomingo Albericci and Eduardo Matson Ospino. It also considered that the State had failed to comply with its obligation to open an immediate and effective investigation ex officio; that it had failed to carry out the search activities required to discover the whereabouts of the disappeared and to clarify what had happened, and also that it had not acted with due diligence in the initial investigation procedures

and, to a lesser extent, in the investigations underway in the ordinary jurisdiction. Consequently, the Court concluded that the State was responsible for violating judicial guarantees and judicial protection.

Fourth, the Court examined the lack of preventive actions prior to the taking of the Palace of Justice. In this regard, it applied the standard of a real and imminent danger and of reasonable possibilities of preventing it. Thus, it was able to determine that the lack of surveillance in the Palace of Justice, despite the threats received by the justices and the State's awareness of the possibility of an attack on this building, constituted non-compliance with the obligation to ensure the right to life and to personal integrity. The Court also found that the State had violated the right to personal integrity (Article 5) of 138 members of the victims' families.

Lastly, the Court ordered different measures of reparation, including: (i) investigation and punishment of those responsible for the facts declared in the judgment; (ii) a search for the disappeared; (iii) psychological treatment for the victims who request this; (iv) publication and dissemination of the judgment; (v) payment of compensation, and (vi) organization of an act of public acknowledgement of responsibility and preparation of an audio-visual documentary on the facts of the case.

*The hearing before the Court in this case is available at*  
<http://www.corteidh.or.cr/index.php/al-dia/galeria-multimedia>.

# Case of Espinoza González v. Peru

## (torture and sexual violence against a woman / diligence in the investigation of acts of violence against women)

The events examined in the judgment delivered on November 20, 2014, occurred in the context of the armed conflict in Peru, which took place between the 1980s and the year 2000. In April 1993, Gladys Carol Espinoza González was unlawfully and arbitrarily arrested by agents of the Peruvian National Police. During her detention and subsequent transfer, she was subjected to inhuman and degrading treatment, torture, rape, and other types of sexual violence. These acts were consistent with a systematic and generalized practice of torture, including the use of sexual violence and other cruel, inhuman and degrading treatment, which was used as a counter-terrorism instrument in criminal investigations during the armed conflict for the offenses of treason and terrorism. Gladys Espinoza was tried under the military jurisdiction and convicted of the offense of treason in June 1993. However, in February 2003, the Supreme Court vacated the whole proceeding. On March 1, 2004, the National Terrorism Chamber convicted Gladys Espinoza of the offense of terrorism. On November 24, 2004, the Supreme Court imposed the punishment of 25 years' imprisonment, a sentence that will expire on April 17, 2018. Gladys Espinoza has remained confined in various Peruvian prisons. From 1996 to 2001 she was incarcerated in the Yanamayo Prison.

During these criminal proceedings and on different occasions, Gladys Espinoza informed the Peruvian authorities that she had been the victim of acts of violence during her detention, as well as acts of torture, rape and other forms of sexual violence. Despite the numerous complaints made starting in 1993, and the medical reports that confirmed the state of her health, no investigation was conducted into the alleged acts of violence, and in particular of sexual violence, perpetrated against Gladys Espinoza. It was only on June 8, 2011, when the Inter-American Commission notified the Report on Admissibility and Merits to Peru, that the State initiated the corresponding investigations. In this context, in 2014, the Institute of Forensic Medicine drew up a "Protocol for the investigation of torture or cruel,

inhuman or degrading treatment" and the Prosecution Service brought criminal charges in April 2014.

In view of the fact that this case deals with sexual violence against women, in its analysis, the Court applied Article 7 of the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women \(Convention of Belém do Pará\)](#).

The Court considered that the right to personal liberty had been violated in relation to the following facts: (a) the failure to record the detention appropriately (Article 7(1) and 7(2)); (b) the absence of information about the reasons for the detention and the failure to provide information on the charges brought (Article 7(1) and 7(4)); (c) the lack of judicial control of the detention for at least 30 days (Articles 7(1), 7(3) and 7(5)), and (d) the impossibility of filing the remedy of habeas corpus or any other amparo action (Articles 7(1) and 7(6) in relation to Article 2).

Regarding the right to personal integrity (Article 5(1)), the Court found that, at the time of her arrest, Gladys Espinoza had been beaten and received death threats and, subsequently, mental and physical violence had been inflicted on her on police premises. The Court also found that the way in which her incarceration was implemented constituted physical and mental torture (Article 5(2)). In this regard, the Court referred to the definition of torture that it has been using repeatedly; in other words, ill-treatment that (a) is intentional; (b) causes severe physical or mental suffering, and (c) is committed with a purpose or objective.

The Court also recalled that the standard for proving torture is different from that for other offenses. In other cases, the Court has noted that victims frequently abstain from denouncing acts of torture or ill-treatment out of fear, especially if they are detained in the place where such acts occurred. Therefore, it is not reasonable to require victims of torture to describe all the presumed ill-treatment they have suffered each time they make a statement.

In addition, the Court considered that, while Gladys Espinoza was in the Yanamayo Prison, the State had subjected her to cruel, inhuman and degrading treatment, in violation of Articles 5(2) and 5(1), in connection with Article 1(1) of the Convention, owing to: (i) the detention conditions in the prison; (ii) the regime established for those being tried for and/or convicted of terrorism and treason to which she was subjected; (iii) the absence of adequate and prompt specialized medical care in view



of the progressive deterioration of her health, which was evident from the reports on the medical examinations performed on her at the time, and (iv) the scale of the force used against her during a search carried out in the Yanamayo Prison on August 5, 1999, with the participation of members of the National Special Operations Directorate (DINOES), which constituted a form of torture.

The Court also emphasized that the use of sexual violence is never permissible during the use of force by security agents, and that the generalized practice of sexual violence by the security forces during the armed conflict constituted gender-based violence, because it affected women just because they were women. In light of this context, the Court considered that the State agents had used sexual violence and the threat of sexual violence against Gladys Espinoza as a strategy to combat subversion, and considered these acts to be individualized discriminatory treatment owing to her condition as a woman in violation of Article 1(1) of the Convention, in relation to Articles 5(1), 5(2) and 11 of this instrument and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture. Furthermore, owing to the torture to which Gladys Espinoza was subjected, the Court applied the presumption *iuris tantum* on the violation of the right to mental and moral integrity (Article 5(1)) of her mother and her brother.

The Court incorporated the [World Health Organization's Guidelines](#) for medico-legal care for victims of sexual violence into the protection standards in relation to torture. Thus, it considered that when interviewing a person who asserts that they have been subjected to acts of torture, the following should be taken into consideration: (i) the presumed victim should be allowed to describe freely what he or she considers relevant, so that the officials should not merely ask questions; (ii) no one should be required to speak of any form of torture if they are uncomfortable doing so; (iii) the psychosocial history prior to the arrest of the presumed victim should be documented during the interview, together with a summary of the facts narrated relating to the moment of the initial arrest, and (iv) the detailed statement should be recorded and transcribed (if the acts included sexual violence or rape, the presumed victim must give consent to the recording). The Court also reiterated in this regard that the statement given by the presumed victims of acts or sexual violence or rape should be received in a safe and secure environment, which provides privacy and instils confidence, and that the statement should be recorded in order to avoid or limit the need for its

repetition.

The Court also considered that, in cases where indications of torture exist, the medical examinations of a potential victim should be performed with their prior informed consent, without the presence of security agents or other State agents, and the corresponding reports should include, at least, the following: (a) the circumstances of the interview; the name of the subject and name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution where the examination is being conducted; any appropriate circumstances at the time of the examination, and any other relevant factor; (b) a record of all physical and psychological findings upon clinical examination including appropriate diagnostic tests and, where possible, color photographs of all injuries; (d) an interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment, and a recommendation for any necessary medical and psychological treatment or further examination, and (e) the report should clearly identify those carrying out the examination and should be signed.

The Court has also indicated that, in cases of violence against women, a complete and detailed medical and psychological appraisal should be made as soon as there is awareness of the alleged acts by suitable trained personnel, if possible of the sex indicated by the victim, advising the latter that she may be accompanied by someone she trusts if she so wishes. The Court also recalled that, in cases of sexual violence, the investigation must try, insofar as possible, to avoid the re-victimization of the presumed victim or the re-experience of the profoundly traumatic incident, and considered that the gynecological and anal examination should be made with the prior informed consent of the presumed victim, preferably during the first 72 hours after the reported act.

The Court also emphasized the role of the health personnel and indicated that doctors and other health personnel are obliged not to engage, actively or passively, in acts which constitute participation or complicity in, or incitement or attempts to commit torture or other cruel, inhuman or degrading treatment. Moreover, forensic doctors are obliged to record the existence of evidence of ill-treatment, if this is the case, and must take steps to notify possible abuse to the corresponding authorities.

Based on these standards, the Court considered that

the State had failed to comply with its obligation to respect and ensure rights (Article 1(1)), in relation to the guarantees of due process of law and a fair trial (Articles 8 and 25), and to Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7.b of the Convention of Belém do Pará, owing to the unjustified delay in opening an investigation into the acts perpetrated to the detriment of Gladys Espinoza. These articles were also violated, together with the obligation to adopt measures (Article 2), owing to the stereotyped assessment of the evidence by the Permanent Criminal Chamber of the Supreme Court, which constituted gender-based discrimination in relation to access to justice. In this regard, the Court rejected the gender stereotype which considers that women who are suspected of having committed an offence are untrustworthy or manipulative, especially in the context of judicial proceedings. The Court also indicated that one guarantee of access to justice for women victims of sexual violence should be the establishment of rules for the assessment of evidence that avoid stereotyped affirmations, insinuations and allusions.

Among other measures of reparation, the Court ordered: (i) elaboration of investigation protocols to ensure that cases of torture, rape, and other forms of sexual violence are duly investigated and tried in accordance with the standards indicated in the judgment; (ii) implementation of a mechanism that allows all women victims of the generalized practice of rape and other forms of sexual violence during the Peruvian armed conflict to have free access to specialized medical, psychological and/or psychiatric rehabilitation to redress this type of violation, and (iii) incorporation of the standards established in the judgment into the permanent education and training programs and courses for those in charge of criminal investigations and judicial proceedings.

*The hearing before the Court in this case is available at:*  
<http://vimeopro.com/corteidh/caso-espinoza-gonzales-vs-peru>

## Case of Argüelles et al. v. Argentina

### (due process of law in the military jurisdiction)

This judgment, delivered on November 20, 2014, related to domestic proceedings opened in 1980 against 20 Argentine military officers for the offense of military fraud under the provisions of the Argentine Code of Military Justice. The charges consisted of different types of corruption. The accused were in pre-trial detention for approximately four years before the American Convention entered into force for the Argentine State, and for three more years after the entry into force of the Convention. The final verdict of the Supreme Court of Argentina was handed down in March 1995. These facts were verified by the Court during the proceedings.

In its analysis of the merits, the Court found that the right to personal liberty (Article 7) of 18 of the presumed victims had been violated, because the State had failed to assess whether the proportionality and the reasons and need for the pre-trial detention had persisted during the approximately three years following Argentina's ratification of the American Convention. The Court considered that the State should have imposed less harmful measures, especially since the punishment for the offense they were accused of was a maximum of ten years' imprisonment. Thus, it found that the pre-trial detention was an anticipation of the punishment and that the presumed victims had been deprived of liberty for a disproportionate time in relation to the punishment that would correspond to the offense of which they were accused. The other two presumed victims were released in 1981, so that it was not incumbent on the Court to examine their case.

The Court also indicated that the State had violated the right to a fair trial (Articles 8 and 25). Specifically, the Court considered that the State had violated the right to be assisted by legal counsel of their own choosing contained in Article 8(2)(d) and 8(2)(e) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the 20 petitioners. It determined this owing to the impossibility of appointing a defense counsel of their choice during the processing of the case in the military jurisdiction, which significantly affected their ability to defend themselves during the

trial. Regarding the reasonable time, the Court found that, during the proceedings in the domestic sphere, both the judicial authorities and the successive defense counsel of the presumed victims took numerous steps that clearly delayed the processing of the case. Also, the Court considered that no simple and effective remedy existed to determine the rights of the victims concerned. In addition, the Court reiterated that, if the passage of time affected the legal situation of the individual, the proceedings must be completed with greater diligence to ensure that the case is decided as soon as possible. Lastly, regarding the independence and impartiality of the judges, in view of the particularities of this case and the Court's competence *ratione temporis*, owing to the review of the proceedings before the ordinary jurisdiction that observed the guarantees of due process of law and the principles of judicial independence and impartiality, the Court found that the State had not violated Articles 8(1) and 25(1) of the American Convention.

The Court also analyzed the presumed violation of the principle of legality and political rights. Regarding the former, the Court ruled on the possibility of applying a norm that suspends the statute of limitations established in the Criminal Code for an offense under the Code of Military Justice, insofar as this permitted the application of the Criminal Code by reference. The Court found that, although the Criminal Code was prior to the Code of Military Justice, this did not constitute a change in the procedural rules, or a violation of the principle of legality. Furthermore, with regard to political rights and their possible violation owing to a measure of disqualification, it recalled that suspension of political rights is an attribution of the State established in Article 23 of the Convention, so that it does not violate Argentina's international obligations.

Regarding reparations, the Court ordered the publication of the judgment and the payment of compensation for pecuniary damage, as well as the reimbursement of costs and expenses. The Court also established that the State should reimburse the Victims' Legal Assistance Fund of the Court the amounts disbursed during the processing of the case.

*The hearing on merits in this case is available at:*

<http://vimeopro.com/corteidh/audiencia-publicacaso-arguelles-y-otros-vs-argentina>

## Case of Cruz Sánchez et al. v. Peru

### (extrajudicial execution)

On April 17, 2015, the Court delivered judgment in the case of Cruz Sánchez et al. v. Peru, regarding the conformity with the American Convention of actions carried out by the State in relation to whether or not extrajudicial executions had taken place during the operation to rescue the hostages in the residence of the Japanese Ambassador to Peru in April 1997. The facts of the case occurred during the conflict between armed groups and the security forces in Peru starting in the 1980s and ending in 2000. The armed groups included the Túpac Amaru Revolutionary Movement (MRTA).

During the evening of December 17, 1996, a reception was being held in the residence of the Japanese Ambassador to Peru when 14 members of the MRTA entered and took all those present hostage. In parallel to the negotiations to free the hostages, President Fujimori ordered the preparation of a rescue plan. On April 22, 1997, an operation known as "Chavín de Huántar" was carried out which managed to free the hostages. However, the hostage and judge, Carlos Ernesto Giusti Acuña; the members of the Peruvian Army, Lieutenant Raúl Gustavo Jiménez Chávez and Lieutenant Colonel Juan Alfonso Valer Sandoval, and the 14 members of the MRTA lost their life in the confrontation. Nevertheless, following declarations given to the press in December 2000 and a letter sent to the Judiciary in 2001 by a former hostage, doubts arose about the circumstances in which the MRTA members Eduardo Nicolás Cruz Sánchez, Herma Luz Meléndez Cueva and Víctor Salomón Peceros Pedraza died, and whether they had been extrajudicially executed, and this was analyzed when the Court examined the merits of the case.

Regarding the facts of the case: (1) in 2001, an investigation was opened based on the denunciations that had been made, and this led to the opening of criminal proceedings in the ordinary jurisdiction; (2) a competence dispute arose which was resolved by the Peruvian Supreme Court of Justice in favor of the military jurisdiction for the commanders who had been accused; (3) the military jurisdiction decided to dismiss the case in 2003 and it was archived; (4) the ordinary jurisdiction continued to hear the case in relation to the authorities who had been implicated, and this case was

later joined to a proceeding for complicity to conceal a crime; (5) at the time the case was submitted to the consideration of the Court, no final judgment had been delivered in the proceeding held before the ordinary jurisdiction; (6) as a supervening fact, the Third Special Liquidating Criminal Chamber of the Lima Superior Court of Justice delivered judgment on October 15, 2012, acquitting all the accused, with the exception of one who was found guilty of contempt of court; (7) on July 24, 2013, the Transitory Criminal Chamber of the Supreme Court of Justice declared that there was no cause for nullity in the judgment handed down; (8) in 2007, a criminal proceeding was opened against former President Fujimori Fujimori and one other person, and (9) currently, a fresh investigation is underway into the facts relating to Eduardo Nicolás Cruz Sánchez.

During the proceedings before the Commission, the State presented an “acknowledgement of responsibility for the excessive time taken in processing the criminal proceedings.” Pursuant to its case law, the Court admitted and granted full effects to the partial acknowledgement of responsibility made before the Commission in this case.

In its answering brief, Peru presented six preliminary objections, which the Court analyzed and rejected. Regarding the objection of control of legality of the Admissibility Report of the Inter-American Commission (IACHR) in relation to the failure to exhaust domestic remedies, the Court considered that the State had failed to provide grounds for the occurrence of a grave error that violated the right of defense of the parties. Regarding the objection of failure to exhaust domestic remedies, the Court found that the State’s arguments concerning the possible justifications for the delay in the domestic proceedings constituted a change in the position it had assumed previously, which is not permissible under the principle of estoppel. Regarding the objection of control of legality of the IACHR Merits Report as regards the determination of presumed victims and human rights that had not been considered in the Admissibility Report, the Court found that the Commission’s actions had not prejudiced the State’s right of defense. In the case of the objection relating to the alleged violation of the Peruvian State’s right of defense by the Inter-American Commission, the Court considered that there was no reason to consider that this could have caused a violation of the State’s right of defense. The Court also considered that the arguments presented by the State concerning the possible rectification of the deficiencies in the initial investigations, such as the efforts made

in keeping with what it called “current international standards,” belonged to the analysis of the merits of the case and that, therefore, it was not incumbent on the Court to rule on them as a preliminary objection. Regarding the State’s observation that the incorporation of new facts by the representatives of the presumed victims during the proceedings before the Court was inadmissible, it found that this should be examined in the chapter on preliminary considerations when referring to the factual framework of the case, and considered that they constituted facts that explained or clarified the facts contained in the factual framework established by Merits Report No. 66/11.

With regard to the merits of the matter, the Court affirmed that, since the hostage-taking occurred at the time of, and as part of, an internal armed conflict, it was useful and appropriate, considering the specificity of the subject-matter, to take into account Article 3 common to the four Geneva Conventions and customary international humanitarian law (IHL). Therefore, since the American Convention does not expressly define the scope that the Court should grant to the concept of arbitrariness that would classify a deprivation of life as contrary to this treaty in a situation of armed conflict, the Court considered it pertinent to refer to the corpus iuris of IHL to determine the scope of the State’s obligations with regard to respecting and ensuring the right to life in such situations. In this regard, the Court noted that the presumed victims in this case were not civilians, but rather members of the MRTA, who played an active role in the hostilities. At the same time, it recognized that they could potentially be beneficiaries of the safeguards contained in Article 3 common to the four Geneva Conventions, provided that they had ceased to take part in the hostilities and could be identified as hors de combat. As the Court recalled, IHL prohibits attacks on the life and personal integrity of such individuals, in all circumstances. Thus, the factual dispute focused on determining whether the three presumed victims had ceased taking part in the hostilities and, consequently, merited the protection ensured by Article 3 common to the four Geneva Conventions.

With regard to Eduardo Nicolás Cruz Sánchez, after assessing the evidence provided and the circumstances in which the events took place, the Court found that his death occurred while he was in the custody of the State. The version of the events that arises from the statements of the members of the State security forces convinced the Court that Mr. Cruz Sánchez was captured alive, that he was tied up and immobilized, that he was not carrying

a weapon, and that he was handed over to a soldier who took him back into his house. Eduardo Nicolás Cruz Sánchez was subsequently found dead. According to the forensic anthropologists' report, his death occurred while he was immobilized. None of the soldiers who testified in the military jurisdiction acknowledged that they shot or killed him. Consequently, the Court considered that the last time he was seen alive, he was in a situation of hors de combat and that the State was therefore obliged to treat him humanely and to respect and ensure his rights. Thus, the Court established that the burden of proof was inverted and the State had the obligation to provide a satisfactory and convincing explanation of what happened and to disprove the allegations concerning its responsibility, with adequate probative elements proving that, in this case, the officials who had Mr. Cruz Sánchez in their custody had to use force. Despite this, it noted that the State had failed to provide a credible and satisfactory alternative explanation concerning the way in which Mr. Cruz Sánchez died in an area under the exclusive control of the State. The foregoing allowed the Court to conclude that this was an extrajudicial execution, and to declare the international responsibility of Peru for the arbitrary deprivation of the life of Eduardo Nicolás Cruz Sánchez.

In the case of Herma Luz Meléndez Cueva and Víctor Salomón Peceros Pedraza, the Court noted that the sequence of events surrounding their death occurred while an operation was being conducted, during which hostages were being evacuated. The Court indicated that it did not have sufficient evidence to prove consistently that the said individuals had ceased to participate in the hostilities at the time of their death and, therefore, could be categorized as hors de combat. Therefore, it concluded that it had insufficient evidence to establish the international responsibility of the State for the violation of the right to life of these individuals.

However, the Court noted that, 18 years after the events had occurred, no final ruling had been issued regarding what happened to Eduardo Nicolás Cruz Sánchez; rather a new investigation had been ordered, and thus the reasonable time had been surpassed excessively. It also considered that there had been irregularities in the processing of the crime scene and the removal of the corpses, as well as a lack of rigor in the performance of the autopsies in 1997, so that the original procedures and the initial protection of the probative elements lacked basic diligence. It also noted that the intervention of the military jurisdiction for the investigation and trial of the alleged extrajudicial executions of Herma Luz Meléndez

Cueva and Víctor Salomón Peceros infringed the parameters of exceptionality and restriction that should characterize this jurisdiction, and signified the application of a personal jurisdiction that functioned without taking into account the nature of the acts involved. Based on these considerations and the partial acknowledgement of responsibility made by the State, the Court concluded that the State was responsible for the violation of the rights to judicial guarantees and judicial protection (Articles 8(1) and 25(1)), to the detriment of the next of kin of Eduardo Nicolás Cruz Sánchez, Herma Luz Meléndez Cueva and Víctor Salomón Peceros Pedraza.

Lastly, the Court concluded that the State had violated the right to personal integrity (Article 5(1)), of Edgar Odón Cruz Acuña, brother of Eduardo Nicolás Cruz Sánchez, owing to the suffering he endured in relation to the extrajudicial execution of his brother and the absence of an effective investigation.

With regard to reparations, the Court established that its judgment constituted, per se, a form of reparation. It also ordered the State to take the following measures: (i) conduct the investigation and/or criminal proceedings that were underway effectively in order to identify, prosecute and punish, as appropriate, those responsible for the extrajudicial execution of Eduardo Nicolás Cruz Sánchez; (ii) provide, free of charge, immediate, adequate and effective psychological and/or psychiatric treatment for the brother of the victim if he should request it; (iii) make the publications ordered; (iv) pay the amounts established to reimburse costs and expenses, and (v) reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount disbursed during the processing of this case. The Court did not order the payment of financial compensation for the facts of this case, because it considered that the measures of reparation ordered were sufficient.

*The hearing before the Court in this case is available at:*  
<http://www.corteidh.or.cr/index.php/al-dia/galeria-multimedia>.

# II. ADVISORY OPINIONS

## **Request for an Advisory Opinion presented by the State of Panama**

On April 28, 2014, the Republic of Panama submitted to the Court a request for an advisory opinion with regard to the second paragraph of Article 1 of the American Convention, which states: “[...] 2. For the purposes of this Convention, “person” means every human being.” In particular, Panama asked the Court’s opinion in relation to: (i) the scope and the protection of physical persons by juridical persons or “legally-recognized non-governmental entities,” both to exhaust the proceedings of the domestic jurisdiction and to file reports of human rights violations before the Inter-American Commission, and (ii) the scope and the protection of the rights of juridical persons or “legally-recognized non-governmental entities” as such, in their capacity as instruments of physical persons to achieve the latter’s legitimate goals.

The Panamanian State also indicated that it was interested to know whether Article 16 of the Convention, which recognizes the right of human beings to associate to protect their rights, as expressed and implemented through the legal entities formed under the protection of the right of association, was limited by the restriction of protection of associations freely formed by physical persons as “legally recognized non-governmental entities.” In addition, Panama asked the Court to rule on the protection of the human rights of physical persons by non-governmental organizations or legal entities, taking into account, in particular, the rights to judicial protection and due process, private life and privacy, freedom of expression, private property, equality and non-discrimination, and the right to strike and to form federations and confederations.



# III. INTERPRETATION OF JUDGMENT

## Case of Osorio Rivera and family members v. Peru

In its judgment of November 20, 2014, the Court ruled on the request for interpretation of the judgment on preliminary objections, merits, reparations and costs of November 26, 2013, and declared the State's request for interpretation admissible. It also declared admissible the request for interpretation concerning the appropriate legal definition of the offense of enforced disappearance as a reparation ordered by the Court. Consequently, by interpretation based on paragraphs 211, 212 and 271 and the twelfth operative paragraph of the judgment on preliminary objections, merits, reparations and costs, it clarified, the meaning and scope of the State's obligation to adopt the necessary measures to amend, within a reasonable time, its criminal laws in order to make them compatible with the legal definition established by international standards on enforced disappearance of persons. To the contrary, it rejected as inadmissible, the three remaining elements of the request for interpretation of judgment filed by the State that relate to considerations on the amnesty laws, the training programs for the Armed Forces, and the amounts established for pecuniary and non-pecuniary damages.

## Case of J. v. Peru

The judgment of November 20, 2014, responded to requests submitted by both the Peruvian State and by the victim and referred to:

(1) the request presented by the representatives relating to the legal effects of the nullity of her acquittal in the domestic jurisdiction and its effect on the reparations;

(2) the State's requests that the Court clarify whether the ill-treatment suffered by the victim would constitute torture or whether the legal definition should be made by the domestic courts;

(3) that the Court explain the methodology used to establish the compensation, and

(4) that it rectify errors relating to the name and function of one of the State agents and the address where the search of the victim's home was carried out.

The Court rejected all these requests, with the exception of the second one, regarding which it indicated that it was for the State, in the context of its obligation to investigate, to decide the specific legal definition of the facts.

# IV. ORDERS ON MONITORING COMPLIANCE

Case	Date and number of monitoring order	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
<b>Case of Salvador Chiriboga v. Ecuador</b>	November 20, 2014  Third monitoring	<p>Payment of compensation for non-pecuniary damage (US\$10,000)</p> <p>Payment of costs and expenses (US\$ 50,000)</p> <p>Measure of restitution (US\$43,099.10)</p> <p>Publications of paragraphs of the judgment</p>	<p>Payment of three tranches of the compensation (US\$18,705,000)</p> <p>Payment of three tranches of the pecuniary damage (US\$9,435,757.80)</p>	<p>Payment of two tranches of the compensation (US\$18,705,000)</p> <p>Payment of two tranches of the pecuniary damage (US\$9,435,757.80)</p>
<b>Joint monitoring of the cases of Fernández Ortega et al. and Rosendo Cantú et al. v. Mexico</b>	November 21, 2014  First order on joint monitoring of compliance (an individual monitoring order had been issued for each one in 2010)	<p>Public act to acknowledge international responsibility</p> <p>Medical and psychological treatment</p> <p>Scholarships in Mexican public institutions</p> <p>Payment of the compensation for pecuniary and non-pecuniary damage</p> <p>Reimbursement of costs and expenses</p>	The Court only ruled on the five measures indicated.	
<b>Case of Véliz Franco et al. v. Guatemala</b>	January 26, 2015  First monitoring	The Court ruled on compliance with the order to reimburse the Victims' Legal Assistance Fund the amount disbursed during the processing of the case.		



Case	Date and number of monitoring order	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
<b>Case of Norín Catrimán et al. (Leaders and Activist of the Mapuche Indigenous People) v. Chile</b>	January 26, 2015 First monitoring	The Court ruled on compliance with the order to reimburse the Victims' Legal Assistance Fund the amount disbursed during the processing of the case.		
<b>Case of the Pacheco Tineo Family v. Bolivia</b>	January 26, 2015 First monitoring	The Court ruled on compliance with the order to reimburse the Victims' Legal Assistance Fund the amount disbursed during the processing of the case.		
<b>Case of Suárez Peralta v. Ecuador</b>	January 26, 2015 First monitoring	The Court ruled on compliance with the order to reimburse the Victims' Legal Assistance Fund the amount disbursed during the processing of the case.		
<b>Case of Luna López v. Honduras</b>	January 26, 2015 First monitoring	The Court ruled on the method of paying the compensation, but not on the extent of compliance with the judgment.		
<b>Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador</b>	January 27, 2015 Fourth monitoring	<p>Eliminate the names from public criminal records</p> <p>Advise private institutions they should eliminate any reference to the victims as authors or suspects of committing, an unlawful act</p> <p>Amend laws so that it is a judicial authority who decides the remedies filed by those detained, and amend the Law on Narcotic and Psychotropic Substances</p> <p>Pay compensation to the victims for the pecuniary and non-pecuniary damage and reimburse costs and expenses</p> <p>Disseminate the judgment by radio and television</p>		<p>Adapt the procedure for the elimination, ex officio, of the criminal record of those acquitted or whose cases are dismissed</p> <p>Obligation of the State and of Mr. Chaparro to submit to arbitration to establish the amount corresponding to the pecuniary damage suffered by Mr. Chaparro</p>

Case	Date and number of monitoring order	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
<b>Case of Acevedo Buendía et al. (“Dismissed and Retired Employees of the Comptroller’s Office”) v. Peru</b>	January 28, 2015	Reimburse costs and expenses  Publish the pertinent parts of the judgment, once, in the official gazette and in a national newspaper with widespread circulation		Comply fully with the judgments of the Constitutional Court regarding reimbursement of the victims’ loss of earning between April 1993 and October 2002.
<b>Case of the Pacheco Tineo Family v. Bolivia</b>	April 17, 2015  Second monitoring	Make the publications ordered in the judgment  Permanent training programs for officials in contact with immigrants or asylum-seekers  Pay compensation for pecuniary and non-pecuniary damage		
<b>Cases of Radilla Pacheco, Fernández Ortega et al., and Rosendo Cantú et al. v. Mexico</b>	April 17, 2015  Fifth monitoring of the case of Radilla Pacheco  Second monitoring of the cases of Fernández Ortega et al., and Rosendo Cantú et al.		Amend article 57 of the Code of Military Justice to make it compatible with the relevant international standards and the American Convention.	Adopt the necessary amendments to allow those who have been prejudiced by the intervention of the military jurisdiction to have an effective remedy for contesting that jurisdiction.
<b>Case of Cabrera García and Montiel Flores v. Mexico</b>	April 17, 2015  Second monitoring		Amend article 57 of the Code of Military Justice to make it compatible with the relevant international standards and the American Convention.	Adopt the necessary amendments to allow those who have been prejudiced by the intervention of the military jurisdiction to have an effective remedy for contesting that jurisdiction.

Case	Date and number of monitoring order	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
<b>Case of García Lucero et al. v. Chile</b>	April 17, 2015 First monitoring	Make the publications ordered in the judgment  Pay Mr. García Lucero compensation for non-pecuniary damage		Investigate the events involving Mr. García Lucero
<b>Case of Suárez Rosero v. Ecuador</b>	April 17, 2015 Fourth monitoring	Order the annulment of the fine imposed on Mr. Suárez Rosero  Eliminate his criminal record as regards the facts of this case  Pay costs and expenses  Pay compensation for pecuniary and non-pecuniary damage to Mr. Suárez Rosero, his wife and daughter		Order an investigation to determine the persons responsible for the human rights violations referred to in the judgment on merits and, eventually, punish them

Case	Date and number of monitoring order	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
<b>Case of the Miguel Castro Castro Prison v. Peru</b>	April 17, 2015  Third monitoring	<p>Obligation to investigate, identify and punish those responsible, as appropriate</p> <p>Return the remains of the victim Mario Francisco Aguilar Vega to his family</p> <p>Ensure that all the deceased inmates are identified and return their remains to their families</p> <p>Provide medical and psychological treatment to the victims and their family members</p> <p>Education for agents of the Peruvian security forces on international standards for the treatment of prisoners</p> <p>Public act to acknowledge responsibility, monument, and publication of the judgment.</p> <p>Payment of compensation for pecuniary and non-pecuniary damage and payment of the sum for medical and psychological care to the victims living abroad</p> <p>Ensure that information and documentation of police investigations is kept</p> <p>Reimburse costs and expenses</p> <p>Reimburse the Victims' Legal Assistance Fund the amount disbursed at the stage of monitoring compliance with judgment.</p>		

# Case of Salvador Chiriboga v. Ecuador

On November 20, 2014, the Court issued the third order on monitoring compliance with the judgment on reparations and costs in the case of **t** delivered on March 3, 2011. In that judgment, the Court had ordered the following financial measures of reparation:

Pay the fair compensation and the pecuniary damages<sup>1</sup> established in the judgment for Mrs. Salvador Chiriboga,<sup>2</sup> observing the method of compliance established in paragraphs 102 to 104 of the judgment. These paragraphs establish that the State must pay the said amounts in five equal tranches, over a five-year period, and indicated March 30 each year as the date of payment, starting with a first payment on March 30, 2012.

Pay the sum of US\$10,000.00 for non-pecuniary damage, as established in paragraphs 109 to 111 and 113 of the judgment.

Pay the sum of US\$50,000 for costs and expenses, as established in paragraph 140 of the judgment.

Return to Mrs. Salvador Chiriboga, as a measure of restitution, the sum of US\$43,099.10 for property taxes additional to the other taxes and as an additional tax unduly charged on a vacant lot, as well as the corresponding interest, within six months and as established in paragraph 124 of the judgment.

Make the publications of the judgment delivered in this case in the Official Gazette and the official summary of the judgment prepared by the Court in a national newspaper with widespread circulation, within the time frame and as established in paragraph 127 of the judgment.

In the orders on compliance issued in October 2012 and August 2013, the Court declared that Ecuador had complied fully with the measures of reparation relating to the payment of compensation for non-

pecuniary damage, the return of the sum established for taxes and fines that had been unduly charged and the corresponding interest, the publication of specific parts of the judgment in the Official Gazette and of the official summary of the judgment in a national newspaper with widespread circulation, and with the reimbursement of costs and expenses. It also declared that the State had complied with the payment of the first and second tranche of the fair compensation and the pecuniary damage. In its order of November 2014, the Court considered that Ecuador had complied fully with its obligation to pay the amounts corresponding to the third tranche of the fair compensation and the pecuniary damage, and established that, by June 1, 2015, at the latest, the State should submit a report to the Court on the payment of the fourth tranche of the fair compensation and the pecuniary damage.

2. The sum of US\$9,435,757.80 corresponded to the simple interest accrued on the amount of the fair compensation.

3. The sum of US\$18,705,000.00 includes the value of the building that was expropriated from Mrs. Salvador Chiriboga and its fixtures and fittings.

# Joint monitoring of the cases of **Fernández Ortega et al. and Rosendo Cantú et al. v. Mexico**

On November 21, 2014, the Court issued the order on joint monitoring of compliance in the cases of **Fernández Ortega et al. and Rosendo Cantú et al. v. México**, decided on August 30 and 31, 2010, respectively. Orders on monitoring judgment had been issued in both cases separately in 2010 and, in these, the Court had considered that the measure of publication of the judgment had been complied with, because the victims had not consented to this publication. The other reparations were not referred to in these orders.

In the 2014 order, the Court ruled on five measures of reparation ordered in both judgments and indicated that it would monitor the other pending measures of reparation in both cases in subsequent orders.

**a. Public act to acknowledge international responsibility:** the Court noted that, in both cases, a public act to acknowledge international responsibility had been held. The acts took place in December 2011 and March 2012, and they met the requirements of the judgment. Numerous authorities were present in these acts, they were both presided by the Minister of the Interior, the victims and their representatives participated, and simultaneous interpretation into the Me'Phaa language was ensured.

**b. Medical and psychological treatment:** the Court noted that the State and the victims in the two cases had signed agreements relating to compliance with this measure of reparation in November 2012. The Court considered that these agreements met the parameters it had established. Despite the fact that the victims' representatives asked the Court not to declare that the measure had been complied with fully, because they considered that its implementation was still at the trial stage, the Court assessed that this request had been made in November 2013 and that, according to the State, the treatment had now been provided on numerous occasions in several hospitals and health centers, so that there was sufficient evidence to consider that the State would continue to provide the treatment in compliance with the parameters established by the Court in its

judgments. Regarding the measure of psychological treatment for Ms. Rosendo Cantú and her daughter, the Court endorsed the agreement between the parties that the State would pay a sum for this concept instead of providing the treatment through State institutions, because the change in the method of implementation had been sought and agreed, above all, to provide the specialized treatment that the victims required in keeping with the need they had identified to continue with the private sector psychologists who had been treating them. Consequently, the Court found that the measure ordered in the two cases had been complied with fully.

**c. Scholarships in Mexican public institutions:** the State advised that it had set up a trust with a specific bank to cover, among other obligations, compliance with the reparations ordered by the Court. The Court noted that the rules of operation of the trust establish, among other matters, the method for calculating the amount of the scholarships and the documentation that the beneficiaries must present in order to receive the payment. The Court verified the existence of provisions in these rules that the trust would operate satisfactorily as a mechanism to ensure the future annual payment of the scholarships. It also verified the payments that had been made for the 2011 and 2012 school years, and the proper operation of the trust for the scholarships for the 2013-2014 school year. Accordingly, the Court declared that the State had complied with this measure of reparation.

**d. Payment of the compensation for pecuniary and non-pecuniary damage:** the Court verified compliance with this measure.

**e. Reimbursement of costs and expenses:** the Court verified compliance with this measure.

## **Case of Véliz Franco et al. v. Guatemala regarding reimbursement to the Victims' Legal Assistance Fund of the Court**

On January 26, 2015, the Court issued an order in which it noted that the State of Guatemala had reimbursed the Victims' Legal Assistance Fund the sum of US\$2,117.99 established in the judgment in the [Case of Véliz Franco et al. v. Guatemala](#), delivered on May 19, 2014. Consequently, the Court declared that Guatemala had complied with the fourteenth operative paragraph of the judgment.

## **Case of Norín Catrimán et al. (Leaders and Activist of the Mapuche Indigenous People) v. Chile regarding reimbursement to the Victims' Legal Assistance Fund of the Court**

In the order on reimbursement to the Victims' Legal Assistance Fund issued on January 26, 2015, the Court found that the twenty-third operative paragraph of the judgment in the [Case of Norín Catrimán et al. \(Leaders and Activist of the Mapuche Indigenous People\) v. Chile](#) delivered on May 29, 2014, had been complied with, because the Chilean State had reimbursed the sum of US\$7,652.88 disbursed during the processing of this case.

## **Case of the Pacheco Tineo Family v. Bolivia regarding reimbursement to the Victims' Legal Assistance Fund of the Court**

In the order issued on January 26, 2015, the Court noted that the Plurinational State of Bolivia had reimbursed to the Victims' Legal Assistance Fund the sum of US\$9,564.63 established in the judgment in the [Case of the Pacheco Tineo Family v. Bolivia](#) delivered on November 25, 2013. It therefore considered that the tenth operative paragraph of the judgment had been complied with.

## **Case of Suárez Peralta v. Ecuador regarding reimbursement to the Victims' Legal Assistance Fund of the Court**

Mediante resolução de 26 de janeiro de 2015 sobre "Reembolso ao Fundo de Assistência Jurídica de Vítimas", o Tribunal constatou que o Estado do Equador reembolsou a quantia de US\$ 1.436,00, dentro do prazo de 90 dias ordenado. Em consequência, a Corte considerou cumprido o ponto dispositivo oitavo da Sentença proferida em 21 de maio de 2013 a respeito do [Caso Suárez Peralta Vs. Ecuador](#).

## Caso Luna López Vs. Honduras

On January 27, 2015, the Court issued the first order on monitoring compliance with judgment in the [Case of Luna López v. Honduras](#) delivered on October 10, 2013. Following questions raised by the victim César Luna and the State of Honduras concerning the method of paying the compensation, the Court found it appropriate to advise the parties about the compensation and its distribution before ruling, in a subsequent order, on the extent of compliance with the judgment.

The Court clarified that the compensation referred to in paragraphs 250 to 254 of the judgment for pecuniary damage (loss of earnings and funeral expenses) and non-pecuniary damage in favor of Carlos Luna López, amounting to US\$250,000.00, should be distributed among his wife and six children so that they each receive US\$35,715.00. In this regard, it pointed out that the compensation corresponding to the Mariana Lubina López (deceased), mother of Carlos Luna López, refers to non-pecuniary damage that corresponded to her in her own right. Thus, the Court specified that the compensation for non-pecuniary damage of US\$7,000.00 is not the total amount, but rather this sum should be delivered to each of the eight family members of Mr. Luna López who were declared victims.

## Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador

On January 27, 2015, the Court issued the fourth order on monitoring compliance in the [Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador](#) decided in a judgment of November 21, 2007. Taking into consideration the measures of reparation that remain pending, the Court referred to the following elements: (a) dissemination of the judgment by radio and television; (b) elimination, ex officio, of the criminal record of those who are acquitted or whose cases are dismissed, and (c) obligation of the State and Mr. Chaparro to submit to arbitration to establish the amounts corresponding to the pecuniary damage suffered by Mr. Chaparro.

Regarding the first element, the Court noted that, in

the previous orders, it had declared that several of the dissemination measures it had ordered had been complied with and that, in this order, it would monitor the obligation to disseminate the judgment by radio and television. In this regard, Mr. Chaparro asked that the State should not be required to make these broadcasts for safety reasons related to the compensation ordered, while Mr. Lapo did not submit a brief or oppose the request. The Court considered that Mr. Chaparro's request was well-founded and admissible and declared that the State had complied with the measures of publication and dissemination ordered in the judgment.

Regarding the elimination, ex officio, of the criminal record of anyone who is acquitted or whose case is dismissed, the State reiterated that it was working on a bill to amend the criminal legislation and referred to regulations contained in domestic laws concerning the cancellation of personal records. The representatives of Mr. Chaparro affirmed that Ecuador had not complied with this international obligation and noted that the information provided by the State revealed that the elimination of criminal records owing to the dismissal of the case against the accused remained a procedure that was carried out at the request of the interested party, and not ex officio as the judgment required. The Court noted, first, that the State had not submitted updated information on the projected comprehensive amendment of its criminal laws since August 2011. Second, it considered that the procedure mentioned for the cancellation of criminal records was not in keeping with what it had ordered in the judgment, because it did not permit the criminal records of those who were acquitted or whose cases were dismissed to be eliminated ex officio. Consequently, the Court declared that this reparation remained pending and requested Ecuador to forward detailed updated information on the specific measures adopted to comply with what the Court had ordered.

Regarding the last point, the Court assessed positively the efforts made by the State and Mr. Chaparro Álvarez to submit to arbitration as provided for in the judgment. It also took note that, on November 12, 2012, the arbitral tribunal had issued a decision in which it concluded that the Ecuadorian State should pay Juan Carlos Chaparro Álvarez in compensation the sum of US\$1,935,370.00 plus interest up until the date of payment. The Court emphasized that there is no dispute between the parties that, on September 17, 2013, the State paid Mr. Chaparro the amount ordered, a payment that was made two months before the expiry of the one-year time limit established in the judgment and in the decision. However,



it noted the existence of a dispute between the parties regarding whether Ecuador should pay the interest accrued between the date of the arbitral decision and the date of payment.

In this regard, the Court stressed that the arbitral award established expressly that Ecuador should pay “[t]he interest that continues to be generated from November 6, 2012, until the date of payment” and that this was confirmed in a note of the arbitral tribunal of November 29, 2012. It also considered that, having submitted to the arbitral procedure, the State must accept the binding nature of the decision of the arbitral tribunal and implement the decision as set out in the arbitral award. The Court also considered that the interest on the capital ordered by the said award was ordinary interest that the arbitral tribunal was unable to calculate when issuing the award decision, because it depended on the date on which the payment was made. The Court noted that this payment of loss of earnings did not depend on, and was unrelated to, whether or not the State paid within the time frame established by the Court; rather it related to the time during which Mr. Chaparro did not have the capital available. For these reasons, the Court found that the decision of the arbitral tribunal was not contrary to the provisions of the judgment and considered that, in order to comply fully with this measure of reparation, Ecuador must pay all the interest ordered in the arbitral award, calculated as established in that decision.

## Case of Acevedo Buendía et al. (“Dismissed and Retired Employees of the Comptroller’s Office”) v. Peru

On January 28, 2015, the Court issued the second order on monitoring compliance in the [Case of Acevedo Buendía et al. \(“Dismissed and Retired Employees of the Comptroller’s Office”\) v. Peru](#) delivered on July 1, 2009. In the first monitoring order of July 1, 2011, the Court declared that the State had complied fully with the measures of reparation consisting of making the payment corresponding to the reimbursement of costs and expenses, and publishing, once, in the Official Gazette and in a national newspaper with widespread

circulation the pertinent parts of the judgment. The Court also declared that it would keep the proceeding of monitoring compliance open in relation to the payment of compensation for non-pecuniary damage and the measure relating to full compliance with the judgments of the Peruvian Constitutional Court of October 21, 1997, and January 26, 2001, as regards the payment of the victims’ loss of earnings from April 1993 to October 2002, within a reasonable time.

Regarding the payment of compensation, the Court recalled that, although Peru had made the payments to the victims for non-pecuniary damage, it had declared partial compliance in its first monitoring order because the documentation provided showed that the payment made to two of the victims was less than the amount paid to the other victims. The Court found that the State should provide information to explain this aspect. The State responded by indicating that the amounts were lower due to domestic court orders establishing alimony obligations for the two individuals in question. The victims’ representative did not present any observations or specific information with regard to the information provided by the State. Taking into account that the differences in the amounts are not due to deductions of a fiscal nature or other retentions that can be attributed to the State, but rather to court orders for the payment of debts relating to alimony, and since neither the victims’ representative nor the Inter-American Commission disputed this, the Court found that the State had complied fully with the payment of compensation for non-pecuniary damage ordered in the judgment within the established time frame.

Regarding the obligation to execute the judgments of the Constitutional Court, the Inter-American Court analyzed three aspects. First, it noted that neither the State nor the representative had provided sufficient information concerning the domestic decisions establishing the amount of the loss of earning by the victims; it therefore requested specific information in this regard. Second, the Court referred to the alleged payment to 45 of the 273 victims and found it necessary to request the State to provide payment vouchers that would allow the Court to corroborate that it had paid all that was owed to those 45 victims. Lastly, the Court referred to the payment to the remaining 228 victims and asked the State, if it had made partial payments to them, to indicate the partial amount paid to each victim and to provide the pertinent proof. The Court also referred to the “prioritization criteria” that were being applied to pay the amounts owed and indicated that insufficient information had

been provided in this regard. In relation to the time required to make the total payment of what was owed to the victims, the Court stressed that the State had not presented a specific plan revealing how it planned to achieve compliance with the sixth operative paragraph for each victim. Although it took note of the “supposed lack of sufficient resources,” it emphasized that the State must comply with what was ordered in the judgment within a reasonable time. In this regard, it requested Peru to implement, as soon as possible, the necessary measures to overcome the alleged budgetary problems or obstacles in order to comply with the payment to all the victims in this case, and to present a detailed proposed timetable of payments to all the victims, together with evidence of progress in these payments.

## Case of the Pacheco Tineo Family v. Bolivia

In an order of April 17, 2015, the Inter-American Court referred for the second time to monitoring compliance in the [Case of the Pacheco Tineo Family v. Bolivia](#) decided in a judgment of November 25, 2013. In particular, the Court analyzed the following measures ordered in its judgment: (a) publications of the judgment; (b) permanent training programs for officials who are in contact with immigrants or asylum-seekers, and (c) compensation for pecuniary and non-pecuniary damage.

Regarding the first aspect, the Court noted that, in May 2014, within the allotted time frame, Bolivia had complied with the publications ordered in the judgment of the official summary in the official gazette, the official summary in a national newspaper with widespread circulation, and the entire judgment on an official website, choosing the Immigration Directorate General for this, which was appropriate, bearing in mind the violations declared in this case. Consequently, the Court found that the reparation ordered in the eighth operative paragraph of the judgment had been complied with.

With regard to the second aspect, the Court assessed positively that the State of Bolivia had adopted a training program for personnel of the Immigration Directorate General, CONARE, and other institutions directly related to immigrants and refugees. In the understanding that the State must ensure that this program is offered permanently and on a compulsory basis, the Court considered that the measure of reparation ordered in the ninth operative paragraph of the judgment had also been complied with.

In relation to the third aspect, the Court noted that Bolivia had complied with the payment to the victims of the compensation for pecuniary and non-pecuniary damage established in the judgment, and had therefore complied with the reparation ordered in the tenth operative paragraph of the judgment. Accordingly, the Court decided that Bolivia had complied fully with the measures ordered in the judgment and considered the case closed.

## Case of García Lucero et al. v. Chile

On April 17, 2015, the Court adopted the first order on compliance with the judgment delivered on August 28, 2013, in the case of [Case of García Lucero et al. v. Chile](#). In the judgment, the Court had ordered the following measures of reparation: (a) to continue and conclude the investigation into the events that occurred to Mr. García Lucero; (b) to publish the official summary and the entire judgment in accordance with the criteria set out in paragraph 226 of the judgment, and (c) to pay the amount established for the non-pecuniary damage caused to Mr. García Lucero.

Regarding the first element, the State had submitted two reports describing the measures taken in the case as regards the investigation into the unlawful detention, torture, and other offenses perpetrated against Leopoldo García Lucero. The representatives of the victim acknowledged that Chile had taken some measures, but considered that there had been an unjustified delay in carrying out “several pending measures that are essential in order to comply with the obligation to investigate with due diligence.” The Court took note of the measures taken and recognized the efforts made by Chile to try and make progress in the criminal investigation. However, it observed “with concern that, more than three years after the complaint had been filed in those criminal proceedings, they was still at the preliminary stage.” It also stressed that “to date, the investigation merely relates to one of those presumably responsible for the violations committed against Mr. García Lucero, when it has been proved that he was detained in several centers, and that the acts perpetrated against him were part of a systematic practice that took place in a context of egregious human rights violations.” In addition, the Court pointed out that “important procedures to advance the investigation remain pending, such as the international letters rogatory to locate, summon, and

take the statement of the person named as one of those presumably responsible, and to receive the statement and carry out the forensic examinations of Mr. García Lucero.”

Regarding the second aspect, the Court noted that the State had complied with the publication of the official summary of the judgment in the Official Gazette of the Republic of Chile, and also with the publication of the entire judgment on the website of the Chilean Ministry of Justice. Regarding this measure, the representatives suggested that the State consider publishing the entire judgment on another government website, such as “Chile Somos Todos,” so that “those who are interested in the facts of the case are really able to find them.” In this regard, the Court considered that Chile had complied with the three criteria ordered in the judgment, which consisted in the said publication being made on “an official website”; that this site was “accessible from abroad,” and that the publication would be available “for one year.” Despite this, the Court urged the State to assess “the possibility of accepting the representatives’ suggestion in order to improve the dissemination and scope of this measure.”

Regarding the last aspect ordered, the Court noted that, on March 7, 2014, within the allotted time frame, Chile had paid Mr. García Lucero, the sum of 20,000.00 GBP as compensation for the non-pecuniary damage caused to him.

The Court also referred to the request made to the State concerning the expenses for Mr. García Lucero’s health care. It recalled that, in its judgment, it pointed out that the requests of the representatives and the Commission that the Court order the State “to provide medical and psychological treatment to the victim referred to alleged harm that could be connected to the acts that fell outside the Court’s temporal competence.” In this regard, it urged the State to provide him, on a discretionary basis, with a sum of money in pounds sterling that would be reasonable to cover the expenses of his medical and psychological treatment in his actual place of residence in the United Kingdom. The Court specified that, although the implementation of this request was not subject to monitoring because it had not been ordered as a measure of reparation, it urged the State, taking into account Mr. García Lucero’s special situation of vulnerability, to continue coordinating with the victim and/or his representatives to determine the financial requirements of Mr. García Lucero’s health care and, insofar as possible, to take any pertinent steps to

ensure that he could count on a sum of money that would allow him to cover the expenses of any reasonable medical and psychological treatment in his actual place of residence.

## Cases of Radilla Pacheco, Fernández Ortega et al., and Rosendo Cantú et al. v. Mexico

On April 17, 2015, the Court issued an order on joint monitoring of the judgments delivered in the cases of [Radilla Pacheco](#), [Fernández Ortega et al.](#), and [Rosendo Cantú et al.](#), all against Mexico, of November 23, 2009, and August 30 and 31, 2010, respectively. In this order, the Court ruled specifically on the two measures of reparation ordered in the judgments in the three cases relating to the State’s obligation to adapt its domestic laws to the American Convention.

The first measure ordered consisted in the need to adopt the pertinent legislative amendments to make article 57 of the Code of Military Justice compatible with international standards and those of the Convention as regards the guarantee of an ordinary judge in relation to the military criminal jurisdiction. In this regard, the Court took note that, in compliance with this recommendation, according to information provided by the State the decree approved by Congress which, among other aspects, amended this provision of the Code of Military Justice entered into force on June 15, 2014. Mexico indicated that this decree ensured that complaints of human rights violations committed by the Armed Forces would be investigated in the ordinary jurisdiction, and that it had thereby complied with the Court’s order. Meanwhile, although they assessed this change positively, the victims’ representatives and the Commission indicated that the measure has not been complied with fully because they considered that the decree did not comply with all the standards established by the Court.

To determine whether Mexico had complied with the reparation ordered in the three cases, the Court assessed whether article 57.II.a) of the Code of Military Justice – amended in June 2014 – was in line with the standards or parameters for the limitations that the military jurisdiction must observe. In summary, these establish that:

- a) This jurisdiction is not competent to investigate and, as appropriate, prosecute and punish the authors of any human rights violation;
- b) It can only try members of the armed forces in active service, and
- c) It can only try them (members of the armed forces in active service) for committing offenses or misdemeanors that, owing to their nature, harm rights that are inherent to the military sphere.

Regarding the standard indicated in (a) above, the Court considered that the amendment of article 57.II.a) was partially adapted to this as regards the military jurisdiction not being the competent jurisdiction to investigate and, if appropriate, prosecute and punish alleged human rights violations when they are committed by members of the Armed Forces against civilians. It noted that the present wording of the article clearly establishes that the hearing of cases of presumed human rights violations committed by members of the Armed Forces against civilians corresponds to the ordinary criminal jurisdiction. The Court emphasized that the amended article 57 indicates that the limitation of the jurisdiction applied to all human rights violations against civilians. Also, with regard to the standard concerning the personal competence indicated in (b) above, the Court considered that the actual article 57.II.a) of the Code of Military Justice was in keeping with this, because it clearly excluded the hearing of cases in which civilians were involved, as active or passive subjects, from the military jurisdiction.

Nevertheless, the Court made some observations regarding the standards indicated in (a) and (c) above, taking into account the arguments of the representatives and the Commission that the amendment did not comply completely with them. In particular, the Court noted that the amended article allowed the military jurisdiction to retain competence to investigate and try human rights violations when both the accused and the victim were members of the Armed Forces, and also with regard to offenses in which the accused was a member of the Armed Forces and the passive subject of the offense, or the holder of the protected right was not a civilian. These two situations prevented the precise connection between the offense of the ordinary jurisdiction and the military institution being established objectively. Consequently, the Court found that the actual legislation is still partly unadapted to the following jurisprudential standards:

- a) The military jurisdiction is not the competent jurisdiction to investigate and, if appropriate, prosecute and punish the authors of human rights violations, even

when the active or passive subject is a member of the Armed Forces, and

- b) The military jurisdiction can only prosecute the perpetration of offenses or misdemeanors (committed by members of the Armed Forces in active service) that, owing to their nature, adversely affect rights inherent to the Armed Forces.

The second measure ordered concerning the adaptation of Mexican legislation, consisted in the adoption of the pertinent amendments to provide those adversely affected by the intervention of the military jurisdiction with an effective remedy to contest the competence of this jurisdiction. The Court noted that, following the legal and constitutional amendments that had been introduced with regard to amparo proceedings, the right to a competent judge or court as a guarantee of the ordinary judge could now be protected by this remedy, because it can be filed to contest decisions that determine or decline competence in favor of the military jurisdiction for the investigation of an act that violates the said standards concerning the right to an ordinary judge. Therefore, the Court considered that, based on this amendment of both the legal and constitutional provisions of its domestic law, Mexico had complied fully with the measure of reparation ordered.

## Case of Cabrera García and Montiel Flores v. Mexico

On April 17, 2015, the Court issued an order on monitoring compliance with the judgment in the Case of [Cabrera García and Montiel Flores v. Mexico](#) delivered on November 26, 2010. In this order, the Court ruled on the two measures of reparation ordered in the judgment relating to the obligation of the State to adapt its domestic law to the American Convention.

The Court pointed out that these two reparations had also been ordered in previous judgment delivered in another three cases against Mexico: [Radilla Pacheco \(2009\)](#), [Rosendo Cantú et al. \(2010\)](#) and [Fernández Ortega et al. \(2010\)](#). The Court ruled on compliance with these reparations in these three cases in a separate order, because Judge Ferrer Mac-Gregor does not take part in monitoring compliance in those cases. The Court's considerations in this order were the same as those indicated previously in the order relating to the [Cases of Radilla Pacheco, Fernández Ortega et al., and Rosendo](#)

Thus, the Court concluded that Mexico had complied partially with the measure consisting in amending its legislation to make article 57 of the Code of Military Justice compatible with the international standards in this regard and the American Convention. It also concluded that the Mexican State had complied fully with the measure concerning the amendment that provides those affected by the intervention of the military jurisdiction with an effective remedy to contest this competence.

## Case of Suárez Rosero v. Ecuador

On April 17, 2015, the Court issued the fourth order on compliance with the judgment on reparations in the [Case of Suárez Rosero v. Ecuador](#) delivered on January 20, 1999. During the 15 years it has been monitoring compliance with the judgments handed down in this case, the Court has considered that Ecuador has complied fully with the measures of reparation that order the State to annul the fine imposed on Mr. Suárez Rosero, to eliminate his name from the corresponding criminal records, and to pay the amounts established for reimbursement of costs and expenses. The State has also complied partially with the reparation relating to payment of the compensation established for pecuniary and non-pecuniary damage to Mr. Suárez Rosero and his wife, Margarita Ramadán Burbano. However, the payment of the compensation to Micaela Suárez Ramadán, Mr. Suárez Rosero's daughter remains pending.

In this order, the Court focused on examining compliance with the latter aspect. In this regard, it noted that, 12 years after the expiry of the six-month time frame established in the judgment on reparations, the State had deposited the amount agreed by the parties in Micaela Suárez Ramadán's bank account on September 30, 2011. Consequently, the Court declared that the State had complied fully with the measure of reparation ordered.

The Court also took note that the obligation contained in the sixth operative paragraph of the judgment on merits remains pending. This refers to ordering an investigation to determine the individuals responsible for the human rights violations referred to in the judgment on merits and, eventually, punish them. The Court found it necessary that the State present updated information indicating the measures adopted in this regard, and decided to keep the monitoring proceeding open solely

with regard to this aspect of the judgment on merits.

## Case of the Miguel Castro Castro Prison v. Peru

In an order of April 17, 2015, the Court monitored compliance with the judgment in the [Case of the Miguel Castro Castro Prison v. Peru](#) delivered on November 25, 2006. The Court recalled that it had issued two monitoring orders previously, one in 2009 and one in 2014. In the former, it had declared that the State had failed to comply with its obligation to advise the Court of the measures taken to comply with the judgment. In the order issued in March 2014, the Court noted that, more than seven years after the judgment had been handed down, all the measures of reparation ordered remained pending, and required the State to take, immediately and finally, all necessary measures to comply promptly and effectively with all the operative paragraphs of the judgment.

The purpose of this order was to analyze whether the situation of non-compliance with all the reparations persisted, bearing in mind that more than eight years had passed since the Court issued the judgment in this case. Specifically, the Court referred to the following measures ordered:

- a) **Obligation to investigate the events that resulted in the violations in this case, to identify and to punish, as appropriate, those responsible.** The Court noted that the criminal proceedings continued at the preliminary investigation stage and that, despite the information presented on this measure, the State had not provided the explanations requested. The Court indicated that this reflected an absence of due diligence in the obligation to investigate.
- b) **Return of the remains of the victim Mario Francisco Aguilar Vega to his family.** The State had provided information on a court summons issued in 2007 and 2008 to obtain the statement of Ladislao Alberto Huamán Loayza, to whom the corpse had been delivered in 1992. The Court found it particularly serious that Peru had not taken any other step to clarify what happened to the victim's remains and indicated that Peru had not complied with the Court's request in its 2014 order.
- c) **Ensure that all the deceased inmates are identified and their remains returned to their next of kin.** The Court noted that the information presented by the State did not



clarify whether the remains of any of the 41 victims still had to be returned to their next of kin and considered that the State had not submitted the information requested in its 2014 order in this regard.

**d) Provide medical and psychological treatment to the victims and the members of their families.** The Court noted that the State had not taken the necessary steps to comply with this measure; nor had it provided information on progress in its implementation and results.

**e) Education for agents of the Peruvian security forces on international standards for the treatment of prisoners.** The Court noted that, although the State had indicated that, in 2014, “4,512 police agents [had been] trained,” and sent general information, it had not taken into account the indications of the Court in relation to the officials to whom the training should be addressed, and had failed to provide the specific information requested by the Court.

**f) Public act to acknowledge international responsibility, the monument, and the publication of the judgment.** The Court noted that the State had failed to comply with this aspect, and recalled that, in its 2014 order, it had stated categorically that Peru must, without fail, comply fully with the measures of the public act of acknowledgement and the publication of the judgment within six months of notification of the order.

**g) Payment of compensation for pecuniary and non-pecuniary damage and payment of the amount for medical and psychological treatment for the victims living abroad.** The State indicated that judicial proceedings had been held on this aspect in the domestic sphere before the Special Court for the Execution of Supranational Judgments since April 7, 2010. The Inter-American Court stressed that Peru had presented insufficient information as regards the current status of the domestic proceedings, and therefore considered that this revealed that it had not made the respective determinations or paid the compensation, even though more than seven years had passed since the 18-month time frame granted for compliance had expired.

In addition, the Court noted that, in the reports it had presented, the State had failed to refer to measures to ensure that information and documentation from the police investigation be conserved, to the reimbursement of costs and expenses, and to reimbursement to the Victims’ Legal Assistance Fund of the amount disbursed during the stage of monitoring compliance with judgment.

The Court concluded that, even though Peru had presented three reports, these did not observe the

parameters required by the Court, and this constituted non-compliance by Peru with the obligation to report to the Court. It indicated that not only had the State failed to comply satisfactorily with its obligation to report on the implementation of the reparations ordered, but also the information provided and the omissions noted allowed the Court to conclude that the situation of non-compliance with all the measures ordered persisted.

The Court considered that the situation verified in the order constituted serious non-compliance with the obligations arising from the judgment delivered by the Court and with the commitments made by the State under the Convention. It indicated that it was unacceptable that, more than eight years after the judgment had been delivered, the general panorama was one of absence of compliance with each and every one of the reparations ordered. Therefore, the Court reiterated to Peru that it must take the necessary measures to comply immediately and effectively with the provisions of the judgment. It also indicated that, if the current situation of non-compliance persisted, the Court would establish the pertinent consequences pursuant to the American Convention and its Rules of Procedure.

# V. PROVISIONAL MEASURES

Matter	State	Precedent before the IACHR	Status of the measure	Rights protected	Beneficiaries of the measure
Matter of the Pedrinhas Prison Complex	Brazil	Precautionary measure (2013)	Granted	Life and integrity	Persons deprived of liberty and any person within the Pedrinhas complex
Case of García Prieto et al.	El Salvador	Precautionary measure (1997)	Granted	Life and integrity	Next of kin of Ramón Mauricio García Prieto Giralte and his legal advisers, members of the Human Rights Institute of the Universidad Centroamericana
Case of Mack Chang et al.	Guatemala		Granted	Life and integrity	Helen Mack Chang and members of the Myrna Mack Chang Foundation
Matter of Giraldo Cardona et al.	Colombia	Precautionary measure (1995)	Lifted	Life and integrity	
Matter of Meléndez Quijano et al.	El Salvador	Precautionary measure (2006)	Granted	Life and integrity	Adrián Meléndez Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez García, Estefani Marcela Meléndez García, Pamela Michelle Meléndez García, and Adriana María Meléndez García

## Matter of the Pedrinhas Prison Complex with regard to Brazil

(provisional measures with regard to persons deprived of liberty)

On November 14, 2014, the Court ordered Brazil to adopt provisional measures to protect the life and integrity of the persons deprived of liberty and another person within the Pedrinhas Complex. The request does not relate to a case submitted to the Court's consideration, but refers to a situation regarding which the Inter-American Commission had adopted precautionary measures on December 16, 2013.

The events that gave rise to this measure relate to a series of incidents affecting the life and integrity of the persons detained in this prison. Specifically, the measures provided by the Commission relate to the death of 40 inmates, acts of violence and torture perpetrated against detainees by the official in charge of security, the militarization of the prison, the supposed possession of firearms by the detainees, and the lack of medical care for injured detainees and those testing positive for tuberculosis, HIV/AIDS and leprosy, among other matters.

Although Brazil presented a series of arguments to prove that the problems in the prison were being dealt with, the Court considered that a situation of extremely serious and urgent danger persisted, with a possibility of irreparable damage to the right to life and integrity of the inmates. Also, with regard to the beneficiaries of the measure, the Court emphasized that it did not find it necessary to identify them, because (as it had already indicated in the orders in the matters of the [Peace Community of San José Apartadó](#) and of the [Curado Prison Complex](#)), they were identifiable and could be determined, and were in a situation of grave danger because they were members of a group or community, as is the case of those deprived of liberty in a detention center. Lastly, the Court recalled the special obligation of guarantor that the State has with regard to persons deprived of liberty owing to the control that it exercises over them.

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

(provisional measures with regard to the next of kin of Ramón Mauricio García Prieto Giralt and his legal advisers)

In an order dated January 26, 2015, the Court referred for the sixth time to the provisional measures granted to protect the life and personal integrity of the next of kin of [Ramón Mauricio García Prieto Giralt](#), who was killed on June 10, 1994, in El Salvador, and of his legal advisers, members of the Human Rights Institute of the Universidad Centroamericana. The Salvadoran State's responsibility for the events relating to Mr. García Prieto's death were decided by the Court in its Judgment of November 20, 2007. The provisional measures in this matter were granted by the Court on September 26, 2006, at the Commission's request, because it considered that the information provided proved that the beneficiaries had been receiving threats continually and for many years, which revealed prima facie the existence of a situation of extreme gravity and urgency for their life and personal integrity.

In its last order of February 3, 2010, the Court decided, among other matters, to lift the provisional measures in favor of the beneficiaries, José Roberto Burgos Viale and Matilde Guadalupe Hernández de Espinoza, and to require the State to maintain the measures it had adopted and to adopt any other measures required to protect the rights to life and personal integrity of Gloria Giralt de García Prieto, José Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez and Ricardo Alberto Iglesias Herrera.

In the most recent order, the Court noted that the State had not sent the required reports on several occasions and indicated that, although the Court appreciated that the State had answered requests for information, the failure to present reports regularly had negatively impacted the Court's ability to assess the implementation of the measures satisfactorily. In this regard, the Court recalled that the States Parties to the American Convention on Human Rights that have accepted its contentious



jurisdiction are bound to abide by the obligations established by the Court, which include the obligation to report regularly on the measures taken to comply with its rulings.

The Court also recalled that, in order to decide whether to maintain provisional measures in effect, it must analyze where the situation of extreme gravity and urgency that led to their adoption persists, or whether new equally grave and urgent circumstances warrant maintaining them. In this specific matter, the Court observed that the State had implemented effective measures to prevent the occurrence of harm to the life and personal integrity of the beneficiaries and, in general, the representatives have indicated their agreement with those measures. The Court also noted that, since its last order on February 3, 2010, it had received information concerning incidents that had taken place following that date only in relation to Mr. and Mrs. García Prieto, in December 2011 and 2012.

Based on the above, and considering that, over a period of almost four years, no incidents had been reported with regard to María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez and Ricardo Alberto Iglesias Herrera, the Court decided to lift the provisional measures adopted in their favor. With regard to Gloria Giralt de García Prieto and José Mauricio García Prieto Hirlemann, the Court considered it pertinent that the State present a detailed report in which it referred to the current situation of these two beneficiaries compared to the situation that led to these provisional measures, setting out the arguments and evidence concerning whether or not it considered that the respective measures should be maintained. The Court also asked the representatives and the Commission to present their comments on the information provided by the State.

## Case of Mack Chang et al. with regard to Guatemala

(provisional measures with regard to the next of kin of Myrna Mack Chang and the members of the Myrna Mack Chang Foundation)

In an order dated January 26, 2015, the Inter-American Court referred to the provisional measures granted

to protect the right to life and to personal integrity of Helen Mack Chang and the members of her family, Zoila Esperanza Chang Lau (mother), Marco Antonio Mack Chang (brother), Freddy Mack Chang (brother), Vivian Mack Chang (sister), Ronald Mack Chang Apuy (cousin), Lucrecia Hernández Mack (daughter) and her children, and of the members of the Myrna Mack Chang Foundation. These provisional measures had been adopted in 2002, based on a request presented by the Commission, while the Court was examining the contentious case concerning the death of [Myrna Mack Chang](#).

In its last order in this regard, dated May 14, 2014, the Court had decided to maintain the provisional measures until January 29, 2015. The State of Guatemala subsequently requested that the measures be “lifted and archived.” According to the State, there had been no report of a situation of imminent or latent danger for the rights of the beneficiaries while the measures were in force. Nevertheless, the representative mentioned several matters that could place the beneficiaries in a vulnerable situation, but did not refer specifically to the actual situation of each one. In this regard, the Court observed that, according to the information provided, the Myrna Mack Chang Foundation is currently acting as an associated litigant in the investigation underway into the murder of José Miguel Mérida Escobar, who was one of the investigators into the death of Myrna Mack, and Helen Mack is the President of the Foundation and a human rights defender, owing to which she has been involved in that investigation. In addition, it noted that, according to the representative, in June and August 2014, members of the Foundation received telephone calls that could be connected to the said investigation.

Consequently, and since the State had not indicated the specific mechanisms of the domestic jurisdiction that would ensure the rights to life and personal integrity of Ms. Mack Chang and the members of the Foundation, or described sufficient guarantees for her safety owing to her participation in the said investigation, the Court found it appropriate to maintain the provisional measures in favor of Helen Mack Chang and the members of the Myrna Mack Chang Foundation. It also decided to request the parties and the Commission to provide information on whether the conditions existed for the State to continue adopting the necessary measures to ensure the rights to life and integrity of these persons, independently of the existence of provisional measures.

The Court also noted that, in recent years, neither the

parties, nor the Commission had referred to the situation of the beneficiaries, Zoila Esperanza Chang Lau, Marco Antonio Mack Chang, Vivian Mack Chang, Ronald Mack Chang Apuy, and Lucrecia Hernández Mack and her children. It noted that there had been no reports that they had been the object of any act of violence, harassment or threat. It considered that this revealed that, at least during the most recent years of the existence of these provisional measures, it has not been proved that they had suffered incidents directly related to the purpose of the measures. Therefore, the Court found it reasonable to presume that the situation of these beneficiaries no longer met the requirements established in Article 63(2) of the Convention and, consequently, it considered it pertinent to lift the measures in their favor.

## **Matter of Giraldo Cardona et al. with regard to Colombia**

### **(provisional measures with regard to members of the El Meta Civic Committee)**

On January 28, 2015, the Court issued an order on monitoring the provisional measures granted in the matter of Giraldo Cardona et al. with regard to Colombia. The provisional measures were adopted in October 1996 as a result of a request submitted by the Commission in relation to a petition being processed before it based on supposed threats, harassment, persecution, executions, disappearances, and forced displacements of members of the El Meta Civic Committee. According to the information received by the Court concerning the processing of this petition, in February 2013, the case was at the admissibility and merits stage. The Court had received no further information from the Commission on the evolution of the proceeding.

Taking in account its decision in its last order, dated February 8, 2013, the Court examined the following aspects: (a) the actual measures of protection to ensure the life and integrity of Islena Rey Rodríguez, including the existence of conditions for the State to continue taking measures, independently of the existence of an order from the Court, and (b) the possible persistence of a situation of extreme gravity and urgency with regard to Islena Rey Rodríguez. The Court also reiterated that,

in keeping with the fourth operative paragraph of the order of February 8, 2013, it would not examine the information and considerations of the parties and the Commission concerning the investigations into the facts of this matter.

On this first aspect, based on the information provided by the parties and the Commission, the Court noted that the State had not submitted prompt and specific information on concrete measures that would avoid the repetition of events such as those of November 4, 2011. On that date, according to the representatives, “six or seven individuals [...] wearing badges of the Technical Investigation Unit (CTI) of the Prosecutor General’s Office came to the offices of the El Meta Civic Human Rights Committee; they proceeded to inspect the building where the Committee has its offices and to take photographs.” However, the Court assessed positively that the State had maintained a protection plan in favor of the beneficiaries and appreciated the meetings that had been held, which had led to agreements on the implementation of the measures. Nevertheless, the Court noted that difficulties had arisen, as well as several disagreements, and that communication between the beneficiary or her representatives and the State had not been sufficient, permanent and adequate to reach agreement on the implementation of the measures.

Regarding the possible persistence of a situation of extreme gravity and urgency for Islena Rey Rodríguez, the Court underlined that, during the almost two years that had passed since its previous order adopted on February 8, 2013, the beneficiary had not suffered threats or direct attacks (the previous incident concerning the beneficiary had occurred on November 4, 2011). The Court also took note that the representatives had advised that, between January and April 2013, Islena Rey had received five strange communications from members of the Colombian National Army, and considered that this suggests an intention of trying to intimidate Islena Rey. Based on the observations of the parties and the Commission, the Court considered that the information available was insufficient to infer that, almost two years after they occurred, the said facts denote per se the persistence of a grave and urgent situation that could be considered “extreme.” It added that, apart from these events, the Court has no other information that would allow it to consider that such a situation continues to exist.

The Court also recalled that its intervention issuing provisional measures is subsidiary and complementary.

Thus, an order to adopt or maintain provisional measures is justified in the situations established in Article 63(2) of the American Convention, in which the ordinary guarantees that exist in a State with regard to the person for whom they are requested are insufficient or ineffective, or the domestic authorities are unable or do not wish to implement them. In this regard, the Court stressed that the State had provided information on the existence of domestic mechanisms, in particular in relation to the National Protection Unit, an entity that is already intervening in this matter. Consequently, the Court found it in order to lift the provisional measures and to archive the case file.

In addition, the Court noted that this order should not affect any pertinent actions and decisions of domestic organs and proceedings pursuant to the applicable laws and, in particular, the domestic protection mechanisms. It also recalled that, irrespective of the existence of specific provisional measures, the State has a special obligation to ensure the rights of individuals in a situation of danger, and should facilitate the investigations required to clarify the facts and, as appropriate, punish those responsible.

## Matter of Meléndez Quijano et al. with regard to El Salvador

### (provisional measures with regard to Mr. Meléndez Quijano and the members of his family)

On April 17, 2015, the Inter-American Court issued an order monitoring the provisional measures granted in the matter of Meléndez Quijano et al. with regard to El Salvador. The provisional measures were adopted in 2007, as a result of a request by the Commission because, while the precautionary measures adopted by the Commission in favor of the beneficiaries were in force, they had been subject to surveillance and threatening telephone calls, and had been followed. The information provided proved prima facie that they were in a situation of extreme gravity and urgency, because their life and personal integrity were threatened and in grave danger.

In its last order in this regard, dated October 14, 2014, the Court had decided to maintain the provisional measures in favor of Adrián Meléndez Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez García,

Estefani Marcela Meléndez García, Pamela Michelle Meléndez García, Adriana María Meléndez García, Gloria Tránsito Quijano viuda de Meléndez, and Sandra Ivette Meléndez Quijano, for an additional period that expired on April 2015, following which the Court would evaluate whether to extend them.

According to the Court, the current order focused on evaluating the evolution of all the measures adopted and their impact on the elimination of the situation of danger of each beneficiary over the last six months, from April 14 to October 14, 2014. In this regard, the Court noted that, based on information provided by the beneficiaries, in December 2014, Mr. Meléndez Quijano had received further threats in a telephone call and two text messages, which the Prosecutor General had been informed of. The Court also took note that the State had not referred to these threats in its latest report, and considered that it could not be ignored that these incidents, which had occurred less than six months previously, could be related to the situation that gave rise to the provisional measures. The Court considered that, in this matter, it was desirable to avoid the absence of absolute certainty about the potential of the said incidents to renew the situation of extreme gravity and urgency that gave rise to the measures deriving into the possibility of an increased risk to the beneficiaries by a possible cessation of the measures ordered. Consequently, it decided to maintain the provisional measures in favor of Adrián Meléndez Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez García, Estefani Marcela Meléndez García, Pamela Michelle Meléndez García, and Adriana María Meléndez García for an additional period that would expire on January 27, 2016, following which it would evaluate whether to maintain them.

Regarding Gloria Tránsito Quijano viuda de Meléndez and Sandra Ivette Meléndez Quijano, the Court noted that, during the period from April 14, 2014, until the date of this order, the parties had not referred specifically to any situation of danger for these beneficiaries, and had not indicated that they had been subject to any harassment, threat or attack. Thus, the Court considered that, at least during the past year, no proof had been presented that they had suffered incidents directly related to the purpose of these measures. Consequently, the Court found it reasonable to presume that the situation with regard to these beneficiaries was no longer in keeping with the requirements established in Article 63(2) of the Convention, and found it pertinent to lift the measures granted in their favor.