

***AMICUS CURIAE***

**Case No. 13.051**

Vicky Hernandez and Family

v.

Honduras

Presented by

THE INTERNATIONAL SERVICE FOR HUMAN RIGHTS

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### 1 The interest of the International Service for Human Rights

- 1.1 The International Service for Human Rights (ISHR) presents itself before this Honorable Inter-American Court of Human Rights as *amicus curiae* in the case *Vicky Hernandez and Family v. Honduras* in order to offer some considerations and arguments that we believe may be useful for the Court's decision.
- 1.2 ISHR is an independent, non-governmental organization dedicated to promoting and protecting human rights. ISHR achieves this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.
- 1.3 ISHR has a mandate to prevent attacks and violations against human rights defenders, and to ensure justice and accountability where they occur. Where appropriate, ISHR participates in strategic litigation at international, regional and national levels in an effort to ensure that human rights defenders have the freedom to effectively and safely protect and promote human rights.
- 1.4 ISHR respectfully submits these written comments (the Intervention) to the Honorable Inter-American Court for Human Rights (Court) in relation to **case number 13.051 dated 7 December 2018** (the Communication), filed on behalf of Vicky Hernandez and Family (the Complainant).
- 1.5 This Intervention addresses the approach we respectfully submit the Court should take to the Communication and the regard which should be had to the following soft law instruments:
  - 1.5.1 the 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms' (the Declaration);

- 1.5.2 the 'Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity' (YPs); and
- 1.5.3 the Yogyakarta Principles plus 10 (YPs +10).
- 1.6 As detailed in this Intervention, we respectfully submit the Court should adopt the following approach to the interpretation of the Convention in connection with the Communication:
  - 1.6.1 In circumstances involving human rights defenders, the obligations under the Convention should be read in light of the Declaration; and
  - 1.6.2 In circumstances involving human rights defenders working to promote and protect the rights of LGBTI people, the obligations under the Convention should be read in light of the Declaration, the YPs and the YPs +10.

## **2 The context of the Communication**

- 2.1 We submit that the Court should consider the Communication in light of:
  - 2.1.1 the status and treatment of human rights defenders who advocate for the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Honduras; and
  - 2.1.2 the international community's efforts to address discrimination based on sexual orientation and gender identity (SOGI).

### **Defenders working on LGBTI rights in Honduras**

- 2.2 We submit that the Court should approach the Communication in the context of the specific risks and violence faced by human rights defenders working in Honduras.
- 2.3 The report on the merits of this case by the Inter American Commission on Human Rights finds that, as a member of the Unidad Color Rosa, Colectivo TTT, Vicky Hernández 'was a defender of the human rights of trans persons.'<sup>1</sup> Based on this status, the report underscores the relevance of the context of particular risks and violence faced by human rights defenders working on LGBTI rights in Honduras.<sup>2</sup> The report notes that, of the seven women who founded the group, six have been murdered; and 15 of the 27 trans women who were murdered in Honduras between 2009 and 2012 were members of the group.<sup>3</sup>
- 2.4 The report consequently highlights how 'defenders of the human rights of trans persons are in a situation of extreme vulnerability to suffering violence by state and non-state actors, as a reprisal for their human rights activism and the carrying out of sex work. Trans women human rights defenders are ... subjected to arbitrary arrest, extortion and threats from police officers.'<sup>4</sup>
- 2.5 During her visit in 2012 to Honduras, the then UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, found that public officials and police officers frequently stigmatised, threatened, and persecuted those defending the rights of LGBTI persons, creating a culture of impunity and increasing the vulnerability of this group of defenders.<sup>5</sup> The Special Rapporteur also observed 'little or no progress in investigating the attacks and threats made against journalists, human rights defenders and political activists

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<sup>1</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 18.

<sup>2</sup> Ibid, par. 18.

<sup>3</sup> Ibid, par. 45.

<sup>4</sup> IACHR, Preliminary Observations concerning the Human Rights Situation in Honduras, December 5, 2014.

<sup>5</sup> [A/HRC/22/47/Add.1](#)

since 2009<sup>6</sup> following commitments Honduras made during its 2010 Universal Periodic Review.<sup>7</sup>

- 2.6 During the visit of the former UN Special Rapporteur, Michel Forst, in 2018, he concluded that 'despite strong efforts to establish an effective mechanism of protection, the vast majority of human rights defenders in Honduras are not able to operate in a safe and enabling environment.'<sup>8</sup> He added, '97 percent of crimes committed against human rights defenders...remain unresolved'<sup>9</sup> and LGBTI human rights defenders are particularly affected.<sup>10</sup>
- 2.7 In its 2015 Universal Periodic Review, the Government of Honduras made commitments to improve protections for LGBTI human rights defenders.<sup>11</sup> These commitments have not yet been implemented.<sup>12</sup>

### **International efforts to address discrimination based on SOGI**

- 2.8 The Court should approach the Communication in the context of the growing momentum behind the international community's push to address discrimination based on SOGI. There have been many recent notable developments, including:
- 2.8.1 the United Nations (UN) Human Rights Council's 2011 study into discrimination based on SOGI, which found a pattern of violence and discrimination based on SOGI that 'demands a response;' and the subsequent update to the report issued in May 2015. This update found that whilst there had been advances made in efforts to reduce the level of violence and discrimination based on SOGI, these efforts 'are overshadowed by continuing, serious and widespread human rights violations perpetrated, too often with impunity, against individuals based on their [SOGI]';<sup>13</sup>
- 2.8.2 a Joint Statement by UN entities in 2015, which stated that, in order to protect LGBTI persons from violence and ill-treatment, States must properly investigate and prosecute crimes, strengthen efforts to prevent, monitor and report crimes and incorporate homophobia as an aggravating factor in laws targeting hate crime. The statement noted that homosexual women are at particular risk of physical, psychological and sexual violence, and that human rights defenders combatting these violations are frequently persecuted and face discriminatory restrictions on their activities;<sup>14</sup>

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<sup>6</sup> [A/HRC/22/47/Add.1](#)

<sup>7</sup> [http://lib.ohchr.org/HRBodies/UPR/Documents/Session22/HN/UPR22\\_Honduras\\_list\\_of\\_recommendations.doc](http://lib.ohchr.org/HRBodies/UPR/Documents/Session22/HN/UPR22_Honduras_list_of_recommendations.doc)

<sup>8</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23063&LangID=E>

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> [Honduras Stakeholder Report for the United Nations Universal Periodic Review Submitted by The Advocates for Human Rights, 2019](#)

<sup>12</sup> [Honduras Stakeholder Report for the United Nations Universal Periodic Review Submitted by The Advocates for Human Rights, 2019](#)

<sup>13</sup> *Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity*, Report of the High Commissioner of United Nations on Human Rights (May 2015); HRC Res 27/32. 32<sup>nd</sup> sess, Agenda Item 8, UN Doc A/HRC/RES/27/32 (26 September 2014), para. 3.

<sup>14</sup> 'Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People', UNAIDS

<[http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929\\_LGBTI](http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929_LGBTI)>

- 2.8.3 in May 2015, a group of UN and regional human rights experts, made a joint statement urging Governments to end violence and discrimination against LGBTI people and children;<sup>15</sup>
- 2.8.4 the adoption of numerous resolutions by the Human Rights Council which aim to prevent discrimination on the basis of SOGI, including the resolution on 'protection against violence and discrimination based on [SOGI]' (adopted 30 June 2016);<sup>16</sup> and
- 2.8.5 the Human Rights Council's creation, appointment and renewal in 2016 and 2019 of an UN independent expert on protection against violence and discrimination based on SOGI, who is mandated to: highlight instances of violence and discrimination based on SOGI; address underlying causes of such discrimination at an international and national level; and help States find more effective ways to safeguard individuals from such discrimination. This appointment reflects the Council's stance on the severity of discrimination based on SOGI.<sup>17</sup>

### 3 The interpretation of the American Convention

- 3.1 The American Convention on Human Rights (Convention) should be read in light of the Declaration, the YPs and the YPs +10. Such an approach is consistent with established principles of interpretation in international law and existing jurisprudence on the Convention.

#### The relevance of soft law instruments

- 3.2 Soft law instruments, such as the Declaration, inform a State's understanding of its obligations under regional and international legally binding instruments. The IACHR has recognized that the Convention is a 'living instrument whose interpretation must consider the changes over time and present-day conditions'.<sup>18</sup>
- 3.3 Non-treaty declarations have been used in the interpretation of articles of the Convention in the IACHR's contentious jurisdiction, for example:
  - 3.3.1 the IACHR interpreted Articles 8 and 25 of the Convention in light of the UN Protocol for the Investigation of Extra-Legal, Arbitrary and Summary Executions, in order to determine the scope of the duty imposed on States to conduct a serious, impartial and effective investigation of extra-legal executions;<sup>19</sup>
  - 3.3.2 the IACHR interpreted Articles 4(1) and 5 in light of the UN General Assembly resolution proclaiming the Principles for the Protection for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, with respect to the duties of States towards all persons with mental illness;<sup>20</sup> and
  - 3.3.3 the IACHR interpreted Article 1(1) of the Convention in light of the Declaration on the Rights of Indigenous Peoples, noting that the right to cultural identity under the

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<sup>15</sup> Joint Statement, 'Discriminated And Made Vulnerable: Young LGBT And Intersex People Need Recognition And Protection Of Their Rights'

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15941&LangID=E>.

<sup>16</sup> HRC Res 32/2, 27<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/32/2 (30 June 2016).

<sup>17</sup> Ibid.

<sup>18</sup> IACHR, *Gómez Paquiyauri Brothers v Peru*, Judgment of July 8, 2004, para 165.

<sup>19</sup> IACHR, *Juan Humberto Sánchez v Honduras*, Judgment of June 7, 2003, para 127.

<sup>20</sup> IACHR, *Ximenes Lopes v Brazil*, Judgment of July 4, 2006, para 128.

Declaration gives effect to the principle of non-discrimination under the Convention.<sup>21</sup>

- 3.4 Non-treaty declarations have also been considered by the IACHR in its advisory jurisdiction, for example:
- 3.4.1 the IACHR interpreted Article 22(7) of the Convention in conjunction with the Universal Declaration of Human Rights, when advising on the scope of the right to seek asylum, commenting that the Declaration 'establishes certain principles that are common to all nations and of universal value',<sup>22</sup>
  - 3.4.2 when determining whether Articles 17(1) and 11(2) of the Convention could extend to the protection of same-sex couples, the IACHR took into consideration the question of whether an interpretation would be consistent with the American Declaration of the Rights and Duties of Man and the Declaration on the Rights of Indigenous Peoples. The IACHR noted that 'soft law' instruments provide 'guidance on the interpretation of [treaties], because they give greater precision to the minimum content established in the treaties',<sup>23</sup>
  - 3.4.3 the IACHR has relied on measures specified in the Rio Declaration on Environment and Development when advising on the action States should take to prevent environmental damage, in order to comply with Article 4 of the Convention;<sup>24</sup> and
  - 3.4.4 the IACHR has noted that it is necessary to consider the American Declaration of the Rights and Duties of Man as a component of the inter-American framework for the protection of the rights of children.<sup>25</sup>

## 4 Obligations under the Convention in light of the Declaration

### The Declaration on human rights defenders

- 4.1 The Declaration articulates how existing human rights enshrined in legally-binding international instruments apply to human rights defenders. While the Declaration is not, in and of itself, a legally-binding instrument, it is underpinned by, articulates and elaborates existing rights enshrined in international human rights treaties, including the Convention, in a way that clearly outlines the relationship between those rights and the practical role and situation of human rights defenders.
- 4.2 The Declaration was adopted by a unanimous resolution of the UN General Assembly in 1998.<sup>26</sup> By joining the consensus in adopting the Declaration, Honduras underlined its international commitment to protect and promote the rights of human rights defenders.
- 4.3 Honduras has co-sponsored numerous United Nations General Assembly and Human Rights Council resolutions on the Declaration and on the situation of human rights defenders, signalling a commitment to the promotion of the Declaration and the protection of human rights defenders. These include: a 2013 resolution on protecting human rights

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<sup>21</sup> IACHR, *Kichwa Indigenous People of Sarayaku v. Ecuador*. Judgment of June 27, 2012, paras 213 - 217.

<sup>22</sup> IACHR *The institution of asylum, and its recognition as a human right under the Inter-American System of Protection (Advisory Opinion)* OC-25/18, para 37.

<sup>23</sup> IACHR, *Gender identity, and equality and non-discrimination with regard to same-sex couples (Advisory Opinion)* OC-24/17, paras 60, 184.

<sup>24</sup> IACHR *The environment and human rights (Advisory Opinion)* OC-23/17, paras 44, 187, 198.

<sup>25</sup> *Juridical condition and human rights of the child (Advisory Opinion)* OC-17/2002, para 27.

<sup>26</sup> UN General Assembly Resolution [A/RES/53/144](#), March 8, 1999.

defenders;<sup>27</sup> a 2015 resolution on human rights defenders;<sup>28</sup> a 2017 resolution commemorating the 20th anniversary of the Declaration;<sup>29</sup> and a 2017 resolution that renewed the mandate of the Special Rapporteur on the situation of human rights defenders.<sup>30</sup>

- 4.4 Most recently, Honduras co-sponsored resolution [74/146](#) on the implementation of the Declaration, which was adopted unanimously by the United Nations General Assembly on 18 December 2019, reaffirming its commitment to implementing the Declaration domestically.<sup>31</sup>
- 4.5 The Inter-American Court of Human Rights has made express reference to the Declaration in its analysis of violations of the Convention in cases involving human rights defenders:
  - 4.5.1 The Court relied on the Declaration to find that human rights defenders are in a 'situation of special vulnerability' and that the 'State's obligation to guarantee the rights to life' and personal integrity of an individual is increased in the case of a human rights defender.<sup>32</sup>
  - 4.5.2 The Court further held, in line with the Declaration, that a State 'should provide the necessary means for persons who are defenders of human rights...so that when they encounter threats or situations of risk or report human rights violations, they can freely carry out their activities; protect them when they receive threats so as to prevent attacks on their lives and integrity; create conditions to eradicate violations by State agents or private individuals; refrain from hindering their work, and thoroughly and effectively investigating violations committed against them, combating impunity.'<sup>33</sup>
  - 4.5.3 In the case of *Nogueira de Carvalho and other vs. Brazil*, the Inter-American Court echoed Articles 2 and 9 of the Declaration, affirming that 'States have the duty to provide the necessary means for human rights defenders to carry out their activities freely; to protect them when they are threatened in order to prevent attacks on their life and integrity; to refrain from imposing obstacles that hinder the performance of their work; and to seriously and effectively investigate violations committed against them, combating impunity,'<sup>34</sup> in supporting of its finding that Brazil had violated Articles 8 and 25 of the Convention.

### **Obligations under the Convention interpreted in light of the Declaration**

- 4.6 As outlined in the Communication, the Complainant submits that rights under Articles 4(1) (right to life), 5(1) (right to humane treatment), 8(1) (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), 24 (right to equal protection and nondiscrimination), and 25(1) (right to judicial protection) of the Convention have been

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<sup>27</sup> HRC Res 22/6, HRC, 22nd Sess. UN Doc A/HRC/Res/22/6 (12 April 2013).

<sup>28</sup> GA Res 70/161, UNGA, 70th Sess, UN Doc A/Res/70/161 (10 February 2016).

<sup>29</sup> GA Res 72/247, UNGA, 72nd Sess, UN Doc A/Res/72/247 (25 January 2018).

<sup>30</sup> HRC Res 34/5, HRC, 34th Sess. UN Doc A/Res/34/5 (13 April 2017).

<sup>31</sup> GA Res 74/146, UNGA, 74th Sess, UN Doc A/Res/74/146 (8 January 2020).

<sup>32</sup> IACHR., Case of Luna Lopez v. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013, par. 123.

<sup>33</sup> Ibid.

<sup>34</sup> *Nogueira de Carvalho and others V. Brazil*, supra note 66, parr. 77, translated from Spanish, available at:

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_161\\_esp1.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_161_esp1.pdf).

violated, taken in conjunction with the obligation to respect and ensure rights enshrined in Article 1(1).<sup>35</sup>

- 4.7 The Declaration articulates several rights reflected in the Convention in a manner that underscores how these rights ought to be understood and protected with respect to human rights defenders. Those articles of the Declaration relevant to the Communication, which we submit should inform the Court's interpretation of the relevant Articles of the Convention, are examined in turn below.
- 4.8 Article 13 of the Convention is informed by Article 6 (**Right to know, seek, obtain, receive and hold information about human rights and fundamental freedoms**) and Article 7 (**Right to develop and discuss new human rights ideas and principles and to advocate their acceptance**) of the Declaration:
  - 4.8.1 Article 13 of the Convention provides that everyone has the right to freedom of thought and expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers or choice of medium.
  - 4.8.2 Article 6 of the Declaration informs Article 13 of the Convention, providing a broader application of this right in respect of human rights defenders, stating that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms. Individuals have the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms. Individuals also enjoy the freedom to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
  - 4.8.3 Similarly, Article 7 of the Declaration informs Article 13 of the Convention as it provides that everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.
  - 4.8.4 Honduras violated the Complainant's right to freedom of thought and expression set out in Article 13 of the Convention, as informed by Articles 6 and 7 of the Declaration, by failing to prevent the specific targeting of the Complainant's organization and its members. The Complainant was a recognized activist within Unidad Color Rosa, Colectivo TTT, an organization that defends the rights of trans persons in Honduras. Six of the seven women who founded this organization have been murdered, and of the 27 trans women murdered in Honduras between 2009 and 2012, 15 were members of the group. These murders, in conjunction with the fact that murders of LGBTI people in Honduras often take place with impunity, have not been investigated and remain unsolved,<sup>36</sup> is a grave and significant deterrent to trans persons in Honduras, such as the Complainant, and a violation of their right to seek and discuss information about human rights which is protected by Article 13 of the Convention as informed by Articles 6 and 7 of the Declaration in its application to human rights defenders.

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<sup>35</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 5.

<sup>36</sup> Global Rights & International Human Rights Clinic at the University of Virginia School of Law, Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Honduras, 2006.

- 4.9 Articles 13 and 24 of the Convention are further informed by Articles 1 (**Right to promote human rights and fundamental freedoms**), Article 2 (**Duty to protect human rights defenders and provide an enabling environment for their work**) and 12 (**Right to participate in peaceful activities against violations of human rights and protection by the State against any violence**) of the Declaration:
- 4.9.1 Article 13 of the Convention provides that everyone has the right to freedom of thought and expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers or choice of medium.
  - 4.9.2 Article 24 of the Convention provides for the right to equal protection. It reaffirms the principle that all persons are equal before the law, and consequently, that all persons are entitled, without discrimination, to equal protection of the law.
  - 4.9.3 Article 1 of the Declaration provides for the right for individuals and groups to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international level.
  - 4.9.4 Article 2 of the Declaration encompasses the right to equal protection provided in Article 24. It sets out that the State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. It goes further, providing that States can carry out this duty by, inter alia, adopting steps to create all conditions and legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
  - 4.9.5 Article 12 of the Declaration provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms. It provides that the State shall take all necessary measures to ensure protection by competent authorities of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration. In this connection, everyone is entitled to effective protection under national law when reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.
  - 4.9.6 Honduras violated the Complainant's right to participate in peaceful activities against violations of human rights and fundamental freedoms in breach of Articles 13 and 24 of the Convention as informed by 1, 2 and 12 of the Declaration. This right was violated by the lack of protection given in Honduras to LGBTI human rights defenders, like the Complainant, to engage in peaceful activities to promote and defend the rights of LGBTI people.
  - 4.9.7 As described above at 2.3–2.7, Honduras is responsible for creating the environment in which LGBTI human rights defenders and trans persons are subject to intimidation and violence because perpetrators of such crimes can act with impunity. The State's inaction enabled the murder of 15 other members of the Complainant's group, the Color Rosa TTT trans collective.<sup>37</sup> Moreover, despite knowledge of the continued murder of members of the Complainant's group, the

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<sup>37</sup> Global Rights & International Human Rights Clinic at the University of Virginia School of Law, *Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in Honduras*, 2006.

State did not pursue any line of inquiry to determine whether the Complainant's murder was connected to her work as a human rights defender.<sup>38</sup>

- 4.9.8 In this case, as the IACHR has noted, 'defenders of the human rights of trans persons are in a situation of extreme vulnerability to suffering violence by state and non-state actors, as a reprisal for their human rights activism and the carrying out of sex work. Trans women human rights defenders are ... subjected to arbitrary arrest, extortion and threats from police officers.'<sup>39</sup> Honduras has not taken appropriate measures to ensure that defenders of the rights of trans persons can safely carry out their work, and is therefore in violation of Articles 13 and 24 of the Convention as informed by Articles 1, 2 and 12 of the Declaration.
- 4.10 Articles 25(1) and (2) of the Convention are informed by Article 2 (**Duty to protect human rights defenders and provide an enabling environment for their work**) and Article 9 (**Duty to investigate attacks against human rights defenders and provide an effective remedy**) of the Declaration:
- 4.10.1 Article 25(1) of the Convention provides that everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate their fundamental rights recognized by the constitution or laws of the State concerned or by the Convention, even though such violation may have been committed by persons acting in the course of their official duties.
- 4.10.2 Article 25(2) goes further to provide that States Parties to the Convention undertake to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State; to develop the possibilities of judicial remedy; and to ensure that the competent authorities shall enforce such remedies when granted.
- 4.10.3 Article 2 of the Declaration reaffirms Article 25(1) of the Convention, providing that each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the Declaration are effectively guaranteed.
- 4.10.4 Article 9 of the Declaration complements and extends this right and provides that everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights. Everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay. Article 9 articulates the duty of the State to conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

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<sup>38</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 90.

<sup>39</sup> IACHR, *Preliminary Observations concerning the Human Rights Situation in Honduras*, December 5, 2014.

4.10.5 Honduras violated Articles 25(1) and (2) of the Convention, as informed by Articles 2 and 9 of the Declaration by failing to conduct a prompt investigation of the Complainant's murder, in circumstances in which the Complainant's murder appears to be related to the Complainant's role as a human rights defender working for the promotion of the rights of trans persons. The circumstances of the Complainant's death are, in several respects, consistent with the circumstances of other crimes against trans persons, previously held by the Inter-American Commission on Human Rights to be prejudice-based.<sup>40</sup> These circumstances include the fact that the Complainant was found in a public place, that a condom was found near the Complainant's body and the fact that the Complainant is believed to have been killed by a firearm.<sup>41</sup> The State neither outlined nor exhausted lines of enquiry that take into account any of these particular pieces of evidence, or the broader context of discriminatory violence toward trans persons in Honduras, including violent acts committed by police.<sup>42</sup> The investigation is lacking in other key respects, including the failure to interview a number of witnesses or establish a motive,<sup>43</sup> and the fact that an autopsy was not promptly conducted and that the record still does not include an autopsy report.<sup>44</sup>

## 5 Obligations under the Convention in light of the Yogyakarta Principles

### The Yogyakarta Principles and Yogyakarta Principles +10

- 5.1 The Yogyakarta Principles are a series of 29 principles that apply existing human rights standards to the specific and unique issues relating to SOGI. The YPs were drafted in 2006 by an international panel of experts in international human rights law and on SOGI, including a former UN High Commissioner for Human Rights and 13 current or former UN human rights experts.<sup>45</sup>
- 5.2 The Yogyakarta Principles + 10 are an additional series of nine principles and 111 state obligations which supplement the YPs. The YPs +10 were adopted in 2017 to reflect significant international developments in human rights and an increased understanding of violations suffered by persons on the basis of SOGI.<sup>46</sup>
- 5.3 Like the Declaration, the YPs and YPs +10 are not a binding international treaty, but rather they are a restatement of international law, 'reflect[ing] the existing state of international human rights law' and 'affirm[ing] binding international legal standards with which all States must comply.'<sup>47</sup> The status of the YPs has been reiterated by the European Court of Justice as 'reflect[ing] established principles of international law.'<sup>48</sup>

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<sup>40</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 59.

<sup>41</sup> *Ibid.*, 64.

<sup>42</sup> *Ibid.*, par. 65.

<sup>43</sup> *Ibid.*, par. 59.

<sup>44</sup> *Ibid.*, par. 92.

<sup>45</sup> [The Yogyakarta Principles](https://yogyakartaprinciples.org/), see: <https://yogyakartaprinciples.org/>

<sup>46</sup> *Ibid.*

<sup>47</sup> Introduction to the Yogyakarta Principles.

<sup>48</sup> Opinion of Advocate General Sharpston delivered on 17 July 2014. A, B and C. Joined Cases C-148/13, C-149/13 and C-150/13, at par (37) footnote 47.

- 5.4 The YPs and YPs +10 have been referenced by the IACHR in both its contentious and advisory jurisdictions, as follows:
- 5.4.1 with reference to the YPs, the IACHR affirmed the right to access social security benefits without discrimination based on sexual orientation;<sup>49</sup> and
  - 5.4.2 the IACHR explicitly acknowledged the YPs and the YP+10 as part of the legal framework of the Court. The IACHR interpreted Article 11 of the Convention in a manner 'consistent with' Principle 6 of the YPs when advising that States must establish a confidential procedure to enable change of name and identification documents to reflect a person's gender identity.<sup>50</sup> In referring closely to the two documents, the seven judges also identified them as authoritative sources for developing and interpreting laws related to SOGI;<sup>51</sup>
- 5.5 The YPs have also been referred to by a range of UN bodies and mechanisms:
- 5.5.1 they have been cited in a General Comment of the Committee on Economic, Social and Cultural Rights;<sup>52</sup>
  - 5.5.2 they have been included in reports of Special Rapporteurs, with some reports referencing them as guiding principles or statements of international law;<sup>53</sup>
  - 5.5.3 a guidance note issued by the UN High Commissioner for Refugees (UNHCR) states that the YPs 'reflect binding international legal standards with regard to sexual orientation which are derived from key human rights instruments';<sup>54</sup>
  - 5.5.4 guidelines issued by the UNHCR reference the importance of the YPs in applying rights and adopt the terminology of sexual orientation and gender identity in the YPs;<sup>55</sup>
  - 5.5.5 many recommendations made and accepted as part of a State's Universal Periodic Review have made reference to the YPs;<sup>56</sup>

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<sup>49</sup> Duque v Colombia, Inter-American Court of Human Rights (2015), para. 110 and 138.

<sup>50</sup> IACHR, Gender identity, and equality and non-discrimination with regard to same-sex couples (Advisory Opinion) OC-24/17, para 138.

<sup>51</sup> IACHR., Advisory opinion requested by the Republic of Costa Rica. Judgment of 24 November 2017.

<sup>52</sup> General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 2 July 2009, 10.

<sup>53</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, 10 August 2009, 13; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/64/211, 3 August 2009, 16 and 20.

<sup>54</sup> UNCHR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008, 7.

<sup>55</sup> See for example 'Guidelines on International Protection No. 9', UNHCR, available at <http://www.unhcr.org/509136ca9.pdf>.

<sup>56</sup> See David Brown, Making Room for Sexual Orientation and Gender Identity in International human Rights Law: An Introduction to the Yogyakarta Principles (2010) 31 Michigan Journal of international Law 821, 843 and 878; see also Paula Ettelbrick and Alia Trabucco Zerán, The Impact of the Yogyakarta Principles on International Human Rights Law Development: A Study of November 2007 – June 2010 (10 September 2010); ARC International, YP in Action: Universal Periodic Review Documents (viewed 19 August 2016) <[http://www.ypinaction.org/content/universal\\_periodic\\_review\\_docume](http://www.ypinaction.org/content/universal_periodic_review_docume)>.

- 5.6 The YPs have been referred to in domestic law judgments:
- 5.6.1 the Delhi High Court discussed the YPs in its judgment in *Naz Foundation v Govt. of NCT of Delhi*, finding that criminalisation of homosexual sex violated the rights protected by India's Constitution;<sup>57</sup>
  - 5.6.2 the Supreme Court of India referred to the YPs in *National Legal Services Authority v Union of India WP*, which affirmed the rights of transgender people, and formally recognised a third gender for the purposes of safeguarding and appropriately enforcing their rights under India's Constitution;<sup>58</sup>
  - 5.6.3 an Australian court and tribunal cited the YPs;<sup>59</sup>
  - 5.6.4 the Supreme Court of Nepal requested an amicus brief on the YPs and went on to find that its citizens had rights broadly consistent with the YPs;<sup>60</sup>
  - 5.6.5 the YPs have been suggested to have had a second-order influence on a decision of the Supreme Court of Pakistan relating to the rights of transgender persons;<sup>61</sup> and
  - 5.6.6 the 9th Circuit Court of Appeals in the United States considered an amicus brief which relied heavily on the YPs.<sup>62</sup>

### **Obligations under the Convention interpreted in light of the Yogyakarta Principles and Yogyakarta Principles +10**

- 5.7 The principles in the YPs and YPs +10 relevant to the Communication are set out below.
- 5.8 Article 3 of the Convention is informed by Principle 31 (**Right to legal recognition**) of the YPs +10.
- 5.8.1 Article 3 of the Convention provides that every person has the right to recognition as a person before the law.
  - 5.8.2 Principle 31 expands this right to include the right to change gendered information in identity documents, where gendered information is included.<sup>63</sup>
  - 5.8.3 The IACHR has previously expressed the opinion that 'the right of individuals to define, autonomously, their own sexual and gender identity is made effective by guaranteeing that their self-determined identities correspond with the personal identification information recorded in the different registers, as well as in the identity documents'.<sup>64</sup> Further, the United Nations Independent Expert on protection against violence and discrimination based on SOGI has noted that, "State failure to legally

<sup>57</sup> *Naz Foundation v. Govt. of NCT of Delhi*, 160 Delhi Law Times 277 (Delhi High Court 2009) at par 43 (Note: this decision was later overturned by the Supreme Court of India).

<sup>58</sup> *National Legal Services Authority v Union of India WP (Civil)* No 604 of 2013.

<sup>59</sup> *Re Alex* [2009] FamCA 1292, [183]; 071263822 [2007] RRTA 115.

<sup>60</sup> *Pant v Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD) (Nepal).

<sup>61</sup> David Brown, *Making Room for Sexual Orientation and Gender Identity in International human Rights Law: An Introduction to the Yogyakarta Principles* (2010) 31 Michigan Journal of international Law 821, 873.

<sup>62</sup> Brief of ICJUR and Ctr. for Constitutional Rights as Amicus Curiae, *Witt v. Dep't of the Air Force*, 527 F.3d 806, 806 n.2 (9th Cir. 2008), 802.

<sup>63</sup> Yogyakarta Principle 31.

<sup>64</sup> IACHR, *Gender identity, and equality and non-discrimination with regard to same-sex couples* (Advisory Opinion) OC-24/17, para 105.

recognise the gender identity and expression of trans persons creates a situation of de facto criminalisation of the expression of gender identity".<sup>65</sup>

- 5.8.4 By denying the right to the Complainant to be legally recognised by her gender identity, and by registering the Complainant as a male named Johny Hernandez in the Public Prosecution Service homicide case, Honduras violated the Complainant's right to juridical personality under Article 3 of the Convention as informed by Principle 31 of the YPs +10.<sup>66</sup>
- 5.9 Article 4(1) of the Convention is informed by Principle 4 (**Right to Life**) of the YPs.
- 5.9.1 Article 4(1) of the Convention provides that every person has the right to have their life respected. This right shall be protected by law. No one shall be arbitrarily deprived of their life.
- 5.9.2 Principle 4 expands upon Article 4 by requiring that the State cease any State-sponsored or State-condoned attacks on the lives of persons based on SOGI and vigorously investigate, prosecute, try, and duly punish those responsible for any attacks on the lives of individuals based on SOGI.<sup>67</sup>
- 5.9.3 Honduras violated Article 4 of the Convention as informed by Principle 4 of the YPs +10, by failing to adhere to its duties to protect the right to life of LGBTI persons. Not only have repeated curfews, increased military presence and the inefficacy of judicial mechanisms exacerbated the existing context of violence, discrimination and police brutality toward LGBTI persons in Honduras, the Complainant was murdered at the time of a curfew enforced by police, under significant police presence, and when the streets were in effect under State control. In addition, significant circumstantial evidence indicates that State agents were responsible for, or involved in, the Complainant's murder. The State of Honduras has been unable to counter this evidence. Furthermore, Honduras has failed to vigorously investigate, prosecute, try, or duly punish those responsible for the attack upon and murder of the Complainant as explained at paragraph 4.10.5 above.
- 5.10 Article 5(1) and Article 24 of the Convention are informed by Principles 2 (**Rights to Equality and Non-discrimination**), 5 (**Right to the Security of the Person**) and 10 (**Rights to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment**) of the YPs.
- 5.10.1 Article 5(1) of the Convention provides for the right to humane treatment, outlining that every person has the right to have his physical, mental, and moral integrity respected. The right further extends that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
- 5.10.2 Article 24 of the Convention provides that all persons are equal before the law and are entitled, without discrimination, to equal protection of the law.
- 5.10.3 Principle 2 of the YPs provide that everyone is entitled to enjoy all human rights without discrimination on the basis of SOGI. Discrimination based on SOGI includes any distinction, exclusion, restriction or preference based on SOGI which has the purpose of nullifying or impairing equality before the law or the equal protection of

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<sup>65</sup> Ibid, par. 76.

<sup>66</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 8 and 29.

<sup>67</sup> Yogyakarta Principle 4.

the law. Principle 2(f) requires States to take all appropriate action with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or superiority of any sexual orientation or gender identity or gender expression.

- 5.10.4 Principle 5 provides that all persons have the right to security of persons and that States have an obligation to protect its citizens, regardless of SOGI, against harm, whether inflicted by agents of the State or by private individuals or groups. In order to do this the State must take legislative, policing and other measures to prevent and provide protection from violence and harassment; vigorously investigate and prosecute perpetrators; and undertake awareness-raising campaigns in order to combat the prejudices underlying the violence.<sup>68</sup>
- 5.10.5 Principle 10 reaffirms the right to be free from torture or cruel, inhuman or degrading punishment or treatment, including for reasons relating to sexual orientation or gender identity.<sup>69</sup>
- 5.10.6 Honduras violated Articles 5(1) and 24 of the Convention, as informed by Principles 2, 5 and 10 of the YPs, by its failure to ensure the Complainant's equal treatment and protection before the law without discrimination on the basis of SOGI. The State failed to respond to the Complainant's earlier police complaint that she had been assaulted by a guard with a machete. Instead, the police officers receiving the Complainant's complaint are reported to have responded, "For all we care, you can die."<sup>70</sup>
- 5.10.7 The State failed to protect the Complainant's life during a curfew under significant police control and failed to prove State agents were not involved in the murder.<sup>71</sup> Further, the State did not investigate whether the victim was subjected to sexual violence, which the UN Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment has cited as a form of torture frequently inflicted on LGBTI persons for transgressing traditional gender boundaries.<sup>72</sup> As set out at paragraph 4.10.5, the State then failed to adequately investigate the Complainant's murder and failed to consider the Complainant's death in this broader context of discrimination and prejudicial attitudes against trans persons and defenders, particularly those engaged in sex work.<sup>73</sup>
- 5.10.8 Since the coup d'état in 2009, repeated curfews, increased military presence and the inefficacy of judicial mechanisms exacerbated the existing context of violence, discrimination and police brutality toward LGBTI persons in Honduras.<sup>74</sup> Honduras has failed to provide any information regarding any action it has taken to address these problems and prevent them from continuing, as required by Principle 2.
- 5.10.9 In summary, the State failed to take all necessary legislative and administrative steps, as well as necessary policing measures, to prevent the Complainant's murder in accordance with its obligations under Article 5(1) of the Convention, as

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<sup>68</sup> Yogyakarta Principle 5.

<sup>69</sup> Yogyakarta Principle 10.

<sup>70</sup> *Ibid*, par. 21.

<sup>71</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 97.

<sup>72</sup> *Ibid*, par. 61.

<sup>73</sup> *Ibid*, par. 65.

<sup>74</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 19.

informed by Principles 2, 5 and 10 of the YPs. This was exacerbated by the failure by the police to respond to the Complainant's earlier police complaint as well as the context of violence and discrimination against LGBTI persons following the coup d'etat.

5.11 Article 8(1) of the Convention is informed by Principle 8 (**Right to a fair trial**) of the YPs.

5.11.1 Article 8(1) of the Convention establishes that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal previously established by law.

5.11.2 Principle 8 clarifies that everyone is entitled to a fair trial without prejudice or discrimination on the basis of SOGI. Principle 8 further notes that States must take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of SOGI at every stage of the judicial process.

5.11.3 The State's failure to pursue lines of inquiry that could have determined the possible involvement of State agents was in breach of its obligation to provide a fair trial under Article 8(1). This failure, along with the classification of the murder in the record as a possible 'crime of passion,'<sup>75</sup> which was clearly grounded in gender stereotypes, constitute a failure to eliminate prejudicial treatment in the basis of SOGI at key stages of the criminal investigation and judicial process in breach of Principle 8.

5.12 Article 11 of the Convention is informed by Principle 6 (**Right to privacy**) of the YPs.

5.12.1 Article 11 of the Convention provides that everyone has the right to have their honor respected and dignity recognized. No one may be the object of arbitrary or abusive interference with their private life, their family, their home, or their correspondence, or of unlawful attacks on their honor or reputation. Everyone has the right to the protection of the law against such interference or attacks.

5.12.2 Principle 6 reiterates this right to privacy and clarifies that the right requires States to take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of SOGI, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference.<sup>76</sup> Principle 6 further requires States to repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or which denies to individuals the opportunity to change their bodies as a means of expressing their gender identity.

5.12.3 By reason of the Complainant's death and her treatment in response to her earlier police complaint, as acts of violence based on prejudice against her gender identity and expression,<sup>77</sup> Honduras failed to allow the Complainant to enjoy the right to privacy regardless of SOGI without arbitrary interference. Further, as Honduran law does not allow someone to be legally recognized by a gender identity different from their sex identified at birth, the State prevented the Complainant from being

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<sup>75</sup> Ibid, par. 29.

<sup>76</sup> Yogyakarta Principle 6.

<sup>77</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 75.

recognized by her true gender identity.<sup>78</sup> By failing to protect the Complainant from violent attacks based on prejudice against her gender identity and failing to repeal laws that prevent the Complainant from being recognized according to her gender identity, Honduras violated the Complainant's right to privacy in breach of Article 11 of the Convention as informed by Principle 6 of the YPs.<sup>79</sup>

5.13 Article 13 of the Convention is informed by Principles 19 (**Right to freedom of opinion and expression**), 20 (**Right to freedom of peaceful assembly and association to advocate around issues of sexual orientation and gender identity**), and 27 (**Right to promote human rights**) of the YPs.

5.13.1 Article 13 of the Convention provides that everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

5.13.2 Principles 19 informs these rights, requiring States to ensure adequate legislative and administrative protection of a person's full enjoyment of the right to express identity or personhood, regardless of SOGI, including through speech, deportment, dress, bodily characteristics, choice of name or any other means.

5.13.3 Principle 20 informs Article 13 by providing that persons have the right to peaceful assembly and association regardless of SOGI, which includes the right to form and have recognized associations based on SOGI and to advocate for the rights of persons of diverse SOGI, and that the State must ensure that there is adequate police and physical protection afforded to these activities to protect from violence and harassment.

5.13.4 Principle 27 also informs Article 13. Principle 27 requires States to combat actions targeting human rights defenders working on issues of SOGI, including protecting rights defenders against violence.

5.13.5 The victim's murder was related to her gender identity and expression as a trans woman and human rights defender.<sup>80</sup> Honduras violated Article 13 of the Convention, as informed by Principles 19, 20 and 27 of the YPs, by failing to provide the victim with adequate protection of her full expression of her identity, particularly in light of the high incidence of participation by security agents in violence against trans women, and the broader upsurge in violence around that time. Further, Honduras failed to provide human rights defenders working on issues of SOGI with protection from violence. In 2018, the UN Special Rapporteur on the situation of human rights defenders reported that 'the vast majority of human rights defenders in Honduras are not able to operate in a safe and enabling environment'.<sup>81</sup> Trans women are often subjected to arbitrary arrest, extortion and threats from police officers.<sup>82</sup> Honduras is therefore responsible for creating a culture of impunity for the perpetrators of crimes against LGBTI human rights defenders in violation of Article 13 of the Convention as informed by Principles 19, 20 and 27.

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<sup>78</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 8, 76.

<sup>79</sup> *Ibid*, par. 76.

<sup>80</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 66.

<sup>81</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23063&LangID=E>

<sup>82</sup> *Ibid*, par. 18.

5.14 Articles 24 and 25(1) of the Convention are informed by Principle 30 (**Right to State Protection**) of the YPs +10.

5.14.1 Article 24 of the Convention provides that every individual is entitled to equal protection of the law.<sup>83</sup> Article 25(1) establishes the right to simple and prompt recourse, to a competent court or tribunal for protection against acts that violate their fundamental rights.<sup>84</sup>

5.14.2 Principle 30 of the YPs +10 clarifies that everyone, regardless of sexual orientation, gender identity, gender expression or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group.<sup>85</sup>

5.14.3 Honduras failed to take action to protect LGBTI persons in a context of increased violence against trans women based on prejudice.<sup>86</sup> Despite this knowledge, when the Complainant reported her assault by a security guard at a police station, the officers response 'For all we care, you can die,' was clearly discriminatory<sup>87</sup> Honduras had knowledge of discriminatory patterns of violence against trans women and did not take action to protect them, or the Complainant, in violation of Articles 24 and 25(1) of the Convention as informed by Principle 30 of the YPs+10.

5.15 Articles 24 and 25 of the Convention are also informed Principle 37 (**Right to truth**) of the YPs +10.

5.15.1 Article 25 of the Convention contains the right to simple and prompt recourse to a competent court or tribunal for acts that violate a person's fundamental rights. Article 24 provides that all persons are equally entitled to this protection.<sup>88</sup>

5.15.2 Principle 37 provides that all victims of human rights violations on the basis of sexual orientation, gender identity, gender expression or sex characteristics have the right to know the truth about the facts, circumstances, and reasons for that violation. This right encompasses effective and independent fact-finding investigations, as well as any form of reparation recognised by international law. This right extends to the families of individual victims, as well as their communities and society at large.<sup>89</sup>

5.15.3 Principle 37 informs the rights under Articles 24 and 25 by requiring that evidence of human rights violations based on sexual orientation, gender identity, gender expression and sex characteristics be preserved.<sup>90</sup>

5.15.4 The Complainant's body was found next to a used condom, which could be indicative of sexual violence, and yet the State did not provide any information in the record to suggest that the necessary tests were done to determine whether the

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<sup>83</sup> American Convention on Human Rights.

<sup>84</sup> American Convention on Human Rights.

<sup>85</sup> Yogyakarta Principle 30.

<sup>86</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 77.

<sup>87</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 78.

<sup>88</sup> American Convention on Human Rights.

<sup>89</sup> Yogyakarta Principles + 10, Principle 37.

<sup>90</sup> Yogyakarta Principles + 10, Principle 37.

Complainant had been a victim of such violence.<sup>91</sup> Moreover, the record does not indicate that any tests were done to determine the caliber of the bullet that killed the Complainant and whether that matched any firearm used by State forces.<sup>92</sup> Lastly, the State failed to show that the autopsy report was included in the record of the investigation at the domestic level.<sup>93</sup> By failing to preserve the appropriate evidence of the human rights violation perpetrated against the Complainant, Honduras denied the Complainant of her rights to equal protection, judicial protection, and truth in violation of Articles 24 and 25 of the Convention as informed by Principle 37 of the YPs+10 .

## 6 Conclusion

- 6.1 This Intervention is designed to assist the Court by providing an extended analysis of the scope of the rights under the Convention.
- 6.2 We respectfully seek to demonstrate that in the current circumstances the Court should take into consideration the Declaration, the YPs and YPs +10 in the analysis of the articles of the Convention applicable to this case.
- 6.3 Honduras has violated its obligations pursuant to the Convention as set out in the Communication. In considering those rights under the Convention as informed by the Declaration, the YPs and the YPs+10, we respectfully submit that Honduras is in violation of the following obligations:
  - 6.3.1 Ensure and respect the Complainant's rights enunciated in the Convention; as informed by the Declaration, YPs and YPs +10;
  - 6.3.2 Ensure the Complainant's right to juridical personality as protected by Article 3 of the Convention, which includes (but is not limited to) the State's failure to:
    - 6.3.2.1 Ensure the Complainant's right to change gendered information in identity documents as protected by Principle 31 of the YPs +10;
  - 6.3.3 Ensure the Complainant's right to life as protected by Article 4(1) of the Convention, which includes (but is not limited to) the State's failure to:
    - 6.3.3.1 Cease State-condoned attacks on the lives of persons based on SOGI and vigorously investigate, prosecute, try, and duly punish those responsible for such an attack on the Complainant as protected by Principle 4 of the YPs;
  - 6.3.4 Ensure the Complainant's right to have physical, mental and moral integrity respected as protected by Article 5(1) of the Convention, which includes (but is not limited to) the State's failure to:
    - 6.3.4.1 Take measures to prevent and provide protection from all forms of discrimination, violence and harassment on the basis of SOGI as protected by Principle 5 of the YPs; and

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<sup>91</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 64, 95

<sup>92</sup> Ibid, par. 95.

<sup>93</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, par. 92.

- 6.3.4.2 Ensure the Complainant's right to be free from torture or cruel, inhuman and degrading treatment for reasons relating to SOGI as protected by Principle 10 of the YPs;
- 6.3.5 Ensure the Complainant's right to a hearing by a competent, independent and impartial tribunal as protected by Article 8(1) of the Convention, which includes (but is not limited to) the State's failure to:
  - 6.3.5.1 Ensure the Complainant's right to a fair trial without prejudice on the basis of SOGI as protected by Principle 8 of the YPs;
- 6.3.6 Ensure the Complainant's right to privacy as protected by Article 11 of the Convention, which includes (but is not limited to) the State's failure to:
  - 6.3.6.1 Take measures to ensure the Complainant's right to enjoy the private sphere, intimate decisions, and human relations, without arbitrary interference regardless of SOGI as protected by Principle 6 of the YPs;
- 6.3.7 Ensure the Complainant's right to freedom of thought and expression as protected by Article 13 of the Convention, which includes (but is not limited to) the State's failure to:
  - 6.3.7.1 Ensure and respect the Complainant's right to promote and to strive for the protection and realization of human rights and fundamental freedoms as protected by Article 1 of the Declaration;
  - 6.3.7.2 Ensure the Complainant's right to seek, discuss and develop information and ideas about human rights as as protected by Articles 6 and 7 of the Declaration;
  - 6.3.7.3 Ensure the Complainant's right to express identity or personhood, regardless of SOGI, as protected by Principle 19 of the YPs;
  - 6.3.7.4 Take measures to prevent and provide police and physical protection from all forms of discrimination, violence and harassment to persons and associations that advocate for the rights of persons of diverse SOGI as protected by Principle 20 of the YPs; and
  - 6.3.7.5 Take measures to combat actions targeting human rights defenders working on issues of SOGI as protected by Principle 27 of the YPs;
- 6.3.8 Ensure all citizens are equal before the law and given protection without discrimination as protected by Article 24 of the Convention, which includes (but is not limited to) the State's failure to:
  - 6.3.8.1 Adopt legislative, administrative and other steps as necessary to ensure the Complainant's human rights and freedoms were effectively guaranteed as protected by Article 2 of the Declaration;
  - 6.3.8.2 Ensure the Complainant's right to enjoy all human rights without discrimination on the basis of SOGI as protected by Principle 2 of the YPs; and
  - 6.3.8.3 Ensure the Complainant's right to State protection from violence, discrimination and harm by government officials as protected by Principle 30 of the YPs +10;
- 6.3.9 Ensure the Complainant's right to prompt recourse to a competent court or tribunal for protection against acts which violated fundamental human rights as protected

by Article 25 of the Convention, which includes (but is not limited to) the State's failure to:

6.3.9.1 Conduct a prompt and thorough investigation of the violation of the Complainant's human rights as protected by Article 9 of the Declaration; and

6.3.9.2 Ensure the Complainant's right to know the truth about the facts, circumstances, and reasons for the violation of her human rights on the basis of SOGI as protected by Principle 37 of the YPs +10.

6.4 We request that the Court make a finding that Honduras has violated its obligations under Articles 3, 4(1), 5(1), 8(1), 11, 13, 24 and 25 of the Convention, as informed by Articles 1, 2, 6, 9 and 12 of the Declaration, Principles 2, 4, 5, 6, 8, 10, 19, 20 and 27 of the YPs and Principles 30, 31 and 37 of the YPs +10.

6.5 We request that the Court set forward strong statements that:

6.5.1 In circumstances involving human rights defenders the obligations under the Convention be read in light of the Declaration; and

6.5.2 In circumstances involving human rights defenders working to promote and protect the rights of LGBTI people, the obligations under the Convention be read in light of the Declaration, the YPs and the YPs +10.

6.6 In addition to the recommendations made by the Inter-American Commission on Human Rights for reparations and other relief in this case,<sup>94</sup> we further request that the Court recommend that Honduras:

6.6.1 Enact and implement laws and policies that enable human rights defenders to carry out their work and ensure human rights defenders and LGBTI people are protected and not discriminated against;

6.6.2 Enact, implement and strengthen laws and policies to ensure authorities conduct prompt, competent and impartial investigations regarding a violation of human rights, including where such a violation is on the grounds of SOGI; and

6.6.3 Take additional steps and implement special measures to protect human rights defenders and LGBTI people and enable them to fully exercise their rights under the Convention, as informed by the Declaration, the YPs and the YPs +10.

We appreciate the consideration of the amicus curiae and hope that our intervention will be useful in the adoption of the decision submitted for the consideration of this Honorable Inter-American Court of Human Rights, in accordance with Rule 44 of its Rules of Procedure.

Sincerely,



Theresa McEvoy  
Legal Counsel and Programme Manager

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<sup>94</sup> IACHR, Report No. 157/18, Case 13.051, Merits, Vicky Hernández and Family Honduras, December 7, 2018, p 24.