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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, these bulletins are being published 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 May and August 2015. During this period, the Court issued five judgments: three on preliminary objections, merits and reparations, and two on interpretation of judgment. In addition, the Court adopted five orders on monitoring compliance with judgments and six on provisional measures.

Decisions adopted by the Court during this period refer to the issues it has dealt with in the past, as well as to issues it has not addressed before in its jurisprudence. Thus, the Court was able once again deal with restrictions on the right to freedom of expression in Venezuela that are incompatible with the American Convention, and the arbitrary dismissal of workers of the Congress of the Republic of Peru, after the breakdown of democratic-constitutional order that occurred together with the coup of April 5 of that same year. A new matter discussed by the Court involved the international obligations of States regarding human rights in extradition proceedings, an issue dealt with in the case of Wong Ho Wing vs. Peru. In that ruling, the Inter-American Court covers the scope of the obligation to guarantee human rights and the principle of non-refoulement against possible risks to the right to life, humane treatment, and due process in proceedings of this nature.

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President of the Inter-American Court**

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I. CONTENTIOUS CASES



Number of cases¹ heard by the Court with regard to each State

*This document was draft jointly by Elizabeth Salmón, Director of IDEHPUCP; Cristina Blanco, Coordinator of the Academic and Investigatory Department; and, Renata Bregaglio, Senior Investigator of the Institute.

¹ These are cases that have been filed before the contentious jurisdiction of the Court by the Inter-American Commission or by a State, and which have been issued a Judgment or final decision as of August 31, 2015.

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

Case of Granier et al. (Radio Caracas Television) V. Venezuela

(indirect restrictions on freedom of expression)

The judgment, issued on June 22, 2015, refers to events framed in the context of the tension that arose after the coup d'état that took place in April 2002, and the behavior that the media displayed during these days, characterized by the radicalization of the positions held by the sectors that were involved. In this context, the TV channel "Radio Caracas Television" (RCTV) maintained an editorial stance that was critical of the government of former President Chavez. This channel had a license based on Decree 1577 of 1987, until May 27, 2007. As of December 2006, State officials announced the government's decision not to renew RCTV's license. In January 2007, representatives of RCTV went to the National Telecommunications Commission (CONATEL for its acronym in Spanish) requesting the issuance of a new license. However, the Ministry of the People's Power, for Telecommunications and Information Technology (MPPTI) and CONATEL, issued Communication No. 0424 of March 28, 2007, by which it communicated its decision to not renew the license. That same day, the MPPTI issued Resolution No. 002 of March 28, 2007, which rendered the corresponding administrative procedure closed. By way of two requests for amparo,

the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ for its acronym in Spanish) ordered two precautionary measures, in which it assigned CONATEL the right to use property owned by RCTV. The signal from said station was disrupted on May 28, 2007 and replaced by the Venezuelan Social Television Broadcasting Company (TVes for its acronym in Spanish), which broadcast its programming. Before and after the RCTV's closing, several judicial remedies were sought of a constitutional, administrative, and criminal nature.

In this regard, the violation was argued of the right to freedom of expression (Article 13) of the shareholders, directors and journalists at RCTV, considering that the non-renewal of RCTV's license was politically motivated, ignoring the provisions on renewal of licenses, and carried out in a context of legal uncertainty. Moreover, it was also argued that the State violated the right to equality and non-discrimination (Article 24), to a fair trial [due process] (Article 8) and judicial protection (Article 25) in the administrative and judicial processes undergone before and after the channel's closure. The representatives of the victims also argued the violation of the right to property (Article 21).

The State of Venezuela raised two preliminary objections: incompetence in the protection of legal entity and non-exhaustion of domestic remedies. Regarding the first, the State indicated that the Convention does not protect rights of legal entities as holders, since the Article 1(2) of the Convention provides that for this purpose "person means every human being." However, the Court noted that the alleged violations of the Convention involved shareholders and employees as natural persons, to which the objection was inadmissible. Notwithstanding the foregoing, the Court noted that the fact that a legal entity is involved in the facts of the case, does not imply *prima facie* that the preliminary objection is admissible because the exercise of a natural person to an analysis of whether there was a violation should be analyzed in the merits of the case. The second preliminary objection was rejected by the Court as untimely because it was filed after a decision had been rendered on the admissibility report.

In relation to the right to freedom of expression (Article 13) and the principle of non-discrimination, the Court referred to the exercise of freedom of expression by means of legal entities and recalled that media outlets are a true instrument of freedom expression, used to carry out this right and they play an essential role as vehicles for the exercise of the social dimension of this freedom in a democratic society, reason for which it is essential that they gather the most diverse information and opinions. It further noted that restrictions on freedom of expression often materialize through actions of the State or individuals who affect, not only the legal entity which is a means of communication but also to the plurality of natural persons involved (shareholders or journalists). To determine whether a State action that affected the means as a legal entity also had a negative, true, and substantial impact on freedom of expression of natural persons, it should analyze the role the alleged victims played within the respective communication medium and, in particular, the way they contributed to the means of communication of the channel. Therefore, the Court stated that, when referring to "RCTV" it should be understood as a means of communication by which the alleged victims were exercising their right to freedom of expression and not as a specific reference to the legal entity called "RCTV C.A." In this case, the Court established that some workers and shareholders who are part of the board of RCTV C.A. demonstrated a connection between their respective duties and the generation of media content in this means of communication, as well as their relation and contribution to the mission of the communication channel, to which they can be considered to be conducting an exercise of their freedom of expression through RCTV.

Furthermore, the Court referred to the indirect restrictions on freedom of expression and the scope of Article 13(3) of the Convention. In this regard, the Court noted that the enunciation of restrictive means made in Article 13(3) is not limited nor does it prevent consideration of "any other means" or indirect methods derived from new technologies. Moreover, for there to be a violation of Article 13(3) of the Convention, it is necessary that the method or means effectively restrict, indirectly, the communication and circulation

of ideas and opinions. Therefore, although the Court recognized the power and necessity of States to regulate radiobroadcasting activities, it specified that this also implies that the requirements established pursuant to the right to freedom of expression be respected. This is because the adoption or renewal of a license in radio broadcasting is not comparable to other public services, because the scope of the right to freedom of expression permeates regulation on the matter. In this regard, the Court referred to pluralism in the media and that this must be taken into account within the process of granting, renewal of concessions or broadcasting licenses. Therefore, limits or restrictions related to radio broadcasting regulations should take into account the guarantee of pluralism. As such, such legislation must be regulated clearly and accurately, using objective criteria that avoids arbitrariness.

Similarly, the Court referred to the alleged right to an automatic renewal or extension of the license. In this regard, it said that international law does not provide for such an obligation. To which, taking these arguments into account, the Court found that the alleged restriction on freedom of expression due to the non-automatic renewal of the license is not as such, since it does not follow that the State was obligated to renew it. However, the Court noted that the petitioners requested on two occasions, to CONATEL, that the titles be changed and to proceed with the process of renewal of the license. The procedures relating to those requests were not carried out, because the State declared that "in the case of the expiration of the period of validity of a concession, initiating an administrative procedure is not suitable." Therefore, the Court considered it appropriate to examine whether these actions correspond to an indirect restriction on the freedom of expression, and without detriment analyze these procedural implications in the context of a judicial guarantees (Article 8).

In determining the existence of such an indirect restriction, the Court ruled on: i) the motivation related to the alleged sanctions imposed upon the television channel; ii) the purpose of Communication No. 0424 and Resolution No. 002, and iii) the alleged non-stated purpose related to the editorial stance of

RCTV. Regarding the former, the Court found that the State argued that one of the reasons for not renewing RCTV's license was based on the alleged sanctions that the channel received for its actions during the coup of 2002 and other actions. As such, the Court noted that the processes and sanctions presented by the State were not directly related to the facts of the coup, and it was also not shown how this implied the non-renewal of the concession. On the contrary, the argument used to prove the basis of the motivation for the decisions established in Communication No. 0424 and Resolution No. 002 was "the democratization of the use of broadcast media and the plurality of messages and content."

In this regard, the Court reiterated that protection of pluralism is not only a legitimate purpose, but also an imperative one. To the extent that the purpose of the State's declaration in said Communication and Resolution was legitimate. However, the Commission and the representative assured that this was not the real purpose, because there was evidence proving that there was an intention to punish the RCTV for its critical editorial stance against the Government. Given this, the Court noted that the actions of the State authorities are covered by a presumption of behavior in accordance with the law, and so to establish whether there was irregular behavior it carried out a review and an analysis of the evidence regarding the non-alleged purpose, which involved statements and publications made by various members of the Venezuelan government.

Based on this analysis, two real reasons were identified which had served as the basis of motivation: i) RCTV's failure to modify its editorial stance after the coup of 2002 despite the warnings made that year, and ii) RCTV's alleged irregular behavior which brought on sanctions against it. Regarding the first reason, the Court considered that it is not possible to restrict the right to freedom of expression based on the political discrepancy that can be generated due to a particular editorial stance towards a government. With regard to the second reason, the Court found that despite the seriousness of the facts related to the coup d'état, it had not been proven that internal procedures had been adopted to sanction such irregular actions, and thus this could not be used as an argument to justify the decisions regarding happened

during the coup, when such actions were not sanctioned at the time. The Court found that only one statement provided in the processing of the case makes note of the purpose stated in the Communication N0424 and Resolution N002, that is, the protection of the plurality of mediums, while the other statements implied the other motivations, to which the stated purpose was not the real purpose, and thus was only given in order to give establish the appearance of the legality of the decisions.

Given these considerations, the Court concluded that there indeed was a misuse of power, since state power was used in order to editorially align a means of communication with the government. Similarly, it also stressed that the misuse of power declared here had an impact on the exercise of freedom of expression, not only on the workers and directors of RCTV, but also on the social dimension of the law, on the citizenry who was deprived of access to the editorial stance represented by RCTV. Therefore, the Court declared the violation of the right to freedom of expression (Articles 13(1) and 13(3)) in relation to the obligation to respect and guarantee rights (Article 1(1)) to the detriment of some shareholders and employees of RCTV.

On the other hand, in relation to the alleged discrimination due to the State's decision to reserve the portion of the spectrum assigned to RCTV and not of other channels whose license also expired the same day, the Court stated that since there were no facts establishing unequal protection derived from a domestic law or its application thereof, it did not correspond to examine the alleged violation of the right to equal protection of the law contained in Article 24 of the Convention. Thus, it noted that it would only analyze the alleged violation of the duty to respect and ensure without discrimination the rights contained in the American Convention, established in Article 1(1) thereof, with regard to the right to freedom of expression of the alleged victims (Article 13). First, the Court found that all the licenses for the other channels were renewed, reason for which it decided to analyze whether the decision not to renew the spectrum was discriminatory treatment. Second, the Court found that the editorial stance of a television channel can be viewed as a reflection of the political views of its managers and workers to the extent that content is broadcast through

its television channel. Third, the Court reiterated that political opinions are protected categories covered by the prohibition against discrimination under Article 1(1) of the Convention, to which the authorities must show that their decision did not have a discriminatory purpose or effect. Fourth, the Court did not have necessary elements that would allow it to conclude that there were special technical conditions that other channels did not have to justify a difference in treatment. On the other hand, the Court proved that the editorial and political stance broadcast by RCTV were among the main reasons behind the decisions established in Communication No. 0424 or in Resolution No. 002. Therefore, it concluded the existence of elements to determine that the decision to avail themselves of a portion of the spectrum assigned to RCTV implied a discriminatory treatment in the exercise of the right to freedom of expression, and it considered that the State is responsible for the violation of the right to freedom of expression (Article 13) regarding the duty of non-discrimination (Article 1.1).

In relation to the right to a fair trial [judicial guarantees] (Article 8), the Court made the following analysis of the various proceedings filed at the domestic level:

Administrative procedures for processing of titles and renewal of licenses: according to the Court, as was raised in the LOTEI (for its acronym in Spanish), there was a specific procedure for processing titles and for the renewal of the license and monitoring thereof. However, this procedure was deliberately not implemented by the State, which constituted yet another effect upon the real and illegitimate purpose of silencing the media in violation of the right to a fair trial under Article 8(1) in relation to Article 1(1).

Request for annulment before a contentious administrative court with requests for injunctive relief and precautionary measures: the Court analyzed the four elements to determine the reasonableness of the time (complexity of the matter, procedural activity of the interested party, conduct of the judicial authorities, and the adverse effect of the legal status on the person involved in the proceeding). Taking into consideration that the request for annulment had ceased in the

evidentiary stage, after more than 7 years had passed since the proceeding initiated, to which the State was not able to justify the delay, it concluded that Venezuela violated the right to a reasonable period specified in Article 8(1). The Court also concluded that the State violated the right to a reasonable time regarding the unnamed precautionary measure, since it was resolved two years after attempts were made to stop the event from happening, namely, that RCTV cease broadcasting. The representatives of the victims also alleged the lack of independence and impartiality of the authority called upon to resolve the administrative request for annulment. . However, the Court considered that the context was not properly argued and presented, and thus it could not conclude a violation of rights. Similarly, also in the framework of this proceeding, the Commission and the representatives argued the violation of Article 25(1) of the Convention on account of the delay in resolving the application of the unnamed precautionary measure. The Court, however, considered that the alleged undue delay of a precautionary measure must be analyzed in the light of Article 25, while the other remedies should be analyzed under the protection of Article 8(1) which enshrines the right to a be heard within a reasonable time. To which, the Court found that regarding this particular point the violation would be analyzed in terms of Article 8(1), concluding that there had been a violation of that right.

Criminal Complaint filed by RCTV: the Court found that this was discussed at various internal instances and that RCTV had the opportunity to submit appeals and cassation remedies against the decisions that did not accept its claims. The Court considered that it did not have evidence to determine that the performance of the various instances in the criminal proceedings was contrary to the duty to investigate, and recalled the reinforcing and complementary nature of the Inter-American process. For that reason it considered that the State did not violate Article 8 of the Convention.

Legal proceedings concerning the seizure of assets: in relation to the arguments of the Commission and the representatives regarding the alleged existence of a context in Venezuela marked by the "lack of

independence and autonomy of the judiciary in the face of political power,” the Court determined that there were no elements to prove the existence of that context in this case. It also found that were not proven the lack of judicial independence and impartiality. However, the Court found that the representatives of RCTV could not directly intervene in the judicial proceeding wherein the seizure of the goods was decided, since they were only notified of the proceeding as possible interested parties through edicts, to which they could not present arguments or evidence in this respect. Not being able to intervene in a process that had impact on the their patrimonial rights, constituted, in the Tribunal’s opinion, a clear violation of the right of defense. Similarly, in May 2007 the representatives of RCTV filed an opposition against the precautionary measure issued by the Constitutional Court. This precautionary measure remained in force until the Judgment was rendered and the State continued to use property owned by RCTV to broadcast the signal of the State’s channel TVes. Similarly, since June 2007 no steps had been taken within the framework of the proceeding to resolve the opposition at hand. Therefore, the Court found that the reasonable time has been violated in this proceeding (Article 8(1)).

Regarding the right to judicial protection (Article 25), the Court referred to the constitutional amparo remedies and injunctive relief. Regarding the former, the Court found that, although the Supreme Court took a little over three months to render its decision, that period is not an excessive period of time to resolve the action, nor did it affect its effectiveness, especially when its inadmissibility was ruled because the appropriate remedy was one dealing with the administrative actions contained in Communication No. 0424 and Resolution No. 002 and not yet a remedy for amparo. Regarding the request for injunctive relief filed together with the request for annulment, the Court stated that the time between the filing and the resolution of injunctive relief did not affect the judicial protection of the alleged victims, since the amparo was resolved prior to the closure of RCTV. In regard to both remedies, the Court did not consider that there was a violation of Article 25(1) in relation to Article 1(1).

Regarding the alleged violation of the right to property alleged by the representatives of the victims, the Court found that there was no violation of Article 21 of the Convention, taking into account:

- The non-renewal of RCTV’s license for use of the electromagnetic spectrum: the Court found that the renewal cannot be regarded as an asset or as an acquired right, and therefore, the economic benefits that the shareholders could have received as a result of the renewal of the license cannot be considered as such. Thus, they are not protected under Article 21 of the American Convention.
- Precautionary measures imposed by the Constitutional Chamber: in this regard, the Court considered that it does not have the jurisdiction to examine any alleged violations of the American Convention that have been argued against legal entities.
- The possible harm on the value of shares owned by members of RCTV: the Court found that RCTV C.A. was composed of by a complex shareholder structure resulting from a large corporate structure of legal entities with separate assets, which hindered the possibility of establishing a direct and obvious link between the alleged loss of value of the shares and the damages to the wealth of the legal entity, RCTV.

In regard to the Reparations, the Court ordered, among other things, to i) restore the license for the frequency spectrum that corresponds to television channel 2 and return the property mentioned in the precautionary measures; ii) order the opening of an open, independent, and transparent proceeding for the granting of the frequency spectrum to television channel 2, pursuant to the procedure laid down in the LOTEI or the internal norm in force; iii) take steps to ensure that all future procedures for allocation and renewal of radio frequencies and television frequencies be carried out and conducted in an open, independent, and transparent manner.

*The hearing before the Court is available at the following link:
<https://vimeo.com/96956242>.*

Case of Canales Huapaya et al. V. Peru

(access to justice and due process)

The factual framework of the Judgment, issued on June 24, 2015, involved the termination of 1,117 workers of the Congress of the Republic in December 1992, after the rupture of the democratic and constitutional order due to the coup d'état of April 5 of that same year. This context was already addressed by the Court in the **Case of Dismissed Congressional Employees (Aguado Alfaro et al.) V. Peru**, where it established the facts that preceded the termination of the employees and the measures adopted to repair such terminations. In this case, the Court referred to the termination of Carlos Alberto Canales Huapaya, José Castro Ballena and María Gracia Barriga Oré, who were Congressional employees who did not willingly resign per request of the "Government of Emergency and National Reconstruction," through Decree Law 25640, issued on July 21, 1992, rather they underwent an "Evaluation and Selection Process." However, the victims were dismissed after failing to obtain a position in the "New Table of Congressional Personnel Placement" in the context of that process. Against this, the victims filed actions for amparo before the Judiciary and received unfavorable responses. Some brought actions for annulment, which were declared inadmissible. From these facts, the Court examined the alleged violation of the right to a fair trial (Article 8) and judicial protection (Article 25) due to the lack of adequate and effective judicial response to the dismissals, and the right to property (Article 21) and equality before the law (Article 24). Violations of the two latter rights were argued by the victims and the Inter-American defenders in the proceedings before the Court.

Given these facts, the State argued that there are certain differences between this case and the case of the Dismissed Congressional Employees, to which the Court cannot conclude similar legal findings and it justified that the Court declare there were no violations

in this case. Specifically, it noted i) that in the case of the Dismissed Congressional Employees, only some people filed administrative claims, whereas in this case the three alleged victims did; ii) in the case of the Dismissed Congressional Employees, 257 victims joined the action for amparo, whereas in this case there were two amparo proceedings, one brought by Mr. Canales Huapaya, and another brought by Mr. Castro Ballena and Mr. Barriga Oré, and iii) in the case of the Dismissed Congressional Employees, the amparo was filed extemporaneously and this determined the reasons for its inappropriateness, whereas in this case the amparos were not inadmissible and a decision was rendered for each. However, the Court found that these differences were not enough to depart from the conclusions stated in the analogous case in dispute. According to the Court, in addition to the amparo, some people went forward using administrative means and others through contentious administrative means, without using a separate analysis for each group of victims, precisely because the denial of justice took place in a context of widespread inefficiency in the judicial institutions, with absence of guarantees of independence and impartiality and absence of clarity regarding which channel to use in order to seek justice regarding the collective dismissals.

Thus, with regard to the right to a fair trial [judicial guarantees] (Article 8) and judicial protection (Article 25), the Court first noted some clarifications regarding the scope of Articles 8 and 25 of the American Convention, in order to determine whether there were sufficient similarities between this case and the case of the Dismissed Congressional Employees to justify similar conclusions. Regarding the former, the Court reiterated its jurisprudence that for there to be an effective remedy, it is not enough that it be provided by the Constitution or by law or that it be formally admissible, rather, it is required that it truly be effective in establishing whether there was a human rights violation and to provide reparation. On this point, the Court considered that it was proven that the alleged victims brought amparo actions in order to rescind the resolution 1303-B-92-CACL, which had dismissed them from their posts as permanent Congressional employees. The Court determined, as in the case of the Dismissed Congressional Employees,

that Peru was in a context of widespread inefficiency of its judicial institutions, absence of guarantees of independence and impartiality and absence of clarity regarding which channels to use regarding the collective terminations, which in turn implied a denial of justice. Similarly, there was an express prohibition to contest the effects of Decree Law 25640, which for the Court, cannot be fathomed in a democratic society as a valid limitation of the right to a true and effective access to justice. In this regard, the facts of the case form part of the normative and practical obstacles to access to justice as well as of the various problems regarding the certainty and clarity about which channel victims should have used given the collective terminations. Thus, the Court concluded that the Peruvian State is responsible for the violation of the right to a fair trial (Article 8(1)) and judicial protection (25(1)) of the American Convention, in relation to the duty to respect and guarantee rights (Article 1(1)) and adoption of domestic legal effects (Article 2) thereof.

On the other hand, regarding the right to property (Article 21), the Court considered that the purpose of this judgment was not to determine the alleged arbitrary nature of the termination of the alleged victims, to which it considered that it was inappropriate to adjudicate the alleged violation of the right to property.

Regarding the right to equality before the law (Article 24), the victims raised the alleged existence of arbitrary unequal treatment in relation to the judicial responses that other dismissed former Congressional employees received. However, after analyzing the situation in the cases of other former employees, the Court concluded that these were not cases whose factual circumstances, judicial proceedings, and arguments before the domestic courts were the same as those of the victims in this case, and therefore there were not elements to conclude that there existed a violation of the right to equality before the law.

Given these violations rendered by the Court, it ordered as a measure of reparation, payment to victims by the State as compensation, which includes pecuniary damage, non-pecuniary damage, the sum of pension

contributions and payable interests. In this regard, the Court considered it appropriate to render a final decision on the reparations in this case without making reference to the creation of a Commission, Working Group or analogous mechanism at the domestic level, considering that 23 years had elapsed since the events and 9 years since the issuance of the judgment in the Case of the Dismissed Congressional Employees, which still faces controversies regarding its implementation.

The hearing before the Court is available at the following link:

<https://vimeopro.com/corteidh/audiencia-publica-caso-canales-huapaya-y-otros-vs-peru/video/109624006>

Case of Wong Ho Wing V. Peru

(detention and judicial guarantees in the context of an extradition proceeding)

The judgment, issued on June 30, 2015, is part of the extradition proceedings against Mr. Wong Ho Wing (national of the People's Republic of China suspected of committing the crimes of smuggling common goods, money laundering and bribery) from the moment of his arrest on October 27, 2008, until the date of the judgment. According to the Commission and the representative of Mr. Wong, the State committed a violation of the right to life (Article 4) and humane treatment [personal integrity] (Article 5), because if he were deported to China, there was a risk that he would be sentenced to death and tortured. In addition, since the Peruvian Constitutional Tribunal had ordered on May 24, 2011, that the Executive Branch not extradite Mr. Wong Ho Wing, State authorities committed a breach of a judicial ruling, which is incompatible with the right to judicial protection (Article 25), and also in violation of the right to a fair

trial (Article 8) because during the various stages of the extradition process, the domestic authorities committed a series of omissions and irregularities in the handling of the proceeding. Moreover, Mr. Wong Ho Wing's right to personal liberty (Article 7) was violated, since he had been detained without the backing of procedural means. In the framework of the extradition process, on the one hand, the Supreme Court of Justice of Peru issued an advisory resolution in January 2010, wherein it considered the extradition admissible. While on the other hand, the Constitutional Tribunal of Peru issued a binding *prima facie* ruling in May 2011, wherein the Executive Branch was ordered to abstain from extraditing Mr. Wong Ho Wing on the ground that there was a risk to his life if extradited to China. At the time of sentencing, the extradition process was underway, pending the final decision of the Executive Branch, who is responsible for the final decision, according to Peruvian law. However, when the judgment was issued the advisory order of the Criminal Chamber of the Supreme Court of January 2010 and the binding *prima facie* decision Constitutional Court decision of May 2011 were simultaneously in force.

Regarding the issues of admissibility, the State alleges the non-exhaustion of domestic remedies because the petition was filed when a habeas corpus filed by Mr. Wong Ho Wing was still being processed, which was declared founded in part. It also found that at that time the extradition was still being processed, there still was no decision from the Executive Branch. In addition, it warned that when the Admissibility Report was issued, other habeas corpus demands were still pending final resolution. The Commission and the representative agreed that the analysis of the exhaustion of domestic remedies must be made as of the current situation at the time of the declaration of admissibility. Regarding this point, the Court examined whether at the time the original petition was filed, the domestic remedies had been exhausted, and whether upon deciding its admissibility, the Commission took into account that there were other pending habeas corpus petitions. Regarding the first point, the Court noted that the rule for exhaustion of domestic remedies should be interpreted as requiring that remedies be exhausted at the time the admissibility decision is made and not at the time of filing. This is

because the presentation of the petition, the transmission of it to the State, and the issuance of the Admissibility Report are three separate moments. Regarding the second point, the Court noted that at the time of the admissibility of the petition, two habeas corpus petitions had been filed and resolved, and a third was pending. While these could be ideal regarding some of the alleged violations, the Court found that a habeas corpus petition does not form regular part of an extradition proceeding in Peru, and that the filing of additional resources by the petitioner cannot be an impediment to his access to Inter-American justice. Because of these arguments, the Court found it unnecessary to use other criteria than that set by the Commission in the admissibility report in this case and dismissed the preliminary objection.

The Court ruled on the alleged violation of the right to life (Article 4), humane treatment [personal integrity] (Article 5) and the principle of non-refoulement (Article 13 para. 4 of the Inter-American Convention to Prevent and Punish Torture) regarding the obligation to guarantee rights (Article 1(1)). In this regard, the Court reiterated the importance of extradition and the duty of cooperation between States on the matter, but stressed that a State's international obligations on human rights and the requirements of due process must always be observed in the extradition proceedings, and that extraditions cannot be used for purposes of impunity. Based on the foregoing, the Court addressed the following points: i) the scope of the obligation to guarantee and the non-refoulement principle when faced with a possible risk to the right to life, right to humane treatment, and due process under an extradition proceeding; ii) the nature of the State's international responsibility in this case and the information that must be examined by the Court, and iii) the specific circumstances of the alleged risk of applying the death penalty; and iv) the alleged risk of torture and other cruel, inhumane, or degrading treatment in this case.

Regarding the first point, the Court notes that from the general obligations to respect and guarantee rights stem other special obligations, determined according to the particular needs or to the specific situation. Regarding the right to life (Article 4), the Court recalled that

since the **Case of Hilaire, Constantine and Benjamin V. Trinidad and Tobago**, it has established that the rules of the Convention regarding the death penalty should be interpreted to mean “**specifically limit in application and scope, to which it is reduced until it gradually disappears.**” Meanwhile, in regard to the right to humane treatment, the Court referred to the principle of non-refoulement enshrined in Article 13(4) of the **Inter-American Convention to Prevent and Punish Torture** (IACPPT) and reiterated what was said in its **Advisory Opinion 21**, in the sense that from Article 5 of the Convention, read together with the erga omnes obligations to respect and enforce the norms established for the protection of human rights, the State’s duty not to deport, return, expel, extradite or otherwise remove a person subject to their jurisdiction to another State or a third party State that is not safe, when it appears that there is reason to believe that he or she would be in danger of being subjected to torture, cruel, inhumane, or degrading treatment.

In addition, it stressed that the principle is also associated with the protection of the right to life and certain judicial guarantees, to which it is not limited to protection against torture. It is not enough for States to refrain from engaging in a violation of this principle, rather it is imperative that States adopt positive measures. As such, when a person claims before a State the existence of a risk if returned, the competent authorities of that State shall, at least, interview the person and make a preliminary assessment, for the purpose of determining whether or not that risk exists if the person is expelled. Given the State’s argument regarding the non-applicability of Court precedents on State obligations in cases of deportation, flight and expulsion, and extradition procedures, the Court found that the principle of non-refoulement when faced with a risk of torture and other forms of cruel, inhumane, or degrading treatment, or risk to the right to life applies to all forms of a person being returned to another State, even extradition.

Based on jurisprudence from the Human Rights Committee, the Committee against Torture of the Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment, and its Optional Protocol,

and the European Court of Human Rights, the Court concluded that under the obligation to guarantee the right to life, States that have abolished the death penalty may not expel, by deportation or extradition, individuals under its jurisdiction if it can reasonably be expected that they will be sentenced to death, without ensuring that the death penalty will not be applied. In addition, States Parties to the Convention that have not abolished the death penalty cannot expose by deportation or extradition, any person under its jurisdiction that is under the real and foreseeable risk of being sentenced to death, except for the most serious crimes and which the death penalty currently applies in the State Party involved. Moreover, the obligation to guarantee the right to humane treatment, together with the principle of non-refoulement contained in the IACPPT, imposes on States the obligation not to expel, by way of extradition, any person within its jurisdiction when there are reasonable grounds to believe they would face a real, foreseeable, and personal risk of treatment contrary to the prohibition against torture or cruel, inhumane, or degrading treatment.

In relation to this case, the Court considers that the Commission and the representative provided information on the general human rights situation in China, but did not present a real, foreseeable, and personal risk to Mr. Wong Ho Wing, demonstrating that he would suffer treatment that would violate his personal integrity. In addition, the Court found that the last diplomatic guarantee provided by the People’s Republic of China to Peru was detailed and provided a monitoring system to assure compliance, which met several international standards.

Based on these considerations, the Court concluded that, at the time the Judgment was rendered, it would not be legally possible to apply the death penalty for the crime of smuggling common goods for which the extradition of Mr. Wong Ho Wing had been requested. It also found that it had not proven that the Mr. Wong Ho Wing’s extradition would expose him to a real, foreseeable, and personal risk of being subjected to treatment contrary to the prohibition against torture or other cruel, inhumane, or degrading treatment. Therefore, it concluded that, were Mr. Wong Ho Wing to be extradited under the current

circumstances, the State would not be responsible for a violation of its obligation to ensure his right to life (Article 4) and personal integrity (Article 5) in relation to the duty to guarantee rights (Article 1(1)), nor of the non-refoulement obligation under Article 13 (paragraph 4) of the **IACPPT**.

Notwithstanding the foregoing, the Court stated that it needed to determine whether, despite the absence of a current risk, the State could extradite Mr. Wong Ho Wing without violating any other obligations of the Convention: the right to judicial protection and the obligation to comply with final judicial decisions, referred to in Article (Article 25), and the guarantee of reasonable time and other due process guarantees (Article 8), given that after the second advisory decision of the Supreme Court, the Constitutional Tribunal had ordered the Executive Branch to refrain from extraditing Mr. Wong Ho Wing to China. In relation to judicial protection (Article 25), the Court concluded that given the current circumstances of this case, where the extradition process had not been completed, it was not appropriate to rule on the alleged violation of the State's noncompliance with the Constitutional Tribunal's decision. In relation to the guarantee of reasonable time, the Court noted that the extradition proceedings against Mr. Wong Ho Wing lasted more than six years and had not yet been completed. It also considered that the decision of the Executive Branch could be appealed. After analyzing the four elements to determine the reasonableness of the time lapsed in the extradition proceedings (complexity of the matter, procedural activity of the interested party, conduct of the judicial authorities, and effect on the legal situation of the person involved in the proceeding), the Court concluded that State authorities did not act with due diligence nor speedily given Mr. Wong Ho Wing was deprived of liberty, reason for which the guarantee of reasonable time (Article 8(1)), in relation to the duty to respect and guarantee (Article 1) was violated.

Regarding the right to personal liberty (Article 7) and humane treatment [personal integrity] (Article 5), the Court analyzed five points. The first referred to the arbitrariness of the provisional arrest, in particular, to the grounds for the appeal decision regarding his

detention, and the absence of a maximum period for such detention. The Court considered that in regard to detention for extradition purposes, the same standards are applicable as those applied to preventive detention in criminal proceedings. In this regard, the Court reiterated its view that the deprivation of liberty of the accused cannot reside in general-preventive and specific-preventive purposes attributable to the sentence, rather they can only be based on a legitimate purpose, such as that the defendant does not prevent developments in the proceedings or that he or she seeks to evade justice. Moreover, it stressed that procedural risks cannot be assumed; rather verification of the risk should be carried out in each case, based on objective and true circumstances of the case. On this basis, the Court found that the Mixed Superior Chamber, upon not evaluating the procedural risk regarding Mr. Wong Ho Wing in the appeals process, did not examine whether the deprivation of liberty was necessary or whether there were less harmful measures that would ensure an extradition could be carried out. Therefore, the reason for the decision is insufficient to substantiate the need for the deprivation of liberty and the rights to personal liberty (Articles 7(1) and 7(3)) in relation to the duty to respect rights (Article 1(1)) were violated. On the other hand, in relation to the allegation that having no maximum period of detention established in the relevant legislation in violation of the obligation to adopt domestic legal effects (Article 2), the Court found that there were not sufficient grounds to issue a ruling on the matter. .

The second point analyzed was the illegality and arbitrariness of the detention following the decision of the Constitutional Tribunal. In this regard, the Court found that the order of the Constitutional Tribunal did not imply the end of the extradition process, to which the legality of such detention remained, and thus did not establish a violation of Article 7(2) of the Convention. However, given that the arbitrary nature of the detention had been established in the previous point, it was not necessary to analyze such arbitrariness again as stemming from the issuance of the decision of the Constitutional Tribunal.

The third point of analysis was the length of provisional arrest. The Court noted that Mr. Wong Ho Wing was

detained in a criminal institution for more than five years. Moreover, it also noted that since his detention to date, the judicial authorities have incurred various shortcomings that have contributed to the prolongation of his detention, concluding that the State did not act with the utmost diligence. It also considered that the absence of a maximum period established in legislation for provisional arrests, was used by the judiciary to justify its duration, which prevented an analysis regarding the reasonableness of the period of detention of the alleged victim and which permitted its excessive length. Lastly, it reiterated that the existence of precautionary and provisional measures adopted during the pendency of the case before the Inter-American System cannot be used to justify the excessive duration of the extradition process and the detention of Mr. Wong Ho Wing, as there were less harmful measures that Peru could have taken to assure a possible extradition. Because of these considerations, the Court concluded that the State violated the right to personal liberty (Articles 7(1) and 7(5)), in relation to the duty to respect rights (Article 1).

Fourth, the Court analyzed the implementation of the right to appeal to a competent court or judge regarding the habeas corpus petitions filed. In this regard, the Court reiterated its view that the competent authority should examine the legality of the deprivation of liberty, not reducing it to a mere formality, but rather that it must examine the reasons given by the complainant and expressly render a decision accordingly, pursuant to the parameters of the American Convention. Using this criterion, the Court considered the decision regarding a request for release and the habeas corpus petition filed by the representatives of Mr. Wong Ho Wing, and it determined that those decisions had various omissions, which did not effectively allow there to be proper control regarding the detention of the victim, thereby constituting a further violation of the right to liberty (Article 7(6)) in relation to the duty to respect rights (Article 1). Similarly, the Court found that a period of one month to resolve a request for release, which legally should be resolved within 48 hours in accordance with Peruvian law; and of six months or more to decide on the habeas corpus petitions, were clearly excessive. Therefore, it concluded that this constitutes a further violation of the right to liberty (Article 7(6)) in relation to the duty to respect

rights (Article 1).

Finally, the Court referred to the alleged violation of the right to humane treatment during the period of Mr. Wong Ho Ching's deprivation of liberty. In this regard, the Court noted that the representative of the victim based the alleged violation of the right to humane treatment of Mr. Wong Ho Wing on his arbitrary detention. The Court considered that these allegations refer to what it has called the collateral effect to a situation of deprivation of liberty. Moreover, it also recalled that the facts relating to the conditions of Mr. Wong Ho Wing's deprivation of liberty in Peru do not form part of this case. Therefore, the Court found that the State did not violate the right to humane treatment (Article 5), in relation to the duty to respect rights (Article 1(1)). Notwithstanding the foregoing, the Court took into account when ordering reparations, to the extent relevant, the harm suffered by Mr. Wong Ho Wing due to his detention.

In its judgment the Court ordered, among other measures of reparation: i) to adopt, as soon as possible, a final decision regarding the extradition proceedings against Mr. Wong Ho Wing, and ii) immediately review the deprivation of liberty of Mr. Wong Ho Wing. The Court also noted that the provisional measures ordered in this case have no effect, as are replaced by the measures of reparation.

*The hearing before the Court is available at the following link:
<https://vimeo.com/107604909>.*

II. INTERPRETATION OF JUDGMENT

Case of Argüelles et al. V. Argentina

In its judgment of June 23, 2015, the Court ruled on the request for interpretation of the **Judgment on preliminary objections, merits, reparations, and costs** of November 20, 2014, wherein it declared the admissibility of the requests for interpretation of Judgment submitted by the representatives of the victims and the Inter-American defenders. The first was a consultation regarding whether the payment of costs and expenses ordered in the Judgment had been set jointly for all or individually for each of the attorneys that acted in the defense of the human rights of victims. The second was a request for clarification regarding whether or not Mr. Hugo Oscar Arguelles was subject to reimbursement of costs incurred between 1998 until 2012 according to the request made in the proceeding.

The Court, after examining the claims, concluded that the requests for interpretation were inadmissible, as they required reassessments of issues that had been resolved by the Court in its Judgment. In particular, it noted that, in relation to the first request, the Judgment was clear about the sum of US\$10,000 for all of the representatives, and cannot be read as US\$10,000.00 for each of them. Regarding the second request, it stated that the judgment only established reimbursement of additional costs for what was authorized by the Victims Legal Assistance Fund, and not of other expenses allegedly incurred prior to the legal representation of the Inter-American Defenders.

Case of Espinoza González V. Peru

The Judgment of June 23, 2015 relates to the request for interpretation of the **Judgment of preliminary objections, merits, reparations, and costs** of November 20, 2014. Specifically, the Court responded to requests made by the Peruvian State regarding: 1) if the Court found a violation of the right to equality before the law; 2) the prohibition on implementing the principle of non-retroactivity of criminal law as an excuse to not investigate the facts, and 3) the reasons why it was concluded that the identified stereotype in the case directly impacted the decision to not investigate the facts.

The Court, after examining the claims, concluded that the requests for interpretation were inappropriate as they involved reassessments of issues that had been resolved by the Court in its Judgment. Specifically, in relation to the first request, the Court reiterated that which was stated in paragraphs 217 to 218, 224 and 229 of the Judgment, wherein it only found that the State had violated Article 1(1) of the American Convention, in relation to the right to humane treatment and to honor and dignity established in Articles 5(1), 5(2) and 11 of the same instrument, and to the obligations under Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Gladys Espinoza Gonzales. Regarding the second request, the Court noted that paragraph 309 of the Judgment is clear in stating that the State must refrain from using legal concepts such as the principle of non-retroactivity of criminal law in order to abstain from the obligation to effectively investigate. Finally, regarding the third request, the Court reiterated paragraphs 274 to 279 of its Judgment, wherein it developed the argument about stereotypes.

III. ORDERS OF MONITORING OF COMPLIANCE

Case	Date and stage of monitoring	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
Case of Albán Cornejo et al. V. Ecuador	August 28, 2015 Fourth monitoring	Publication of parts of the Judgment in the Official Gazette and in another publication with national circulation Payment to Mrs. Cornejo and Mr. Albán Sánchez of US\$25,000.00 for compensation for pecuniary and non-pecuniary damages. Payment to Mrs. Cornejo of US\$30,000.00 for payment of costs and expenses Widely divulge the rights of patients Training and education program for justice operators and health care professionals about the laws enacted by Ecuador in relation to patients' rights and the punishment for violating them		

III. ORDERS OF MONITORING OF COMPLIANCE

Case	Date and stage of monitoring	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
Case of Suárez Peralta et al. V. Ecuador	August 28, 2015 First monitoring (previously there had been a ruling on reimbursement to the Victim's Legal Assistance Fund)	Publication in the Official Gazette, once, of the official summary of the Judgment Publication, for one year, of the Judgment on an official and appropriate Ecuadorian website Payment of US\$ 20,000 for future medical care to Mrs. Suárez Peralta Payment of US\$ 250,000 and US\$ 30,000 for pecuniary and non-pecuniary damages Payment of US\$ 10,000 for reimbursement of costs and expenses		
Case of Salvador Chiriboga V. Ecuador	June 23, 2015 Fourth monitoring	Payment of compensation for non-pecuniary damages (US\$ 10 000) Payment of costs and expenses (US\$ 50 000) Measure of restitution (US\$ 43 099.10) Publication of paragraphs of the Judgment	Payment in three installments of the compensation (US\$ 18 705 000) Payment in three installments of the pecuniary damage (US\$ 9 435 757.80)	Payment in two installments of the compensation (USD\$3.741.000,00) Payment in two installments of pecuniary damage (USD\$1.887.151,56)

III. ORDERS OF MONITORING OF COMPLIANCE

Case	Date and stage of monitoring	Measures fully complied with to date	Measures partially complied with to date	Measures pending compliance at this time
Cases of the Indigenous Communities of Yakyé Axa, Sawhoyamaxa and XákmokKásek V. Paraguay	<p>June 23, 2015</p> <p>First joint order on monitoring of compliance (the cases of Yakyé Axa and Sawhoyamaxa had XX and four individual monitorings, respectively)</p>	<p>Removal of the titling obstacles for titling of 1.500 hectares on the “25 of February” (XákmokKásek Community)</p>	<p>Identification, delivery, and titling of the traditional lands reclaimed by these communities (Yakyé Axa, Sawhoyamaxa, and XákmokKásek Communities)</p> <p>(*) In the case of the XákmokKásek Community, the State must pay, in as well, an additional amount for the delay in compliance</p>	
Case of Rocha Hernández et al. V. El Salvador	June 23, 2015	<p>The Court ruled on compliance with the order to reimburse the Victim's Legal Assistance Fund the amount dispensed during the processing of the case.</p>		

Case of Albán Cornejo et al. V. Ecuador

On August 28, 2015, the Court issued a fourth order on monitoring of compliance with the Judgment on reparations and costs in the case of **Albán Cornejo et al. V. Ecuador**, issued on November 22, 2007, wherein the following reparations were provided:

- a. Publication of parts of the Judgment in the Official Gazette and in another publication with national circulation
- b. Payment to Mrs. Cornejo and Mr. Alban Sanchez of US \$ 25,000.00 as compensation for pecuniary and non-pecuniary damage.
- c. Payment to Mrs. Cornejo of US \$ 30,000.00 for costs and expenses
- d. Widely divulge the rights of the patients
- e. Training and education program for justice operators and health care professionals about the laws enacted by Ecuador in relation to patients' rights and the punishment for violating them

In the orders of monitoring of compliance issued in 2009, 2010, and 2013, the Court declared that Ecuador fully complied with the measures of reparation concerning the publication of the judgment and payment of compensation for non-pecuniary damage and costs and expenses. In its decision of August 2014, the Court found that Ecuador fully complied with its obligations to widely divulge the rights of patients through awareness campaigns and information regarding the national legislation. Also, it considered that the State satisfied the obligation to implement a training and education program for justice operators and health professionals, through various continuing education courses. As such, the Court closed the case and decided to archive the case file.

Case of Suárez Peralta et al. V. Ecuador

On August 28, 2015, the Court issued a second order on monitoring of compliance with the Judgment on preliminary objections, merits, reparations and costs in the case of **Suárez Peralta et al. V. Ecuador**, issued on May 21, 2013. In that decision, the Court ordered the following measures of reparation:

- a. Publication in the Official Gazette of Ecuador, only once, the official summary of the Judgment.
- b. Publication, for one year, of the Judgment on an appropriate official website of Ecuador.
- c. Payment of US\$ 20,000 of the future medical care of Mrs. Suárez Peralta.
- d. Payment of US\$ 250,000 and US\$ 30,000 for pecuniary and non-pecuniary damages.
- e. Payment of US\$ 10,000 for reimbursement of costs and expenses.

On January 26, 2015, the Court ruled on the State's full compliance of the order to reimburse the Victim's Legal Assistance Fund. In its decision of August 28, 2015, the Court found that Ecuador fully complied with the provisions of the Judgment and decided to close case file.

Joint monitoring of the cases of the Indigenous Communities of Yakye Axa, Sawhoyamaxa and XákmokKásek V. Paraguay

On June 24, 2015, the Court issued the order for joint monitoring of compliance in the cases of **Yakye Axa, Sawhoyamaxa**, and **XákmokKásek V. Paraguay**, whose judgments were rendered on June 17, 2005, March 29, 2007 and August 24, 2010, respectively. The Yakye Axa has two monitoring of compliance orders (2007 and 2008), while in the case of Sawhoyamaxa there have been four monitoring of compliance orders (two in 2007, and 2008 and 2009).

Without detriment to other measures of reparation that continue to be monitored individually, in its order of 2015, the Court ruled on five measures of reparation pending compliance:

a) Delimit, demarcate, issue title deeds, and return to the Yakye Axa Community their ancestral lands: the Court established that by means of an agreement with the State, the Yakye Axa Community accepted delivery of alternative lands. However, the State has not issued title of the alternative lands to the Yakye Axa Indigenous Community and has not forged a route that would allow access to these lands, to which the State has not complied with its obligation to delimit, demarcate, and hand over alternative lands. Therefore, the Court decided to continue monitoring this point, noting that the State must prove the acquisition of alternative lands and titling of deeds in favor of the community, as well as provide updated and detailed information on specific measures being implemented to build an access road to this alternative land and provide the scheduled date in order to guarantee everything necessary for the Yakye Axa to settle on the lands.

b) Formally and physically convey to the member of the Community (Sawhoyamaxa Community) their traditional lands: regarding this point, the Court positively assessed that the State has adopted legislative and judicial actions to comply with the obligation to convey the lands. However, it noted that such actions took place five years after the compliance deadline with this measure of reparation. Moreover, the Court also ordered the State to provide detailed information on specific actions being implemented and, if appropriate, the actions pending in order to carry out the expropriation and titling of the lands to comply with its obligation to convey the traditional lands in a physical and formal manner, as ordered in operative paragraph six of the Judgment. As such, the Court also held that the activities being carried out on the lands by third parties in order to restore it may cause irreparable damage to these lands and, therefore, required Paraguay to present updated and detailed information on the specific measures being implemented for the preservation of the lands while the Community awaits the physical and formal delivery of the lands.

c) Identify and return the Community's traditional territory and grant title to the 1,500 hectares in "25 de febrero" (Community XákmokKásek): the Court found that the State has not complied with its obligation to return to the members of the Community XákmokKásek the 10,700 hectares it is claiming as traditional territory. It also noted that until the traditional territory is delivered to members of the Community, the State must ensure that its actions or actions of third parties do not affect the land, and it stressed that there is only one measure of protection in place on a 7,700 hectares fraction of the 10,700 hectares that make up the traditional lands of the Community. Therefore, it required the State to submit information to demonstrate that is ensuring that the entire territory being claimed by the community is not compromised. Similarly, the Court asked the State to provide an explanation with regard to the representatives' assertions regarding the destruction of the community's cemetery. Moreover, in relation to 1,500 hectares in "25 de Febrero," the Court found that the State has not provided information from which it is apparent that these lands have been titled to the XákmokKásek Community, and it asked Paraguay to submit updated and detailed information on specific measures being implemented to provide the Community with the appropriate title.

On the other hand, the Court stated that the Community had been recognized as a legal entity by way of Decree No. 6.565 of May 10, 2011, removing formal obstacles to the titling of the land. Therefore, it considered that the State had complied with the following means of the Judgment:

d) Create a Fund for the acquisition of land in favor of the communities (Community Yakyé Axa and Sawhoyamaxa): The Court verified that the fund was created in 2006, but expressed concern at the misappropriation of money that could affect the acquisition of the corresponding lands. While the Court took note of the State's willingness to return the misappropriated funds and punish those responsible for such misappropriation, it noted that there is no evidence in the record that states how the fund would have been used even before such misappropriation, nor is there clarity on whether the extracted funds were for the acquisition of the corresponding lands for the communities or for the "Community Development Fund" ordered in another operative paragraph of the Judgment. Therefore, the Court asked Paraguay to provide clear and complete information on whether the funds have been returned, those which are necessary to proceed with the acquisition and titling of the lands that correspond to the Sawhoyamaxa Community, and where applicable, the acquisition and titling of the alternative lands of the Yakyé Axa Community, as well as the construction of a path granting access to these lands.

e) The expiration of the periods specified in the three Judgments: the Court urged the State to adopt the necessary measures without delay to finally comply with the corresponding delivery of the traditional lands of the indigenous communities of Yakyé Axa, Sawhoyamaxa and XákmokKásek, and to present a detailed schedule for the implementation of this obligation. Moreover, the Court recalled that, in accordance with paragraphs 288 to 290 of the Judgment in the case of the Xákmok Kásek Community, the State incurred an obligation to pay the amount of \$10,000.00 for each month it delays compliance, due to its failure to provide the lands to the community. Since June 23, 2015, the State has incurred nine months of delay in compliance, and must pay US\$90,000.00 as compensation. To this, S\$10,000.00 must be added for each additional month of delay in complying with this obligation.

Case of Salvador Chiriboga V. Ecuador

On June 23, 2015, the Court issued a fourth order on monitoring of compliance with the Judgment on reparations and costs in the case of **Salvador Chiriboga v. Ecuador**, issued on March 3, 2011. In that judgment the Court ordered the following measures of reparation:

- a. Carry out payment of just compensation and pecuniary damages¹ established in the judgment in favor of Mrs. Salvador Chiriboga², pursuant to the method of compliance set out in paragraphs 102 to 104 of the Judgment. In these paragraphs, it was established that the State must make the payment of these amounts in five installments, in a period of five years, establishing March 30th of each year as the corresponding payment date, with the first payment starting on March 30, 2012
- b. Pay, as compensation for non-pecuniary damage the sum of US\$10,000.00, and as reimbursement for costs and expenses, the amount of US\$50,000, within the respective periods, and.
- c. Refund to Mrs. Mary Salvador Chiriboga, as a measure of restitution, the amount of US\$43,099.10 for property taxes, additional charges, and other duties as well as surcharges on plots without constructions that were wrongfully collected, within the period of six months
- d. Carry out the publications of the Judgment issued in this case in the Official Newspaper and of the official summary of the Judgment drafted by the Court in another newspaper with ample national circulation.

In the orders of monitoring of compliance issued in 2012, 2013 and 2014, the Court declared that Ecuador fully complied with the measures of reparation relating to the payment of compensation for non-pecuniary damage, the refund of the amount determined for taxes and charges collected and the corresponding interests and surcharges, the publication of certain parts of the judgment in the Official Newspaper and the official summary of the Judgment in a newspaper of ample national circulation, and the reimbursement of costs and expenses. Moreover, it also stated that the State complied with payment of the first, second and third installments established for just compensation and pecuniary damage. In its order of June 2015, the Court found that Ecuador fully complied with its obligations to pay the amounts established for the fourth installment for just compensation and pecuniary damages. As such, the Court concluded the case of Albán Cornejo et al., and decided to close the case file.

Case of Indigenous Communities Kuna of Madungandí and Emberá of Bayano & its Members v. Panama regarding the reimbursement of the Victims' Legal Assistance Fund

In the resolution regarding the reimbursement of the Victims' Legal Assistance Fund, issued on August 28, 2015 the Court declared that the State had complied with the fifteenth operative paragraph of the judgement, issued on October 14, 2014 in the Case of Indigenous Communities Kuna of Madungandí and Emberá of Bayano & its Members v. Panama. Consequently, the Court declared that Panama had complied with its obligation to reimburse the costs of the proceedings in the present case.

Case of Rochac Hernández et al. v. El Salvador on reimbursement of the Victim's Legal Assistance Fund

On June 23, 2015, the Court issued an order in which it found that the State of El Salvador reimbursed the Victim's Legal Assistance Fund in the amount of US\$4134.29, provided in the judgment in the [**Case of Rochac Hernández et al. v. El Salvador**](#), issued on October 14, 2014. Therefore, the Court declared that El Salvador has complied with this obligation.

² Corresponding to the sum of US\$9.435.757,80 for interests arising from the amount of just compensation.

³ Corresponding to the sum of US\$18.705.000,00, which includes the value of the plots that were expropriated from Mrs. Salvador Chiriboga and surcharges.

IV. PROVISIONAL MEASURES

[NOTE: Here, we need to include the Kuna case,
the FALV order of August 28, 2015]

Matter	State	Precedent	Status of the measure	Protected rights	Beneficiaries of the measure before the IACtHR
Matter of Meléndez Quijano et al.	El Salvador	Precautionary Measure (2006)	Reiterated the provisional measure	Life and Humane Treatment	Gloria Tránsito Quijano widow of Meléndez and Sandra Ivette Meléndez Quijano
Castro Rodríguez	México	Precautionary Measure (2008)	Reiterated the provisional measure of 2011	Life and Humane Treatment	Luz Estela Castro Rodríguez (human rights defender)
Alvarado Reyes et al.	México	Precautionary Measure (2010)	Reiterated the provisional measure of 2010	Life and Humane Treatment	Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera and next of kin
Socio-educational Internment Facility	Brazil	Precautionary Measure (2009)	Reiterated the provisional measure of 2011	Life and Humane Treatment	Children and adolescents deprived of liberty, and any person in the Socio-educational Internment Facility

IV. PROVISIONAL MEASURES

Matter	State	Precedent	Status of the measure	Protected rights	Beneficiaries of the measure before the IACtHR
Case of Kawas Fernández	Honduras		Reiterated the provisional measure of 2008	Life and Humane Treatment	Dencen Andino Alvarado
Case of Rosendo Cantú et al.	Mexico		Reiterated the provisional measure of 2010	Life and Humane Treatment	Valentina Rosendo Cantú and Yenis Bernardino Rosendo

Matter of Meléndez Quijano et al. regarding El Salvador

(provisional measures regarding a public employee and his next of kin)

On June 30, 2015, the Inter-American Court adopted an order on provisional measures in the Matter of Meléndez Quijano et al. regarding El Salvador. The provisional measures were granted for the first time in 2007, at the request of the Commission, because during the lapse of the precautionary measures adopted by the Commission in favor of the beneficiaries, they were subjected to surveillance, telephonic threats and monitoring. Thus, the information that was provided demonstrated *prima facie* that they were in a situation of extreme gravity and urgency, since their lives and personal integrity were threatened and at serious risk.

On April 17, 2015, the Court issued an order on provisional measures, in which it decided to maintain the provisional measures to protect the life and integrity of Adrián Meléndez Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez García, Estefanía Marcela Meléndez García, Pamela Michelle Meléndez García, and Adriana María Meléndez García, for an additional period to end on January 27, 2016. However, in that decision, the Court noted that between April 14, 2014 and the time that order was rendered, the parties had not referred to the risk faced by Gloria Transito Quijano widow of Meléndez, and Sandra Ivette Meléndez Quijano, nor had they indicated that these persons had been subject to an act of harassment, assault or threat. As such, the Court considered it reasonable to assume that the situation regarding these beneficiaries no longer fell within the realm of that which is established in Article 63(2) of the Convention and considered it relevant to lift the measures that had been granted in their favor.

In its order of June 30, 2015, the Court was informed by the representatives that as of April 21, 2015 new threats had arisen against Mr. Meléndez and his next of

kin. In addition, Mrs. Gloria Transito Quijano widow of Meléndez was attacked on May 27, 2015. As such, the Court noted the existence a situation of extreme gravity and urgency and possible irreparable damage to those persons currently beneficiaries of the measures, as well as to Gloria Transito Quijano widow of Meléndez and Sandra Ivette Meléndez Quijano. Therefore, since the provisional measures ordered in favor of Mr. Meléndez Quijano's family remain in force, it considered it appropriate to reestablish provisional measures in favor of Gloria Transito Quijano de Meléndez and Sandra Ivette Meléndez Quijano until January 27, 2016.

Matter of Castro Rodríguez regarding México

(provisional measures regarding human rights defenders)

By means of the order of June 23, 2015, the Court referred for the third time to the provisional measures ordered to protect the life and personal integrity of Luz Elena Castro Rodríguez, human rights defender in the State of Chihuahua, Mexico. According to the Commission's petition, the request for provisional measures was based on the grave context of violence against human rights defenders in the State of Chihuahua, and the absence of effective measures of protection offered by the State, supported and individualized given the risk faced by Mrs. Castro Rodríguez. The request was not made in connection with the processing of a contentious case being heard by the Court, but rather it refers to a situation for which the Inter-American Commission adopted precautionary measures on June 13, 2008.

Subsequent to the last Order of the Court, the representatives reported, *inter alia*, the increasing cases of enforced and involuntary disappearances wherein the beneficiary was a representative at a domestic level, as well as various assaults on human rights defenders also represented by the beneficiary. The State, on its behalf, conducted a risk analysis on the beneficiary's situation,

by which it concluded that the risk was at a medium level. In particular, it said that the conclusion was based on the fact that even though there has been a context of threats and harassment against human rights defenders in the state of Chihuahua, as well as organized crime and disappearances, the last direct incident against the beneficiary occurred in 2009. It noted that the three other incidents analyzed correspond to the period between 2012 and February 2014, which were related to a general context of disqualifications of the beneficiary and the work of CEDEHM by senior State officials of Chihuahua. As a result, the State considered that the risk to Mrs. Castro Rodriguez could not be described as extraordinary and imminent, being that the existence of a context of violence without the presence of specific facts was not enough, also taking into account the temporality factor. The State also reported that in April 2015, the NGO FreedomHouse started training staff of the Unit for the Defense of Human Rights with regard to the methodology for updating risk status using a gender perspective. In this regard, the representatives stressed that the study has not yet been carried out.

In light of the information received, the Court noted that while it valued the actions taken, the State itself concluded the current persistence of a risk to Mrs. Castro Rodriguez. The Court also noted, moreover, that the State is not opposed to continue providing measures of protection agreed upon with the representatives and beneficiaries. In light of the facts reported and according to the specific context of the area, it considered that although most of the incidents were not directly aimed at Mrs. Castro Rodriguez, such acts are linked, on the one hand, to the work the beneficiary carries out as a defender of human rights in the context of the state of Chihuahua, and on the other hand, to her family, members of CEDEHM, and even herself, to which the risk has not vanished and the elements necessary to maintain the ordered measures persist.

Therefore, the Court ruled that Mexico must maintain the measures it was implementing, as well as to correct those measures which are ineffective and adopt, immediately and permanently, the complementary measures that may be necessary and effective to protect the rights to life and personal integrity of Luz Estela Castro Rodriguez.

Matter of Alvarado Reyes et al.

(Provisional Measures regarding the next of kin of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza and José Alejandro Alvarado Herrera)

By means of the order of June 23, 2015, the Court ruled for the sixth time on the provisional measures requested by the Inter-American Commission. This request stems from the adoption of precautionary measures on March 4, 2010 by the Inter-American Commission. The request for provisional measures is based on the detention and disappearance of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza and Jose Angel Alvarado Herrera by members of the Mexican Army in the rural community of Benito Juarez in 2009. In its first order de **May 26, 2010**, the Court ordered the State to immediately adopt the necessary measures to determine the whereabouts of these three people and to protect their personal liberty, personal integrity and your life. However, as of the second order of **November 26, 2010**, the list of beneficiaries of such measures has been extended to next of kin based on alleged acts of harassment against them and their representatives, which indicates a *prima facie* situation of extreme gravity and urgency.

In its last order, the Court ordered:

- a. Maintain the measures implemented and immediately adopt the necessary measures to determine the whereabouts of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza and Jose Angel Alvarado Herrera and to protect their life, integrity, and personal liberty.
- b. Lift the provisional measured ordered in favor of Manuel Reyes Lira.
- c. Maintain the measures it has been implementing, and also adopt, immediately and definitively, the necessary and effective complementary measures to protect the rights to life and personal integrity of the following persons: 1) J.O.A.R., 2) R.G.A.R., 3) S.A.R. and 4) J.E.A.R.

(children of Jaime Alvarado Herrera); 5) Sandra Luz Rueda Quezada (wife of Jaime Alvarado); 6) D.J.A and 7) J.A. (daughter of Manuel Melquiades Alvarado Herrera); 8) Mayra Daniela SalaisRodríguez (wife of Manuel Melquiades Alvarado). Also of 9) Patricia Reyes Rueda and her two daughters: 10) A.A.R. and 11) A.A.R.; 12) M.U.A. (daughter of Rocío Irene Alvarado Reyes); 13) Obdulia Espinoza Beltrán; 14) J.A.E., 15) J.A.A.E. and 16) A.A.E. (children of José Ángel Alvarado Herrera and Obdulia Espinoza Beltrán); 17) José Ángel Alvarado Favela; 18) Concepción Herrera Hernández; 19) Jaime Alvarado Herrera; 20) Manuel Melquiades Alvarado Herrera; 21) Rosa Olivia Alvarado Herrera and her children; 22) K.P.A.A., 23) F.A.H. and 24) J.G.A.; 25) Félix García, and 26) Emilia González Tercero.

d. Maintain the measures of the previous paragraph regarding the seven beneficiaries that are outside of the territory: 1) Ascensión Alvarado Favela and 2) María de Jesús Espinoza Peinado (father and mother of Nitza Alvarado); 3) María de Jesús Alvarado Reyes (sister of Nitza Alvarado); 4) Rigoberto Ambriz Marrufo (husband of Nitza Alvarado); 5) M.P.A.E., 6) N.C.A.E. and 7) D.A.E. (daughters of Nitza Alvarado), whose application must be effective immediately once inside of Mexican territory.

Socio-educational Internment Facility regarding Brazil

(provisional measures regarding the minors deprived of liberty)

On June 23, 2015, the provisional measures granted in favor of the children and adolescents detained and anyone else found inside the Socio-Economic Internment Facility for risk to their lives and safety were reiterated. This was the ninth time that the Court rendered a decision on the situation within the detention center. In the order on **provisional measures of 2011**, the Court emphasized the need for the State to avoid situations of violence among inmates, and that it cannot support the use of handcuffs, threats or excessive confinement as means of disciplinary control. In its latest order, the

Court ordered the State to continue to immediately adopt all the necessary measures in order to eliminate situations that pose risks and to protect the life and physical, mental, and moral integrity of the children and adolescents deprived of liberty within the Socio-Educational Internment Facility; and to take appropriate steps to ensure that measures to protect the life and personal integrity, including medical and psychological care, be planned and implemented with the participation of the representatives of the beneficiaries and that they be continually informed about progress regarding the implementation.

It is important to remember that, in relation to the alleged need to identify the beneficiaries of the measures, in the first order for provisional measures of 2011, the Court stated that it did not consider it necessary to identify the beneficiaries to the extent that (they be identifiable and determinable, and in a situation of grave danger because of their membership to a group or community, as is the case of detainees in a detention center.

Case of Kawas Fernández regarding Honduras

(Provisional measures regarding Dencen Andino Alvarado)

By means of the order of June 23, 2015, the Court referred for a third time to the provisional measures rendered to protect the life and personal integrity of Dencen Andino Alvarado. The Court determined the State's responsibility for the facts relating to the death of Blanca Jeannette Kawas Fernández in its Judgment of April 3, 2009. The provisional measures on this issue were granted by the Court on **November 29, 2008**, at the request of the representatives of the victims. It was alleged that Mr. Dencen Andino Alvarado, one of the most important witnesses in the investigations carried out in Honduras for the execution of Jeannette Kawas, was coerced and intimidated by a police officer that was suspected of collaborating in the murder of Kawas. According to the Court, these facts establish,

prima facie, the extreme gravity and urgency that justified the rendering of protective measures in order to prevent irreparable damage to him. Through its Order of June 23, 2015, the Court reaffirmed the provisional measures in favor of Dencen Andino Alvarado.

Case of Rosendo Cantú et al. regarding México

Provisional measures in favor of the victims in the case)

By means of the order of June 23, 2015, the Court reiterated for the third time the provisional measures granted in favor of the victims in del **Case of Rosendo Cantú et al. V. Mexico**, whose Judgment was rendered on August 31, 2010. In this case, the Court established the responsibility of the State of Mexico for, among other things, acts of sexual violence and rape committed by military agents against Mrs. Valentina Rosendo Cantú, as well as the effects on the mental integrity of her daughter, Yenis Bernardino Rosendo.

In its first order of **February 2, 2010**, requested by the representatives of the victims, the Court considered that the beneficiaries of the provisional measures were monitored upon leaving their two workplaces and photographed on one of those occasions by a person of a “military demeanor”; Subsequently, two unknown persons tried to deprive Mrs. Rosendu’s daughter of her liberty and took her cellphone. According to the Court, these facts demonstrated prima facie the existence of a situation of extreme gravity and urgency, given that their lives and physical integrity would be threatened and at serious risk. Through its order of June 23, 2015, the Court confirmed the provisional measures against Valentina Rosendo Cantú and Yenis Bernardino Rosendo.