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## **Bulletin No. 5**

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# PRESENTATION

Over its 37 years of operation, the Inter-American Court has accompanied the peoples of the Americas in the transformation of their social, political and institutional realities. During this time, it has decided more than 200 cases, delivered almost 300 judgments, issued over 20 advisory opinions, and provided prompt protection to individuals and groups of individuals by means of its preventive function.

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

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

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

This fifth edition covers the rulings made by this Court between January and April 2016. During this period, the Court delivered one judgment on preliminary objections, merits and reparations. It also adopted three orders on monitoring compliance with judgment, five orders on provisional measures, and one advisory opinion.

The significance of the issues dealt with by the Court in its decisions over this period resides in the fact that such matters are extremely relevant in the actual circumstances of our continent, and also relate to

current problems common to the different States. Among other issues, the most important relate to the recognition of pension right to same-sex couples, as well as the right to equality and non-discrimination; also the entitlement of legal entities to hold rights under the Inter-American system of human rights. In particular, an innovative matter on which the Court ruled in the context of its advisory competence related to the possibility that trade unions could access the Inter-American system based on the violation of the rights established in Article 8(1) of the Protocol of San Salvador.

As in the case of the previous editions, 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.<sup>1</sup>

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

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

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

# I. CONTENTIOUS CASES

## NUMBER OF CASES HEARD BY THE COURT, BY STATE<sup>2</sup>

State	Cases
Argentina	17
Barbados	2
Bolivia	4
Brazil	5
Chile	8
Colombia	16
Costa Rica	2
Dominican Republic	4
Ecuador	17
El Salvador	6
Guatemala	20
Haiti	2
Honduras	12
Mexico	8
Nicaragua	3
Paraguay	7
Panama	5
Peru	37
Suriname	7
Trinidad and Tobago	2
Uruguay	2
Venezuela	19

## Case of Duque v. Colombia

On February 26, 2016, the Court delivered judgment in the case of Duque v. Colombia, declaring the international responsibility of the State of Colombia for precluding Mr. Duque from obtaining a survivor's pension following the death of his partner in 2002, because they were both of the same sex. This was due to the fact that the laws of Colombia established that the deceased's surviving companion only had the right to the survivor's pension if he or she was of a different sex.

The State filed three preliminary objections: (i) failure to exhaust domestic remedies in relation to recognition of the survivor's pension; (ii) that the representatives had failed to provide evidence to prove that, owing to lack of financial resources, the antiretroviral treatment prescribed for Mr. Duque had been suspended, and (iii) failure to exhaust domestic remedies as regards the rights to life and personal integrity. The Court rejected the first and third objections concerning the failure to exhaust domestic remedies. Regarding the first objection, the Court reaffirmed its case law that it was the Inter-American Commission that should examine the exhaustion of domestic remedies, and this should be done when it decided on the admissibility of the petition, rather than at the time a petition was lodged. Regarding the third objection, the Court noted that this violation was based on the lack of continuity in the antiretroviral treatment resulting from the failure to accord the survivor's pension. The Court therefore rejected the objection, considering that the arguments on failure to exhaust domestic remedies in relation to the rights to life and personal integrity were subsumed in the arguments submitted on the failure to exhaust domestic remedies in relation to the possibility of obtaining the pension. Lastly, regarding the lack of evidence to prove that Mr. Duque did not have the financial resources to continue the treatment, the Court considered that this argument was related to the assessment of the evidence and, therefore, did not constitute a preliminary objection or a cause of inadmissibility. Consequently, it rejected the second preliminary objection.

With regard to the arguments on the merits of the case, the State acknowledged the existence of a "continuous internationally wrongful act during at least part of the time that provisions were in force that precluded recognition of pensions to same-sex couples"; however, it indicated that this situation had ended with the delivery of Judgment C-366 of 2008, which rectified the effects of the wrongful act by ensuring an adequate and effective remedy for the recognition of pensions to same-sex couples. Therefore, the Court considered that Colombia's domestic laws concerning survivors' pensions had been discriminatory and contrary to the right to equality before the law because, since 2002, a law had been in force that did not permit the payment of a pension to same-sex couples and this had been applied in the case of Mr. Duque. The Court pointed out that this wrongful act had not been remedied subsequently, and

**2** These are cases that were submitted to the contentious jurisdiction of the Court by the Inter-American Commission or by a State and in which a final judgment or decision had been delivered at April 30, 2016.

that the retroactive effects of the payments that Mr. Duque could receive if he should submit a pension request had not been fully determined.

The Court also indicated that no law, or decision or practice under domestic law, could reduce or restrict the rights of a person based on his or her sexual orientation, and reaffirmed that the American Convention prohibited discrimination, in general, including categories such as sexual orientation. Consequently, it considered that the possible restriction of a right required rigorous justification, and this meant that the reasons used by the State to differentiate treatment must be particularly serious and founded on detailed reasoning. Based on the foregoing, the Court declared the State responsible for violating the right to equality and non-discrimination (Article 24) in relation to Article 1(1) of the Convention.

In addition, with regard to the obligation to adopt measures under domestic law, the Court considered that, based on the evolution of Colombia's laws and jurisprudence concerning the recognition and protection of same-sex couples, it had no evidence to conclude that there had been a violation of the obligation to adopt provisions under domestic law contained in Article 2 of the Convention.

Furthermore, in relation to the right to judicial protection (Article 25), the Court considered that it had no evidence to conclude that, in Colombia, there was no appropriate or effective remedy to request the payment of the survivor's pension in the case of same-sex couples. Consequently, the Court concluded that the State had not violated the right to judicial protection (Article 25). Moreover, regarding the procedural guarantee that cases should be tried before competent authorities established by law and pursuant to legally-established procedures (Article 8(1)), the Court analyzed the argument of the supposed application of discriminatory stereotypes in judicial decisions. However, it found that the State was not responsible, because it was not possible to verify that the authorities had acted, essentially and above all, on the basis of elements other than those expressly established in the laws of Colombia.

Lastly, regarding the right to life (Article 4) and integrity (Article 5), the Court considered that these articles had not been violated because the representatives had not provided any evidence.

As regards reparations, the Court established that its judgment constituted, *per se*, a form of reparation and, in addition, ordered the State to: (i) publish the Court's judgment and the official summary; (ii) ensure that Mr. Duque received priority in the processing of his eventual request for a survivor's pension; (iii) pay the amounts established in the judgment for non-pecuniary damage and to reimburse costs and expenses, and (iv) reimburse the Victims' Legal Assistance Fund of the Court the amounts disbursed during the processing of the case.



## II. ORDERS ON MONITORING COMPLIANCE

Case	Date and number of monitoring order	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
<p><b>Case of Artavia Murillo et al. (“<i>In vitro</i> fertilization”) v. Costa Rica</b></p>	<p>February 26, 2016</p> <p>First monitoring order</p>	<p>Implementation of permanent education and training programs and courses for judicial officials on human rights, reproductive rights, and non-discrimination</p> <p>Payment of pecuniary and non-pecuniary compensation, and reimbursement of costs and expenses</p> <p>Publications of the judgment and the official summary</p>	<p>Provision of free and immediate psychological treatment to the victims, for up to four years, in specialized State health care institutions</p>	<p>Adoption of appropriate measures to annul the prohibition to practice IVF</p> <p>Regulation of elements considered necessary in order to implement IVF</p> <p>Inclusion of IVF among the State’s infertility programs and treatments under the health care system</p>

<p><b>Case of the Barrios Family v. Venezuela</b></p>	<p>February 23, 2016</p> <p>Second monitoring order</p>		<p>Criminal investigation of the facts that violated human rights</p> <p>Examination of the possible investigative and procedural irregularities in this case and punishment of the conduct of the relevant public servants, as appropriate</p> <p>Free psychological and medical treatment through specialized public health institutions for the victims who request this</p> <p>Publications of the judgment or its official summary</p> <p>Public act to acknowledge international responsibility</p> <p>Award of scholarships in Venezuelan establishments</p> <p>Training actions and implementation of a compulsory program on the principles and norms for the protection of human rights as part of the general and on-going training of the police of the state of Aragua</p> <p>Reimbursement of costs and expenses</p> <p>Reimbursement of the Victims' Legal Assistance Fund of the Court</p>
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<p><b>Case of the Human Rights Defender et al. v. Guatemala</b></p>	<p>February 23, 2016</p>	<p>Publication of sections of the judgment</p> <p>Payment, within one year of notification of the judgment, of compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses</p>	<p>Investigations to individualize, identify, and punish those responsible</p> <p>Examination of possible investigative and procedural irregularities related to this case and punishment of the conduct of the corresponding public servants</p> <p>Guarantee of the necessary security conditions for six of the victims to return to their places of residence</p> <p>Provision of psychological and psychiatric treatment to the victims</p> <p>Implementation of an effective public policy to protect human rights defenders</p>
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## Case of Artavia Murillo et al. (“*In vitro* fertilization”) v. Costa Rica

On February 26, 2016, the Court issued its first order monitoring compliance with the judgment in the **Case of Artavia Murillo et al. (“*In vitro* fertilization”) v. Costa Rica**. This case refers to the legal prohibition of the assisted reproduction technique of in vitro fertilization (IVF) that the Supreme Court of Costa Rica had declared in keeping with the Constitution. In its judgment, the Inter-American Court ordered the State to take appropriate measures to annul the prohibition to practice IVF; to regulate the necessary aspects in order to implement IVF, and to provide an annual report on the gradual implementation of the respective systems.

In this order of February 2016, the Court considered that, since the State had maintained the prohibition to practice IVF in Costa Rica despite the order issued in the judgment and the immediate and binding effect that this should have, it had failed to comply with its international obligations, perpetuating a situation of the violation of the right to private and family life that could have serious and irreversible consequences for those who required this reproductive technique. As it had declared in the judgment, the Court considered that the prohibition to practice IVF was manifestly incompatible with the American Convention because it violated such rights and, therefore, could not have legal effects in Costa Rica or represent an impediment to the exercise of the said rights protected by the Convention. Consequently, in light of the American Convention and the reparation ordered in the judgment, it should be understood that IVF was authorized in Costa Rica and, with immediate effect, the exercise of the right to decide on whether to have biological children by means of this assisted reproduction technique, in either the public or the private sector, should be allowed, without the need for a legal act by the State recognizing this possibility or regulating the implementation of the technique.

The Court also monitored compliance with the measures of reparation ordered in the judgment with regard to including the availability of IVF among the infertility programs and treatments under its health care system, and reporting every six months on the measures taken to gradually introduce such services for those requiring them, as well as on the plans drawn up in this regard. The Court considered that these measures remained pending compliance.

In its judgment, the Court had also ordered the State to provide the victims with free and immediate psychological treatment for up to four years. According to the Court, this measure had been complied with in the case of two beneficiaries who had expressly stated that they no longer required the said treatment. Regarding the other beneficiaries, the Court indicated that it was awaiting information. Also, according to the Court, the remaining measures of reparation consisting in the implementation of permanent education and training programs and courses for judicial officials on human rights, reproductive rights and non-

discrimination, and payment of the amounts corresponding to compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses had been complied with satisfactorily.

Lastly, with regard to the measures concerning the publication and dissemination of the judgment, the Court had ordered the publication of the official summary of the judgment, once, in a national newspaper with widespread circulation, and the entire judgment on an official website of the Judiciary for one year. In this regard, the Court noted that the State had complied adequately with these obligations.

## **Case of the Barrios Family v. Venezuela in relation to reimbursement of the Victims' Legal Assistance Fund of the Court**

In the order on “Reimbursement of the Victims' Legal Assistance Fund” issued on February 23, 2016, the Court noted that the State of Venezuela had not complied with the reimbursement of US\$3,232.16 to the Legal Assistance Fund for the expenses incurred during the merits stage, as ordered in the judgment in the **Case of the Barrios Family v. Venezuela** of November 24, 2011. Consequently, the Court required the State to comply with this obligation forthwith. It also indicated that Venezuela had failed to comply with the reimbursement of US\$1,885.48 for the expenses incurred in relation to the hearing on monitoring compliance with the judgment, referred to in the **Order of the President of the Inter-American Court of January 9, 2015**. Lastly, it urged the State to inform the Court, within four months, on the steps taken to comply with its obligations. It should be noted that, even though the Victims' Legal Assistance Fund usually covers costs related to the appearance of the presumed victim, witnesses or expert witnesses at the hearings held by the Court or others related to the contentious proceedings, it has also covered expenses relating to the appearance of representatives at hearings on monitoring compliance, as established in the order on **monitoring of March 31, 2014**, in the **Case of the Miguel Castro Castro Prison v. Peru**.

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

On February 23, 2016, the Court issued an order on monitoring compliance in the **Case of the Human Rights Defender et al. v. Guatemala** decided on August 28, 2014. In this order, the Court ruled only on the State's actions concerning the execution of the measures of reparation relating to the publication of the judgment and the payment of compensation, costs and expenses.

In its judgment, the Court had ordered as a reparation that Guatemala publish the official summary of the judgment prepared by the Court in the official gazette and in a national newspaper with widespread circulation, and also to publish the entire judgment, omitting the names of the victims, on an official Guatemalan website. In addition, in the judgment, the Court had ordered “the confidentiality of the names

of the presumed victims in this case, at their request,” indicating that they feared attacks on their life and physical integrity.

However, in its **preceding monitoring order**, issued on September 2, 2015, the Court had noted that, when publishing the official summary of the judgment, the State had included the names of two of the victims in the heading. It had also noted that, when publishing the judgment on the website of the Presidential Human Rights Commission (COPREDEH), the State had used a hyperlink to the publication that gave the names of the victims. The Court had considered that these actions were contrary to the object and purpose of the measures of confidentiality and reparation that it had established. In the new order of February 2016, the Court noted that, at least as of October 2015, the names of the victims were not included on the above-mentioned page and therefore considered that the State had complied with this measure.

Moreover, with regard to the payment of compensation, and costs and expenses, the Court considered that these items had been paid satisfactorily.

## III. PROVISIONAL MEASURES

Monitor	State	Precedent before the IACHR	Status of the measure	Rights protected	Beneficiaries of the measure
<b>Case of Nadege Dorzema et al.</b>	Dominican Republic	-	Rejected	Life and integrity	Antonio Pol Emil, Rubén Antonio de Jesús and Roberto Jesús Antúan, Wichna Joseph and Ana Delia Suero Polo, Manuel de Jesús Dandré and Sylvio Dard (reporter)
<b>Case of Fernández Ortega et al.</b>	Peru	-	Request denied	Life and integrity	Obtilia Eugenio Manuel and specific family members; Inés Fernández Ortega and specific family members; 41 members of the Organización del Pueblo Indígena Tlapaneco/Me'phaa A.C., and 18 members of the Centro de Derechos Humanos de la Montaña Tlachinollan, A.C
<b>Rosendo Cantú et al.</b>	Mexico		Lifted		

<b>De la Cruz Flores</b>	Peru		Rejected		
<b>Case of Amrhein et al.</b>	Costa Rica		Rejected		



## Case of Nadege Dorzema et al. with regard to Dominican Republic

In its order of February 23, 2016, the Court referred to the request for provisional measures. The request was based on the fact that Antonio Pol Emil, Rubén Antonio de Jesús and Roberto Jesús Antúan (representatives in the litigation of the case of Nadege Dorzema before the Inter-American system); Wichna Joseph and Ana Delia Suero Polo (who had participated in the preparation of the report on monitoring compliance with judgment), Manuel de Jesús Dandré (who had acted as interpreter during the hearing of the case), and Sylvio Dard (reporter for the international media) had been receiving threats from officials, former officials, and members of the military in relation to their work relating to compliance with the judgment in the Dorzema case. The request also referred to various incidents that had occurred between March and October 2015, such as surveillance of their work, eviction from their premises, harassment and intimidation, damage to property, and difficulties related to the migratory situation of some representatives. In addition to the measures of protection requested to ensure their safety, a request was made that the presumed beneficiaries be granted identity documents indicating that they were beneficiaries of provisional measures so as to prevent their deportation.

The Court noted that this request for provisional measures was closely related to the [Case of Nadege Dorzema et al. v. Dominican Republic](#). However, it considered that the acts and allegations were very general and failed to specify a direct relationship to the contentious case, so that, prima facie, a relationship or a connection to the purpose of the case was not evident. Consequently, the Court rejected the request for provisional measures.

## Case of Fernández Ortega et al. v. Mexico.

On February 23, 2016, the Court ruled, for the fifth time, on the provisional measures granted in relation to the [Case of Fernández Ortega et al. v. Mexico](#). According to the Court, the measures of protection implemented in this case consist of: (i) security infrastructure and communication systems, and (2) police patrols and escorts.

Regarding the first group of measure, the Court verified that the State had installed, reviewed and repaired surveillance systems in the offices of the OPIM, and of the Tlachinollan in Tlapa de Comonfort, Ayutla, as well as at the homes of Inés Fernández and Abel Barrera. However, it indicated that it was not clear whether the systems installed in the home of Inés Fernández were operational. The Court also took note of the representative's claim that complementary measures were required. In this regard, the Court asked the State to refer specifically to the requests of the representatives or to forward pertinent clarifications and, if necessary, to send a timetable for the implementation of such measures.

Furthermore, in relation to the communication systems, the Court noted that the State had given the beneficiaries satellite mobile telephones and landlines, communication radios, and also the electric energy regulators that the beneficiaries had requested. However, it noted the delays experienced in the repair or substitution of faulty equipment. The Court therefore asked the State to present detailed and updated information on the communication equipment given to the beneficiaries, its operational serviceability, the proposals made to substitute the satellite mobile telephones, or the pertinent explanations.

Regarding the second measure relating to the police patrols and escorts, the Court took note of the information provided by the representatives as regards their random nature and asked the State to forward complete, detailed and updated information on the patrols and on the escort services provided to the beneficiaries, their frequency and timing, and the way in which they were implemented, and also to refer to the representatives' request to know the identity of the agents who perform these escort services during transfers from Tlapa to Chilpancingo.

The Court also noted that, in the four years since its last order, various problems had arisen in the implementation of the measures of protection, due either to deficiencies in the security equipment or the communication systems, or owing to the difficulty of accessing the home of Inés Fernández in order to carry out the police patrols. Consequently, the Court decided that the State should propose a strategy for the maintenance, review, reparation or replacement of the equipment provided, including improving coordination with the service providers in order to ensure that the measures of protection were implemented without any interruptions.

In addition, the representatives informed the Court of presumed new threats and risks. Consequently, the Court considered that the dangerous situation confronting the beneficiaries subsisted and, therefore, found it pertinent to maintain the provisional measures in their favor at this time. Nevertheless, the Court recalled that, in its order of February 2012, it had asked the representatives to provide detailed and updated information on the circumstances of each beneficiary and this information had not been forwarded. Similarly, it stressed that the information provided by the parties did not reveal whether all the beneficiaries of the measures experienced the same situation of danger or even whether they continued to work in the beneficiary organizations. Therefore, in order to make an adequate assessment of the need to maintain these measures for all the beneficiaries, it was essential that: (a) the State make an updated assessment of the risk faced by each beneficiary setting out the arguments and evidence why it considered that these measures should or should not be maintained; to this end, the representatives and, if appropriate, the beneficiaries, should provide the necessary collaboration, and (b) the representatives forward specific information with supporting evidence on the persistence of the situation of extreme gravity and urgency and the need to avoid irreparable harm related to the case of Fernández Ortega et al. v. Mexico, with regard to each of the above-mentioned beneficiaries of these measures.

## Case of Rosendo Cantú et al. v. Mexico

In its order of February 23, 2016, the Court reiterated, for the fourth time, the provisional measures granted in favor of the victims in the [Case of Rosendo Cantú et al. v. Mexico](#). The Court had delivered judgment in this case on August 31, 2010, declaring the responsibility of the State of Mexico for the acts of sexual violence and rape committed against Valentina Rosendo Cantú by members of the military, as well as for the effects on the mental integrity of her daughter, Yenis Bernardino Rosendo.

In its first [order of February 2, 2010](#), on the provisional measures requested by the victims' representatives, the Court considered that, owing to the rape suffered by Ms. Rosendo Cantú, the beneficiaries had moved to another town and were living far from their family. There, Ms. Rosendo had been followed when she left the two places where she worked and, on one of those occasions, she had been photographed by a person of "military aspect." Subsequently, two unknown individuals had tried to abduct Ms. Rosendo's daughter and had stolen a mobile telephone from her. According to the Court, those incidents revealed 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 order of February 23, 2016, the Court examined the arguments of the representative. Specifically, the representative gave four reasons for maintaining the provisional measures: (i) the contextual situation of violence against those who defended women's rights in Guerrero, added to the active role that Ms. Rosendo Cantú had played in the search for justice in her case; (ii) the failure to investigate the events that gave rise to the measures; (iii) an incident that took place in June 2015, and (iv) the alleged need to maintain the provisional measures until the State had complied with the measure of reparation ordered in the judgment concerning the investigation of the facts of the case.

Regarding the contextual situation of violence, the Court indicated that the representative had not described recent specific acts that would allow it to reach consistent conclusions on the suggested effects of the context they alleged in the specific case of the beneficiaries. In addition, it considered that, from the information provided, it could not be concluded that the alleged context of violence against those who defend women's rights constituted per se sufficient grounds for maintaining provisional measures in their favor. Regarding the investigation into the events that gave rise to these measures, the Court indicated that in the absence of new dangerous incidents for a reasonable time, the mere fact that an investigation had not provided concrete results, or the possible deficiencies and delays in complying with the obligation to investigate, were insufficient reasons to maintain the provisional measures. With regard to the presumed new dangerous incident, the Court underlined that, following its last order, the representative had reported that, on May 10, 2015, Ms. Rosendo Cantú had been followed by a car, which resulted in her being injured. However, that incident had been reported eight months after it happened, which called into question its urgent nature. In addition, the Court indicated that the representative had not presented any evidence concerning that incident. Lastly, regarding the alleged need to maintain

these measures until the investigation of the facts of the case had concluded, the Court considered that information regarding the investigation was examined in the context of monitoring the judgment and not under the provisional measures procedure.

Based on the above, the Court found that the situation of the beneficiaries no longer met the requirements established in Article 63(2) of the Convention, and therefore order that the provisional measures ordered in favor of Valentina Rosendo Cantú and Yenis Bernardino Rosendo be lifted.

## **Case of De la Cruz Flores v. Peru**

On January 25, 2016, the Court ruled for the first time on the request for provisional measures in favor of Ms. De La Cruz Flores, declared victim in the judgment in the [Case of De la Cruz Flores v. Peru](#) of November 18, 2004.

According to the Court, the request submitted had not been signed by either Ms. De la Cruz Flores or her legal representative, and the persons who remitted the communication had not been accredited as representatives of the victim. Accordingly, the Court requested that the brief be resubmitted duly signed by the victim or her legal representative. However, this request went unanswered. Consequently, pursuant to the provisions of Article 27(3) of the Court's Rules of Procedure, the President of the Court was unable to examine the request and it was therefore rejected.

## **Case of Amrhein et al. v. Costa Rica**

On January 19, 2016, the Court ruled on the request for provisional measures based on the [submission of the Case of Amrhein et al. v. Costa Rica](#) to the Court on November 28, 2014. According to the Court the request was presented by José Tomás Guevara Calderón, who is not a presumed victim or a party to the Case of Amrhein et al. v. Costa Rica, the Court therefore rejected the request for provisional measures.

## IV. ADVISORY OPINIONS

### **Advisory Opinion OC-22/16 of February 26, 2016. Entitlement of Legal Entities to hold Rights under the Inter-American Human Rights System**

On February 26, 2016, the Court issues Advisory Opinion OC-22/16 on the “Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System,” at the request of the Republic of Panama. The request asked the Court to determine whether the Inter-American protection of human rights covered legal entities, in light of the interpretation and scope of Article 1(2) in relation to Articles 1(1), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(a) and (b) of the Protocol of San Salvador. In answer to this request, the Court examined four main points: (i) the consultation on the entitlement to rights of legal entities under the Inter-American system; (ii) indigenous and tribal communities and labor unions; (iii) protection of the human rights of natural persons as members of legal entities, and (iv) exhaustion of domestic remedies by legal entities.

Regarding the entitlement to rights of legal entities under the Inter-American system, the Court resorted to the rules of interpretation set out in Articles 31 and 32 of the Vienna Convention of the Law of Treaties in order to interpret Article 1(2) of the American Convention. Accordingly, it concluded that, based on the literal, teleological and systematic interpretation of the norm, entities that were not human beings were excluded from the protection provided by the Convention. Thus, legal entities could not lodge petitions or have direct access to the Inter-American system as presumed victims. Then, using an evolutive interpretation, the Court analyzed the protection of legal entities by other international human rights organizations or courts and under the domestic law of the States Parties. In this regard, the Court noted that legal entities were not entitled to rights under most systems for the protection of human rights with the exception of the European system and under the Committee for the Elimination of Racial Discrimination (CERD) and, therefore, it considered that a clear tendency to grant rights to legal entities or to allow them to have access, as victims, to the individual petition procedures established by the treaties did not exist. In addition, it indicated that, even though the countries of the region appeared inclined to acknowledge the entitlement to rights of legal entities and to grant them remedies to make them effective, not all the State acknowledged this in the same way and to the same degree.

Regarding the second point, on indigenous and tribal communities, the Court reiterated that, based on their particular situation, they were entitled to some of the rights protected by the Convention and could access the Inter-American system to defend those rights and the rights of their members. As regards trade unions, federations and confederations, the Court noted that the wording of Article 8(1)(a) of the

Protocol of San Salvador did not make it clear whether they were entitled to rights. Consequently, in accordance with the ordinary meaning of the words, the Court concluded that the article resulted in more specific rights for trade unions, federations and confederations as subjects of autonomous rights. Moreover, based on a systematic interpretation, the Court stressed that the heading of Article 8 (“Trade Union Rights”) covered the right of the workers to organize trade unions and to join the union of their choice, as well as that of the trade unions to establish federations or confederations, and of the trade unions, federations and confederations to function freely. It also noted that Article 45(c) of the OAS Charter recognized the juridical personality of employers’ and workers’ associations and the protection of their freedom and independence. Lastly, the Court considered that the most favorable interpretation of Article 8(1) entailed concluding that it entitled trade unions to rights. Therefore, the Court concluded that trade unions, federations and confederations could access the Inter-American system to defend the rights established in Article 8(1)(a) of the Protocol of San Salvador.

Regarding the exercise of the rights of natural persons through legal entities, the Court reiterated the possibility that, in certain circumstances, the individuals who exercised their rights through legal entities could access the Inter-American system; for example, in exercise of the rights to property and to freedom of expression. The Court also asserted that the exercise of a right through a legal entity must involve an essential and direct relationship between the natural person and the legal entity, so that a simple link between them is not sufficient to prove that the rights of the natural person are being protected, rather than those of the legal entity.

Lastly, the Court concluded that it was possible that if legal entities had exhausted the domestic remedies, either on their own behalf or in representation of their members, the admissibility requirement of Article 46(1)(a) of the Convention could be met. To that end, the Court established that, first, it was necessary to verify that the available, appropriate and effective remedies to protect the rights had been filed, regardless of whether or not they had been submitted and decided in favor of a legal entity. Second, it must be proved that the claims alleged by the legal entity in the domestic proceedings were the same as the presumed violations argued before the Inter-American system.