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REPARATIONS FOR THE VIOLATION THE RIGHT TO FREEDOM OF EXPRESSION IN THE INTER-AMERICAN SYSTEM ON HUMAN RIGHTS

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American Convention:	American Convention on Human Rights
IACHR:	Inter-American Commission on Human Rights
Inter-American Court:	Inter-American Court of Human Rights
OAS:	Organization of American States
Office of the Special Rapporteur:	Office of the Special Rapporteur for Freedom of Expression

REPARATIONS FOR THE VIOLATION THE RIGHT TO FREEDOM OF EXPRESSION IN THE INTER-AMERICAN SYSTEM ON HUMAN RIGHTS

A. Introduction

1. A recurring question when a human rights violation or an undue restriction of a freedom that should be guaranteed by the State takes place is how to provide an effective administrative or judicial remedy in each specific case, not only in the sense of guaranteeing access to a fair procedure, but also with regard to the specific content that the judicial or administrative order must establish to restore the situation to the way it was prior to the violation or undue restriction. The difficulty of this situation is particularly acute when human rights are at issue. The question of to what point it is possible to redress human rights violations has been the subject of multiple academic and political discussion.

2. The doctrine of reparations in the field of human rights has enriched the discipline of international human rights law and provided tangible solutions for guaranteeing effective justice to specific victims of violations. In this context, the developing judicial practice of creating and strengthening standards on human rights reparations has been one of the most significant modern contributions of this branch of law, and Inter-American case law has played a fundamental role in energizing it.

3. This trend in the case law has also been reflected in matters of the violation of or undue restrictions on the rights established in Article 13 of the American Convention. Inter-American case law has made significant contributions with regard to ways of approaching the difficulty of how to redress a situation which, given the involvement of the right to freedom of expression and information, has the potential to affect not only the direct victim but also society as a whole. In addition, sensitive questions such as the lost opportunity to obtain or distribute information require specific solutions when considering full reparation of violations or restrictions.

4. This report seeks to carry out a systematic analysis of Inter-American rulings on freedom of expression, particularly of the orders for reparation issued as of October 2011 in cases which have involved violations or illegitimate restrictions of the freedom established in Article 13 of the Convention. With this purpose, the report is divided into three main parts. The first part will briefly review the right to holistic reparation under the standards established in inter-American doctrine and case law. The second part will address the cases that are the subject of this study, highlighting the significance of the damage and the measures that have been ordered by the Inter-American Court based on it. The third part presents a global review of the case law from the perspective of the five components of reparations that are recognized internationally: restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition.

B. The right to reparation in inter-American human rights law

5. The concept of reparation has been developed at length in public international law,² to the point of becoming a basic principle of international human rights law³ and international humanitarian law.⁴ Under the classic logic of international law, States are obligated to provide reparations for acts that are attributable to them that constitute violations of their international obligations.⁵ Consequently, the States responsible cannot invoke domestic legal provisions to justify a failure to comply with their obligation to provide reparations.

6. In keeping with international human rights law, the right to reparation has two dimensions: a substantive one and a procedural one. The substantive dimension is oriented toward providing holistic reparations for the damage caused, both pecuniary and non-pecuniary. The procedural dimension provides for the means for guaranteeing this substantive reparation and is included in the obligation to provide “effective domestic remedies,” an obligation that is set forth explicitly in the majority of human rights instruments.⁶ In this sense, the United Nations Human Rights Committee has indicated that the State obligation to grant reparations to those individuals whose rights recognized in the Covenant have been violated is a component of effective domestic remedies. According to the Committee, “Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy [...] is not discharged.”⁷

7. In a similar manner, the Inter-American Court of Human Rights has reiterated that reparations are “measures that tend to make the effects of the violation and the pecuniary and non-pecuniary damage caused disappear” and that therefore, the reparations “must bear relation to the violations.”⁸ Likewise, on finding that situations exist in which it is not possible to order the “reestablishment of the situation prior” to the violation, the Court

² For decades, the International Court of Justice has highlighted this principle in its case law. See for example: Permanent Court of Arbitration. *Chorzow Factory Case (Ger. V. Pol.)* (1928) P.C.I.J. Sr. A. No.17, at P. 47 (September 13); International Court of Justice: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. U.S.)*, Merits 1986 ICJ Report. P.149 (June 27). More recent rulings reaffirming this principle include: ICJ. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion. July 9, 2004. A/ES-10/273. P. 198.

³ This principle can be found set forth in multiple human rights instruments. They include: the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment (art. 14) and the Convention on the Rights of the Child (art. 39).

⁴ In particular, the Hague Convention on the laws and customs of war on land (art. 3), the additional protocol to the Geneva conventions on the protection of victims of international armed conflicts (art. 91) and the Rome Statute of the International Criminal Court (art. 75).

⁵ The Draft of Articles on State Responsibility for Internationally Wrongful Acts, approved by the International Law Commission in 2001 establishes: “1. Every internationally wrongful act of a State entails the international responsibility of that State.” Draft Articles on Responsibility of States for Internationally Wrongful Acts. Arts. 28–41. In Report of the International Law Commission on the Work of Its Fifty-third Session. UN GAOR. 56th Sess. Supp. No. 10, at 43. UN Doc.A/56/10 (2001).

⁶ For a complete study on this obligation see: Dinah Shelton. *Remedies in International Human Rights Law*. Oxford University Press. Second Edition. 2005.

⁷ Human Rights Committee. General Comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant.

⁸ I/A Court H.R. *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153. Para. 143.

“has found it necessary to grant various reparatory measures toward redressing the damages fully, for which reason in addition to pecuniary compensation, the measures of restitution, satisfaction and guarantees of non-repetition are especially relevant to the damage caused.”⁹

8. Additionally, both international human rights instruments and the rulings and case law of different international human rights protection bodies have understood that full and adequate satisfaction of the right to full reparations must guarantee that the reparation will be proportional to the violation suffered, its seriousness, and the damage caused. In this sense, both the international human rights instruments and the rulings of different international human rights protection bodies make reference to the obligation to guarantee proportional, adequate and just reparations.¹⁰

9. The restitution of the victim to the situation that prevailed before the human rights violation took place¹¹ - or *restitutio in integrum*, as tribunals call it - include the different ways that a State can address the international responsibility in which it has incurred. Currently, there is international consensus that for methodological purposes establishes that the different measures of reparation that victims of violations can access can be placed in five different categories: restitution, compensation, satisfaction, rehabilitation and non-repetition guarantees. These categories are somewhat flexible, and measures of reparation can sometimes fall into more than one category.

10. Measures of restitution imply the reestablishment, as far as possible, of the situation that prevailed before the violation took place. The Inter-American Court has established that restitution can include measures such as: a) the reestablishment of the freedom of persons illegally detained; b) the returning of property illegally confiscated; c) the return to the place of residence from which the victim was displaced; d) reinstatement in a job; e) the annulment of court, administrative, criminal or police records and the elimination of the corresponding restitution; and f) the return, demarcation and granting of title for the traditional territory of indigenous communities for the protection of communal property.¹²

11. When restitution is impossible, insufficient or inadequate, measures of compensation seek to provide redress to victims for the physical and moral damages suffered, as well as for the loss of income and opportunities, pecuniary damages (indirect damages and loss of future earnings), attacks on reputation, expenses incurred, and the costs of legal counsel and medical care. The indemnity can be monetary or in kind. In-kind compensation requires that a physical piece of property with the same characteristics and the same conditions as the one of which the victims were deprived be turned over.

⁹ I/A Court H.R. *Case of Chocrón-Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of July 1, 2011. Series C No. 227. Para. 145.

¹⁰ For example, the “Basic Principles and Guidelines of the UN 2006” established that the reparation should be proportional to the seriousness of the violation and the damages suffered (principle 15), that the victims must receive full and effective reparations (principle 18) and that the reparations must give priority to restitution, indicating that it must, where possible, restore the victim to the situation that prevailed before the serious violation of international human rights law took place (principle 19). UN. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Economic and Social Council. A/RES/60/147. March 21, 2006. Principle 20.

¹¹ Some scholars and tribunals have held that restitution should place the victim in the position she or he would have been in had the violation not taken place.

¹² I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 10 and 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

Monetary compensation, must be granted in a form that is appropriate and proportional to the seriousness of the violation and the circumstances of each case for all quantifiable economic damages resulting from violations.¹³ Likewise, the Court has developed the concept of pecuniary¹⁴ and non-pecuniary¹⁵ damages and the situations in which compensation must be provided for them.

12. The purpose of measures of rehabilitation, a concept which is linked to measures of restitution, is to reduce the physical and psychological suffering of the victims through measures designed to provide medical, psychological and psychiatric care in order to allow for the reestablishment of victims' dignity and reputations. The measures also include any legal and social services that the victims might need. In order to comply with these objectives, care must be provided to the victims free of charge and immediately, including the provision of medications.¹⁶

13. Measures of satisfaction are non-monetary measures aimed redressing moral damages (suffering and afflictions caused by the violation, such as tampering with individual core values and changes of a non-pecuniary nature in the living conditions of the victims). They may also include acts or projects with public scope or impact, such as the broadcasting of an official message expressing disapproval of the human rights violations at issue in order to restore the memory of the victims, recognize their dignity and comfort their next of kin.¹⁷

14. Also included in measures of satisfaction - insofar as the purpose is to publicly recognize damage suffered by the victims in order to restore their dignity - are measures to investigate and bring to trial the perpetrators of grave human rights violations; the discovery and publicizing of the truth; the search for the disappeared; the locating of the remains of the dead and the turning over of the remains to relatives; public State recognition of its responsibility along with public apologies and official testimonies; the holding of events to pay tribute to and commemorate the victims; the placement of plaques and/or

¹³ UN. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Economic and Social Council. A/RES/60/147. March 21, 2006. Principle 20.

¹⁴ The Court has established that pecuniary damage involves "a loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in the case." I/A Court H.R. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91. Para. 43; *Case of the "Las Dos Erres" Massacre v. Guatemala*. Judgment of November 24, 2009. Series C No. 211. Para. 275; *Case of Radilla Pacheco v. Mexico*. Judgment of November 23, 2009. Series C No. 209. Para. 360.

¹⁵ For the Court, non-pecuniary damage "may include distress and suffering caused directly to the victims or their relatives, tampering with individual core values, and changes of a non-pecuniary nature in the living conditions of the victims or their families." I/A Court H.R. *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77. Para. 84; *Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211. Para. 275; *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209. Para. 371.

¹⁶ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

¹⁷ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

monuments; and acts of apology in the memory of the victims.¹⁸ Many of these measures also serve as guarantees of non-repetition, as explained below.

15. The guarantees of non-repetition, which refer to suitable administrative, legislative or judicial measures intended to correct the conditions that allowed the victims to be affected. These measures are public in scope or impact and in many cases remedy structural problems, thus benefiting not only the victims in the case but also other members of society and groups.¹⁹ In this sense, guarantees of non-repetition may, according to their nature and purpose, consist of: a) training public officials and educating society on human rights; b) adoption of domestic legal measures; c) adoption of measures to guarantee that the violations will not be repeated, including the investigation, prosecution and punishment of those responsible.

C. Damages and reparations arising specifically from to Article 13 of the American Convention

16. As of the date of the presentation of this report, the Inter-American Court has ruled in 13 cases on violations of freedom of expression due to prior censorship, the application of criminal law, indirect restrictions on freedom of expression, acts of violence, and limitations on access information.²⁰ A summary of each of these rulings follows, including the main factual elements, the precautionary or provisional measures granted in order to prevent irreparable harm, the central arguments of the Court, the reparatory measures adopted, and the status of compliance with the ruling according to the decisions issued in this regard by the Inter-American Court.

1. Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile

17. The Inter-American Court ruled in this case of prior censorship imposed by Chilean court authorities on the showing of the movie the *Last Temptation of Christ*. The imposition of prior censorship was adopted at the request of a group of citizens that filed for a remedy of protection “for and in the name of [...] Jesus Christ, the Catholic Church, and themselves.”²¹ In response to the petition, the Chilean court authorities reversed the decision through which the Film Ratings Council had authorized showing the movie to viewers over the age of 18²².

18. The Inter-American Court concluded that in prohibiting the film, the Chilean State had committed an act of prior censorship not compatible with Article 13 of the American Convention. The Tribunal highlighted that the State’s international responsibility for the violation of freedom of thought and expression was derived in this case from the

¹⁸ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

¹⁹ I/A Court H.R. *Annual Report of the Inter-American Court of Human Rights, 2010*. OAS. San Jose, Costa Rica. Page 11. Available at: http://www.corteidh.or.cr/docs/informes/2010_esp.pdf

²⁰ This report does not analyze the judgment in the case of *Fontvecchia and D’Amico v. Argentina*, as it was issued after the report went to press. See I/A Court H.R. *Case of Fontvecchia and D’Amico v. Argentina. Merits, Reparations and Costs*. Judgment of November 29, 2011. Series C No. 238.

²¹ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 71.

²² I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 71.

existence of an article in the 1980 Chilean Constitution (in force at the time of the facts) setting forth a system of prior censorship on the showing and publicizing of film productions²³. In keeping with this, the Court also ruled that by maintaining film censorship as part of the legal system, the Chilean State was failing to comply with its duty to adapt domestic law to the Convention in order to make the rights set forth therein effective, as established in articles 2 and 1(1) of the Convention²⁴.

19. By virtue of these declarations, the Inter-American Court ruled that the Chilean State must “modify its legal system in order to eliminate prior censorship and allow the cinematographic exhibition and publicity of the film ‘The Last Temptation of Christ.’” According to the Court, this decision is based on the fact that the State is obliged “to respect the right to freedom of expression and to guarantee its free and full exercise to all persons subject to its jurisdiction.”²⁵ Additionally, it ordered the payment of a sum of money for the expenses incurred by the victims.

20. In compliance with the Court's ruling, the Chilean congress passed a constitutional reform enshrining the right to free artistic creation and replaced film censorship with a rating system regulated by law. Likewise, the movie *The Last Temptation of Christ* was re-rated so that it could be shown to members of the public above the age of 18. In response to the adoption of these measures, through an order dated November 28, 2003,²⁶ the Inter-American Court ruled the case closed and ordered the case file closed upon confirming that the State of Chile had fully complied with the judgment.

2. Case of Ivcher Bronstein v. Peru

21. The Inter-American Court ruled on this case in response to a complaint filed by the Inter-American Commission on Human Rights (IACHR) against the Republic of Peru for indirect restrictions on freedom of expression. The victim was a naturalized Peruvian citizen and the majority shareholder, director and president of a television channel. This media outlet was broadcasting a journalistic program critical of the Peruvian government. The program had done a series of reports on abuse, torture and acts of corruption committed by the National Intelligence Service. Following the broadcast of these reports, the petitioner was subjected to several acts of intimidation at the hands of the Army and the Executive Branch, to the point that through a manifestly arbitrary proceeding, the Director of Police nullified the petitioner's Peruvian nationality. As a consequence, a judicial authority suspended the exercise of his rights as majority shareholder of the channel and revoked his nomination as its director. Subsequent to these actions, the journalists with the program in question were blocked from entering the channel and its editorial stance was changed.²⁷

²³ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 72.

²⁴ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 88.

²⁵ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 97.

²⁶ I/A Court H.R. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile. Monitoring Compliance with Judgment.* Resolution of November 28, 2003.

²⁷ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74. Para.76.

22. On February 5, 1998, the Office of the Provincial Criminal Prosecutor Specialized in Tax and Customs Violations filed a complaint against Mr. Ivcher. On that same day, the Criminal Court Specialized Tax and Customs Violations issued an arrest warrant and opened the proceeding against Mr. Ivcher.²⁸ On March 6, 1998, the Commission granted precautionary measures to his benefit under the presumption that the opening of the criminal proceeding and the arrest warrant were directly related with the case on the violation of freedom of expression and "requested that, while Mr. Ivcher's case is pending the decision of the Commission, the State refrain from taking or executing any action or measure that would worsen his situation, including ordering his capture by Interpol."²⁹ Later, on December 9 of the same year, the Commission asked the Peruvian State to adopt precautionary measures to the benefit of the wife and daughter of Mr. Ivcher, specifically asking the State to drop the warrants issued for the arrest of the beneficiaries. In both cases, the Commission understood that the execution of the arrest warrants would constitute irreparable harm to the beneficiaries.³⁰

23. In its decision, the Inter-American Court found, *inter alia*, that the resolution nullifying the nationality of the petitioner constituted an indirect measure of restriction of his freedom of expression, as well as of the journalists' right to work on the program in question. Likewise, it found that on removing control of the media outlet from the petitioner, "the State not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society."³¹

24. Based on this, the Tribunal ruled that the Peruvian state had violated the right to freedom of expression of the petitioner and failed to comply with the general obligation to protect rights, set forth in Article 1(1) of the Convention. As a measure of reparation regarding these points, the Court ordered that the State guarantee the petitioners' right to "seek, investigate and disseminate information and ideas"³² through the television channel in question. It also ordered the payment of an indemnity for the moral damage suffered by the petitioner as a result of the acts of harassment against him. It ordered that the facts leading to the violations of the Convention be investigated in order to identify and punish those responsible. Finally, it granted the payment of costs and expenses to the benefit of the victim.

25. The Court declined to rule on certain request for reparations brought by the IACHR on finding that they lacked grounds because the State had already satisfied them. Specifically, the Tribunal noted that attending to the recommendations made by the IACHR, the State had restored the petitioner's Peruvian nationality³³. With regard to the adoption of

²⁸ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Footnote 67.

²⁹ IACHR. *Annual Report 1998*. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Chapter III. 2.A. Para.48. Available at: <http://www.cidh.org/annualrep/98eng/Table%20of%20Contents.htm>

³⁰ IACHR. *Annual Report 1998*. OEA/Ser.L/V/II.102. Doc. 6 rev. April 16, 1999. Chapter III, 2.A. Para. 51. Available at: <http://cidh.oas.org/annualrep/98span/Indice.htm>

³¹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 163.

³² I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 182.

³³ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 180.

the legislative and administrative measures necessary to prevent the repetition of similar facts in the future, the Court noted that the State had already done so by nullifying the government's decision to not recognize the jurisdiction of the Inter-American Court and expressing its willingness to move forward with a policy of rapprochement and collaboration with the inter-American human rights system, as well as demonstrating its availability to reach a friendly settlement in this specific case³⁴.

26. Through an order dated August 27, 2010,³⁵ the Court found that the State of Peru had partially complied with the reparatory measures given that it still had not investigated the events that led to the violations and identified and punished those responsible. For this reason, the Court continues to supervise this pending point of compliance.

3. Case of Herrera Ulloa v. Costa Rica

27. The IACHR presented an application before the Inter-American Court against the State of Costa Rica for its having established illegitimate and disproportionate restrictions on the right to freedom of expression of a journalist with the newspaper *La Nación*. The journalist was convicted criminally and civilly for having reproduced information published in some European newspapers on the alleged unlawful behavior of a Costa Rican diplomatic official. The ruling to convict found that the journalist was guilty of the crime of defamation through the publishing of offensive material, as he had written and published several articles "mindful of the offensive nature of their content and for the sole purpose of dishonoring and besmirching the reputation of [the official]."³⁶ For punishment, the ruling ordered the payment of a fine and the publication of the operative paragraphs of the ruling in *La Nación*. Likewise, it sentenced the journalist and the newspaper to pay an indemnity for moral damages and the cost of the proceeding. Finally, it ordered *La Nación* to change the content of its digital version by removing the links between the surname of the diplomat and the articles that were the subject of the controversy and to establish new links between those articles and the operative paragraphs of the ruling.³⁷

28. In a request for precautionary measures, the Commission asked the State of Costa Rica to suspend execution of the sentence until the Commission had examined the case, to refrain from taking any action to include the journalist Herrera Ulloa in the Judicial Criminal Registry of Costa Rica and to refrain from taking any action that would affect the right to freedom of expression of the journalist and the newspaper *La Nación*. The IACHR found that the execution of the sentence would empty the decision on the merits of all meaning and cause irreparable damage not only to the right to the freedom of expression of the journalist, the newspaper, their peers and society as a whole, but also the State itself, which would have to use public funds to repay the indemnity that would be paid by the

³⁴ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 185 and footnote 72.

³⁵ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Monitoring Compliance with Judgment*. Order dated August 27, 2010.

³⁶ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 95 t).

³⁷ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 95 u).

alleged victim for the news item at issue in the trial. Later, the Commission requested that the Inter-American Court of Human Rights grant provisional measures.³⁸

29. Upon performing a *prima facie* analysis of the relevant arguments in the criminal conviction in order to resolve the request for precautionary measures and address the pleadings of the parties, the Court found that it was necessary, among other things, to suspend the execution of the criminal aspects of the ruling and ordered the suspension to be maintained until the case was resolved definitively before the inter-American system. In its ruling on provisional measures, the Court made reference to the impossibility of separating freedom of expression from the professional work of journalists and found that taking into account that (i) a journalist's performance depends on his or her credibility, and (ii) the fact that the crime for which the journalist was accused is related to the exercise of his profession, registration in the judicial criminal registry would cause irreparable damage to journalists Herrera Ulloa that would affect his professional work and cause imminent and irreparable harm to his honor.³⁹

30. In its judgment, the Inter-American Court concluded that the sanctions imposed on the journalist constituted an unjust restriction on freedom of expression in the framework of a democratic society, as they had "a deterrent, chilling and inhibiting effect on all those who practice journalism. This, in turn, obstructs public debate on issues of interest to society."⁴⁰

31. As a consequence, the Court found that the State had violated the right to freedom of thought and expression. Based on this, in reparation the State was required to take all judicial, administrative and any other measures necessary to nullify the criminal judgment handed down against the journalist in all its points⁴¹. Additionally, it ordered the payment of a certain amount of money for the reparation of moral damages, as well as for payment of the procedural expenses incurred by the victims⁴².

32. Through an order dated November 22, 2010,⁴³ the Inter-American Court ruled the case closed and ordered the case file closed upon confirming that the State of Costa Rica had nullified the ruling issued against the petitioner along with all its effects, and that it had paid the sums of money due for compensation and expenses.

4. Case of Ricardo Canese v. Paraguay

³⁸ IACHR. Annual Report 2000. OEA/Ser./L/V/II.111, doc. 20 rev. April 16, 2001. Chapter III, C.1. Para. 28. Available at: <http://cidh.oas.org/annualrep/2000sp/indice.htm>; IACHR. Annual Report 2001. OAS/Ser.L/V/II.114, doc. 5 rev. April 16, 2002. Chapter III, C.1. Para. 27. Available at: <http://cidh.oas.org/annualrep/2001sp/indice.htm>

³⁹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Order of the Court. September 7, 2001. Paras. 7-11. Available at: http://corteidh.or.cr/docs/medidas/lanacion_se_04.pdf

⁴⁰ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 133.

⁴¹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

⁴² I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Paras. 200 and 202.

⁴³ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Monitoring Compliance with Judgment*. Judgment of November 22, 2010.

33. In this case, the Inter-American Court studied the situation of Ricardo Canese, a presidential candidate in the 1992 elections in Paraguay. He was criminally charged with defamation as a consequence of statements that he made about his opponent during the course of the campaign. Specifically, the petitioner pointed to a connection that existed between his opponent and the family of former dictator Stroessner. Based on these statements, Canese was convicted in first and second instance and sentenced to prison and the payment of a fine. Likewise, he was permanently prohibited from leaving the country during the entire proceeding, which lasted eight years and close to four months, a prohibition that was only lifted under exceptional circumstances and inconsistently.⁴⁴

34. Finally, once the case was being processed before the Inter-American system, in a judgment dated December 11, 2002, the Supreme Court of Justice of Paraguay annulled the rulings to convict, absolving Canese of criminal liability and its consequences.

35. The Inter-American Court found that the proceeding and the criminal sentence initially handed down against Canese constituted an unnecessary and excessive sanction that limited open debate on subjects in the public interest and restricted the freedom of expression of the affected individual during the rest of the electoral campaign. The Tribunal highlighted that in the context of a presidential election campaign "opinions and criticisms are issued in a more open, intense and dynamic way, according to the principles of democratic pluralism," for which reason in this case, "the judge should have weighed respect for the rights or reputations of others against the value for a democratic society of an open debate on topics of public interest or concern."⁴⁵

36. The Court concluded that the State was responsible, *inter alia*, for the violation of Article 13 of the Convention in connection with Article 1(1). As a measure of reparation, given that the ruling to convict had been revoked and that *restitutio in integrum* was not possible, it was necessary to set economic compensation. Thus the Court ordered the State to pay a sum of money for non-pecuniary damages, as "the criminal proceedings filed against Mr. Canese, the criminal conviction imposed by the competent courts, and the restriction of his right to leave the country during almost eight years and four months affected his professional activities and had an inhibiting effect on his exercise of freedom of expression."⁴⁶ However, the Court refrained from ordering payment for pecuniary damages, given that they were not proven during the proceeding. Likewise, the Court ordered the State to "publish once in the Official Gazette and in another newspaper with national circulation the chapter of this judgment on proven facts, without the corresponding footnotes, and its operative paragraphs"⁴⁷ and noted that the judgment in itself constituted a form of reparation.⁴⁸ Finally, it ordered the reimbursement of the expenses incurred in the

⁴⁴ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 69.

⁴⁵ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 105.

⁴⁶ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 206.

⁴⁷ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 209.

⁴⁸ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 211.

litigation before the Inter-American Court, as domestic courts had assigned costs to the plaintiff.⁴⁹

37. The Inter-American Court viewed positively that the Supreme Court of Justice of Paraguay had annulled the ruling handed down against Mr. Canese⁵⁰. Likewise, it recognized the reforms of criminal law and criminal procedure that, among other measures, lowered the penalties for the crime of defamation and established fines as an alternative to prison time⁵¹. In light of this, the Court refrained from ordering measures of reparation intended to nullify the ruling or adjust the domestic legal system to the Convention.

38. Through an order dated August 6, 2008, the Court ruled the case closed and ordered the case file closed upon confirming that the State of Paraguay had fully complied with the measures of reparation ordered in the judgment handed down on August 31, 2004.⁵²

5. Case of Palamara Iribarne v. Chile

39. The Inter-American Court ruled in this case on the situation of a civilian official of the Chilean Armed Forces who was charged with and convicted for the crimes of disobedience and failure to comply with military duties and *desacato*. The official was sentenced to serve time in a military prison, pay a fine and be suspended from duties for having tried to publish the book "Ethics and Intelligence Services" without authorization from his military superiors, as well as for having given statements to the media that were critical of the actions taken by the military criminal justice system in his case. Both before and during the criminal proceeding, the military authorities took various measures to prevent the publication and distribution of the aforementioned book.⁵³

40. The Inter-American Court found that the State committed acts of prior censorship and submitted the petitioner to subsequent liability not compatible with Article 13 of the Convention. Regarding the censorship, it concluded that "the control measures adopted by the State to prevent the distribution of the book "Ética y Servicios de Inteligencia" ("Ethics and Intelligence Services") by Mr. Palamara-Iribarne constituted acts of prior censorship that are incompatible with the parameters set by the Convention inasmuch as there was no element that, pursuant to said treaty, would call for the restriction of the right to freely publish his work."⁵⁴ With regard to subsequent liability, it indicated that "the contempt laws applied to Palamara-Iribarne established sanctions that were disproportionate to the criticism leveled at government institutions and their members, thus suppressing

⁴⁹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 214.

⁵⁰ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Paras. 199 and 200.

⁵¹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 210.

⁵² I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Monitoring Compliance with Judgment*. Order of August 6, 2008.

⁵³ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 63.

⁵⁴ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 78.

debate, which is essential for the functioning of a truly democratic system, and unnecessarily restricting the right to freedom of thought and expression.”⁵⁵

41. Based on this, the Inter-American Court ordered the State to pay a compensation for the pecuniary and non-pecuniary damages suffered by Mr. Palamara, as well as to pay his costs and expenses⁵⁶. Likewise, it ordered that the necessary measures be taken to nullify the criminal and military proceedings and the rulings handed down against the petitioner⁵⁷, and that the publication of the book be permitted, with the copies of the book and material that were confiscated returned⁵⁸. The Court also ordered the State to publish once in the Official Newspaper and in another newspaper with national circulation the chapter of the judgment on proven facts and the judgment’s operative paragraphs. It also ordered that the full judgment be published on a government website⁵⁹. Finally, it established that the State must “adopt such measures as may be required to repeal and modify whatever legal provisions may be incompatible with the international standards on freedom of thought and expression, in a manner such that all persons are allowed to exercise democratic control over all State institutions and officials, through the free expression of their ideas and opinions on their performance in office without fearing future retaliation.”⁶⁰ The Court also ordered the State “to set limits on the subject-matter and personal jurisdiction of military courts such that under no circumstance may a civilian be subjected to the jurisdiction of military courts.”⁶¹

42. Through an order dated July 1, 2011, the Court declared that it would keep the monitoring procedure open until the State had complied with the pending points in the case of *Palamara Iribarne v. Chile* regarding: a) adopting the measures necessary to reform domestic law on freedom of thought and expression; b) adjusting the domestic legal system such that should the existence of criminal military jurisdiction be considered necessary, it would be limited to hearing cases on operational crimes committed by soldiers on active duty; and c) guaranteeing due process in the criminal military jurisdiction and judicial protection with regard to the actions of military authorities.⁶²

6. Case of Claude Reyes et al v. Chile

43. In this case, the Inter-American Court weighed a claim submitted by Marcelo Claude Reyes, Sebastián Cox Urrejola and Arturo Longton against the State of Chile for

⁵⁵ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 88.

⁵⁶ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 239, 243 and 248.

⁵⁷ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 253.

⁵⁸ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 250.

⁵⁹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 252.

⁶⁰ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 254.

⁶¹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 256.

⁶² I/A Court H.R. *Case of Palamara Iribarne v. Chile. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 1, 2011.

having denied them access to information they requested on a deforestation project that was to be carried out in Chile by a foreign company. The victims requested information from the Foreign Investment Committee (CIE in its Spanish Acronym) of the Chilean State on a project by the company Trillium that could have an environmental impact. The CIE's response to the request for information filed by Reyes, Cox and Longton was late and incomplete.⁶³

44. The Inter-American Court found that the information that was not turned over by the State was in the public interest⁶⁴. In addition, the Inter-American Court found that the request for information was related to the verification of proper actions and performance of duties of a State agency⁶⁵. The Court found that the restriction applied to the victims' right to access to information was not based on a law⁶⁶; was not part of a legitimate objective allowed by the American Convention; nor was it necessary in a democratic society, as the authority in charge of responding to the request did not issue a written decision providing the reasons for which access to all the information requested was not permitted⁶⁷.

45. The Court concluded that the State had violated the right to freedom of thought and expression set forth in Article 13 of the Convention and had failed to comply with the general obligation to respect and guarantee rights and freedoms as set forth in Article 1(1) of the Convention. Likewise, on having failed to take those measures that were necessary and compatible with the Convention for making the right to access to information under State control effective, the Court concluded that Chile failed to comply with the general obligation to adopt domestic legal provisions as set forth in Article 2 of the Convention.⁶⁸

46. As measures of reparation, the Court ordered the State to pay costs and expenses⁶⁹ and that it must "provide the information requested by the victims, if appropriate, or adopt a justified decision in this regard;"⁷⁰ to publish the chapter on proven facts and the operative paragraphs of the judgment in the official newspaper and another newspaper with broad circulation⁷¹; to adopt "the necessary measures to guarantee the protection of the right of access to State-held information, and these should include a guarantee of the effectiveness of an appropriate administrative procedure for processing and

⁶³ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 57.

⁶⁴ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 73.

⁶⁵ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 73.

⁶⁶ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 94.

⁶⁷ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 95.

⁶⁸ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para.174.1.

⁶⁹ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 167.

⁷⁰ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 158.

⁷¹ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 160.

deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials;⁷² and to train State officials in charge of responding to requests for access to information on the inter-American rules and standards that govern this right⁷³.

47. Through an order dated November 24, 2008, the Inter-American Court ruled the case closed on finding that the State had fully complied with the judgment.⁷⁴

7. Case of *Kimel v. Argentina*

48. In this case, the Inter-American Court examined the situation of Argentine journalist and writer Eduardo Kimel, who was convicted of the crime of slander and given a suspended sentence of one year in prison and the payment of an indemnization. The conviction came after the publication of a book written by the journalist in which he harshly criticized the actions of a judge in the investigation of several homicides committed during the military dictatorship.⁷⁵

49. The Inter-American Court concluded that the Argentine State violated Article 13 of the American Convention in having unnecessarily and disproportionately used its punitive power on Kimel.⁷⁶ According to the Court, given that the journalist's criticism made reference to the actions of a judge in the exercise of his duties in a subject of obvious public interest, the State should have shown greater tolerance towards the assertions he made, as they formed part of democratic oversight through public opinion.⁷⁷ It also highlighted that in the debate over matters of public interest, the Convention protects both expression that is inoffensive and well-received as well as public opinions that "shock, irritate or disturb public officials or any sector of society."⁷⁸

50. In light of this, the Inter-American Court ordered the State to pay a sum of money for the pecuniary and non-pecuniary damages suffered by the petitioner,⁷⁹ as well as to pay his costs and expenses.⁸⁰ Likewise, it ordered the State to nullify the criminal ruling

⁷² I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 163.

⁷³ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 165.

⁷⁴ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Monitoring Compliance with Judgment*. Order of November 24, 2008.

⁷⁵ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 41 *et seq.*

⁷⁶ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 80, 94-95.

⁷⁷ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 88-89.

⁷⁸ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 88.

⁷⁹ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Paras. 110, 119.

⁸⁰ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 133.

handed down against Mr. Kimel, to eliminate his name from the criminal records registry,⁸¹ and to publish the chapter on proven facts and the operative paragraphs of the judgment in the official newspaper and in another media outlet with broad circulation.⁸² It additionally ordered the domestic legal system to be adjusted to correct the lack of precision in criminal proceedings with regard to slander and defamation such that freedom of expression is not affected.⁸³ Finally, for the first time in a case of this nature, it ordered the State to carry out a public act of recognition of responsibility.⁸⁴

51. Through an order dated May 18, 2010, the Inter-American Court ruled that the State had complied with its obligations to make payments, eliminate Mr. Kimel's name from the registry of criminal offenders, publish certain parts of the judgment, and adjust domestic law.⁸⁵ Later, through an order dated November 15, 2010, the Court found that the State had complied with the obligation to carry out a public act of recognition of its responsibility, but ruled to keep the monitoring proceeding open until the obligation to nullify Mr. Kimel's criminal conviction had been fulfilled.⁸⁶

8. Case of *Tristán Donoso v. Panama*

52. In this case, the Inter-American Court addressed the situation of attorney Tristán Donoso, who was sentenced to 18 months in prison and the payment of an indemnity for the crime of slander over accusations he made against the Attorney General of the Nation during a press conference in which he stated that the official had illegally intercepted and made use of his private communications. The day after this press conference, Mr. Tristán Donoso filed a criminal complaint against the official in question for the alleged crime of abuse of authority and infraction of the duties of public servants, charges of which he was in the end acquitted. Simultaneously, the Attorney General accused Mr. Tristán Donoso of defamation and slander for having accused him of taping, recording and publicizing his telephone calls. The first instance acquitted Mr. Tristán Donoso. However, that ruling was overturned on appeal and he was sentenced to pay a sum of money, with delinquency converting it into an 18 month prison sentence. Mr. Donoso's failure to pay resulted in a warrant for his arrest.⁸⁷

53. Given this situation, the Commission decided to grant precautionary measures to the benefit of Mr. Tristán Donoso. For these measures, it "asked the Panamanian State to suspend execution of the sentence (the arrest) until the Inter-American Commission could conclude its examination of the case and adopt the corresponding report

⁸¹ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123.

⁸² I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 125.

⁸³ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 128.

⁸⁴ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 126.

⁸⁵ I/A Court H.R. *Case of Kimel v. Argentina. Monitoring Compliance with Judgment*. Order of May 18, 2010.

⁸⁶ I/A Court H.R. *Case of Kimel v. Argentina. Monitoring Compliance with Judgment*. Order of November 15, 2010.

⁸⁷ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 95 *et seq.*

on merits, in accordance with the precedent set by the Inter-American Court in the 'La Nación' case, in which an order was issued requiring that execution of a judicial sentence be suspended."⁸⁸

54. In its ruling, the Inter-American Court found that the criminal punishment imposed on Mr. Tristán Donoso was manifestly unnecessary and therefore constituted a violation of the right to freedom of thought and expression set forth in Article 13 of the Convention.⁸⁹ First, the Tribunal took into account that the statements for which Tristán Donoso was found guilty were in reference to "a person who held one of the highest public offices in his country, [the Attorney General of the Nation]."⁹⁰ Likewise, it noted that the statements were in reference to a subject in the public interest: the interception of private communication, a subject which at that time was being widely debated in Panama.⁹¹ Finally, the Inter-American Court found that, given the evidence held by the attorney at the moment of making the comments in question, "it was not possible to sustain that his expression was groundless and, consequently, that the criminal remedy was a necessary action."⁹² All this occurred in spite of the fact that Tristán Donoso effectively accused the Attorney General of the Nation of the commission of a crime of which he was later acquitted in court.

55. Pursuant to all of this, the Court ordered the State of Panama to pay a sum of money for the non-pecuniary damages suffered by Mr. Tristán Donoso.⁹³ In establishing this reparatory measure, the Tribunal especially took into account that "the private life of Mr. Tristán Donoso was invaded and that he was discredited as a professional, firstly before two important audiences: the authorities of the Colegio Nacional de Abogados [National Bar Association] and the Catholic Church, to which he provided legal counsel; and then before society, due to the criminal conviction entered against him."⁹⁴ The Tribunal refrained from ordering payment for pecuniary damages, given that they were not proven during the proceeding.⁹⁵ Likewise, it ordered the State to nullify the criminal ruling handed down against the petitioner along with all its effects⁹⁶ and ordered the publication of several parts of the judgment in the official newspaper and in another media outlet with broad circulation.⁹⁷ Finally, the Tribunal ordered the State to pay his costs and expenses.⁹⁸

⁸⁸ IACHR. 2005 Annual Report. OEA/Ser.L/V/II.124.Doc.5. February 27, 2006. Ch. III.C.1. Para. 36. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>

⁸⁹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 130.

⁹⁰ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 122.

⁹¹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 121.

⁹² I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 126.

⁹³ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 191.

⁹⁴ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 190.

⁹⁵ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 184.

⁹⁶ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 195.

⁹⁷ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 197.

56. However, the Court declined in this case to order several of the reparatory measures requested. Thus, the Tribunal did not order adjustments to domestic laws due to the fact that the State of Panama had already implemented reforms excluding criminal punishment for crimes of slander and defamation when the offended parties are certain public servants⁹⁹. Likewise, it declined to order a public act of recognition be carried out or to order the training of court officials on standards for the protection of the right to honor and freedom of expression in matters in the public interest, as it found that they would be unnecessary in light of the other reparatory measures adopted.¹⁰⁰

57. With regard to the measures of reparation ordered, through an order dated September 1, 2010, the Inter-American Court ruled the case closed and ordered the case file closed on finding that the State had fully complied with the judgment.¹⁰¹

9. Case of Ríos et al. v. Venezuela

58. In this case, the Court addressed the violation of the right to freedom of expression of some journalists with the television channel RCTV. They had been subjected to actions against their physical integrity and different kinds of harassment from private parties while performing their journalistic work. The actions took place in the context of extreme political polarization in which senior State officials made various statements connecting the owners and directors of that television channel with plans for political destabilization and terrorist activities.¹⁰²

59. The Inter-American Court found, *inter alia*, that the Venezuelan State was responsible for failing to comply with its obligations as set forth in Article 1(1) and 13 of the Convention to ensure the exercise of the freedom to seek, find and distribute information. The Tribunal observed that the acts of violence and harassment committed by private individuals against the RCTV journalists limited or eliminated their abilities seek out and receive information.¹⁰³ According to the Tribunal, in light of this situation, the statements of State officials with regard to the television channel were not compatible with the obligation to ensure the rights recognized in Article 13 (1) of the Convention, as they “contributed to emphasize or exacerbate situations of hostility, intolerance or animosity by sectors of the population towards the people linked to that [television channel]”¹⁰⁴ such that the State,

⁹⁸ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 216.

⁹⁹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 209.

¹⁰⁰ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 211.

¹⁰¹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment*. Order of September 1, 2010.

¹⁰² I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 112 *et seq.*

¹⁰³ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 333-34.

¹⁰⁴ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 148.

instead of complying with its obligation to prevent the facts affecting journalists, placed them in a situation of greater vulnerability.¹⁰⁵

60. As a reparatory measure, the Court ordered the State to “effectively carry out the investigations and criminal proceedings in process and those opened in the future to determine the corresponding responsibilities for the facts of this case and apply the consequences established by law.”¹⁰⁶ Likewise, it ordered that several sections of the judgment be published - including the operative paragraphs - in the official newspaper and in another newspaper with broad national circulation.¹⁰⁷ It also ordered the State to adopt “the measures necessary to avoid illegal restrictions and direct or indirect hindrances on the exercise of the freedom to seek, receive, and impart information of the alleged victims.”¹⁰⁸ Finally, the State was ordered to pay costs and expenses.¹⁰⁹

61. As of this report’s publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

10. Case of Perozo et al. v. Venezuela

62. In this judgment, the Court addressed a situation similar to the one found in the case of *Ríos et al. v. Venezuela*, this time with regard to journalists connected to television channel *Globovisión*. The victims in this case were also subjected to acts of violence and harassment preventing them from carrying out their journalistic work. Likewise, senior State officials issued statements about the channels owners and managers, which exacerbated the situation of vulnerability facing the journalists who were victims of the attacks.¹¹⁰

63. For reasons identical to the one set forth in the *Case of Ríos et al. v. Venezuela*, the Inter-American Court found, *inter alia*, that the Venezuelan State was responsible for failing to comply with its obligations as set forth in Article 1(1) and 13 of the Convention to ensure the exercise of the freedom to seek, find and distribute information.¹¹¹ Based on this, it ordered the same reparatory measures established in the prior case, this time with regard to the journalists with channel *Globovisión* who were victims in this case.¹¹²

¹⁰⁵ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Paras. 149 and 332.

¹⁰⁶ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 404.

¹⁰⁷ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 405.

¹⁰⁸ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 406.

¹⁰⁹ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 409.

¹¹⁰ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Paras.123 *et seq.*

¹¹¹ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 362.

¹¹² I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Paras. 413-16, 419.

64. As of this report's publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

11. Case of Usón Ramírez et al. v. Venezuela

65. In this ruling, the Court addressed the situation of Mr. Usón Ramírez, a retired soldier who was convicted for the crime of "slander against the national Armed Forces" for having given an opinion during a television program on that institution's actions in the so-called case of "Fort Mara." Specifically, the petitioner was sentenced to five years and six months in prison for having supported a theory according to which the serious burns suffered by a group of soldiers during the fire in Fort Mara holding cell could have been caused by the premeditated use of a flamethrower.¹¹³

66. The Inter-American Court found that the criminal provision of the Organic Code of Military Justice that was applied in this case - which punishes one who "slanders, offends, or disparages National Armed Forces or one of its entities" - did not comply with the requirements of the principle of strict legality which must be observed when restricting the freedom of expression criminally.¹¹⁴ Likewise, the Court found that the criminal punishment imposed on Mr. Usón Ramírez was not suitable, necessary and proportional in that the statements he made were specially protected because they made reference to State entities in the context of a subject of obvious public interest.¹¹⁵ The Inter-American Court ruled, *inter alia*, that the State violated the principle of legality and the right to freedom of thought and expression recognized in articles 9, 13(1), and 13(2) of the American Convention, with relation to articles 1(1) and 2 of the Convention¹¹⁶.

67. Based on this, the Inter-American Court ordered the State to adopt the measures necessary to nullify the military criminal proceeding carried out against the petitioner.¹¹⁷ Likewise, it ordered the State to establish within a reasonable period of time "limits to the competence of the military jurisdiction so that the provisions pertain only to active military members or those performing military functions¹¹⁸ and "to repeal all domestic legislation that is not in conformance with said Court jurisprudence."¹¹⁹ Additionally, the Court ordered the State to reform Article 505 of the Military Code of Justice codifying defamation against the National Armed Forces, as it did not specifically lay out the conduct considered to be criminal.¹²⁰ In addition, it ordered the publication of several parts of the

¹¹³ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paras. 36 *et seq.*

¹¹⁴ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paras. 56-58.

¹¹⁵ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paras. 68, 75, 84 and 87.

¹¹⁶ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 199.2.

¹¹⁷ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹¹⁸ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 172.

¹¹⁹ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 172.

¹²⁰ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 173.

judgment, including the operative paragraphs.¹²¹ Finally, it ordered the State to pay an indemnity to the victim for pecuniary and non-pecuniary damages, as well as to pay the costs and expenses of the proceeding.¹²²

68. As of this report's publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

12. Case of Manuel Cepeda Vargas v. Colombia

69. In this case the Court addressed Colombian State responsibility for the politically motivated extrajudicial execution of Senator Manuel Cepeda Vargas, who was the executive editor of *Voz* weekly, a leader in the National Council of the Colombian Communist Party and a prominent figure in the political party Unión Patriótica.¹²³ The Colombian State accepted its responsibility for the violation of the right to freedom of expression of the murdered Senator, as it "failed to protect and guarantee the Senator's exercise of freedom of expression, because he was arbitrarily prevented from expressing his thoughts by being killed."¹²⁴

70. In light of the fact that the State admitted its responsibility for the violation of the right to freedom of expression in its individual dimension, the Court ruled in regard to the violation of this right in its social dimension, an aspect it analyzed together with the alleged violations of political rights and freedom of association. The Tribunal noted that Senator Cepeda exercised his opposition toward and was critical of different governments in the context of permanent threats and harassment, and that although he "was able to exercise his political rights, freedom of expression and freedom of association, the fact that he continued to exercise them was obviously the reason for his extrajudicial execution."¹²⁵ According to the Court, the State "did not create either the conditions or the due guarantees for Senator Cepeda [...] to have the real opportunity to exercise the function for which he had been democratically elected; particularly, by promoting the ideological vision he represented through his free participation in public debate, in exercise of his freedom of expression."¹²⁶ It not only entailed "undue or unlawful pressure and restrictions on his political rights, freedom of expression, and freedom of association," but also "a rupture of the rules of the democratic game."¹²⁷

71. As measures of reparation for the multiple rights violations arising from the extrajudicial execution of Senator Cepeda Vargas, the Court ordered the following measures

¹²¹ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 176.

¹²² I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paras. 180, 187 and 193.

¹²³ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 71.

¹²⁴ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 13.

¹²⁵ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 176.

¹²⁶ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 176.

¹²⁷ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 177.

of satisfaction: The execution of the measures necessary to investigate, single out, and punish all those responsible for the extrajudicial execution of the Senator;¹²⁸ the publication of several parts of the ruling and its operative paragraphs in the official newspaper and in another widely circulated newspaper, and its full publication on a government website¹²⁹; the carrying out of a public act of recognition of international responsibility;¹³⁰ the preparation and distribution of the publication and a documentary on the political and journalistic career of Senator Cepeda Vargas;¹³¹ the one-time granting of a scholarship named after Manuel Cepeda Vargas covering a professional degree in communication sciences or journalism at a public Colombian university.¹³² Additionally, it established that the State must offer free medical and psychological care to the Senator's relatives, pending their consent.¹³³ Finally, it ordered the State to pay an indemnity for non-pecuniary damages and to reimburse costs and expenses.¹³⁴

72. As of this report's publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

13. Case of Gomes Lund v. Brazil

73. The most important facts of the case¹³⁵ as far as the right to access to information can be summarized as follows: On February 21, 1982, the relatives of the victims forcibly disappeared during military operations carried out against the Guerrilha do Araguaia brought a civil action whose only purpose was to obtain all the information on these operations in order to be able to know the truth of what occurred.¹³⁶ On June 30, 2003, 21 years after the action was first brought, and after delays and rulings against them,¹³⁷ the first instance ruling ordered the State to turn over the information on the victims and their relatives within a period of 120 days.¹³⁸ However, the State again sought a

¹²⁸ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 216.

¹²⁹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 220.

¹³⁰ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Paras. 223-25.

¹³¹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 228.

¹³² I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 233.

¹³³ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 235.

¹³⁴ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Paras. 247, 253 and 259.

¹³⁵ The Inter-American Court's judgment in this case also found violations of the rights to juridical personality, to life, to humane treatment, and to personal liberty in relation to the arbitrary detention, torture and forced disappearance of 70 persons between 1972 and 1975 in the context of the Brazilian military's operations in its fight against the Araguaia Guerrilla movement.

¹³⁶ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 219.

¹³⁷ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 222.

¹³⁸ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 211.

series of remedies, the result of which was that the Court ruling was not final until October 9, 2007. Still, according to the Court, it was not until March of 2009 that the ruling's execution was actually ordered and the State began to take action towards complying with the decision. Those actions included, among other things, turning over close to 21,000 documents from the public entities involved.¹³⁹

74. The Court recognizes the important progress that the State of Brazil has made in this matter, but highlights three facts. First, it calls attention to the fact that during the processing of the public action, the State had alleged that the information did not exist and that it was therefore impossible to turn it over, while in 2009 it turned over a considerable amount of information related to the subject. Second, the Court addresses the fact that the State did not turn over the available information at the first court order issued in 2003. Finally, the Court notes that the final judgment and its later execution were unjustly delayed.¹⁴⁰ These three facts and the argument according to which the victims have the right to access the requested information and to turn to a remedy that would protect their rights in a reasonable period of time led the Court to declare the State internationally responsible for the violation of the right to access to information set forth in Article 13 of the American Convention.¹⁴¹

75. In one of the ruling's most important sections, the Court indicates the following: "the State cannot seek protection in arguing the lack of existence of the requested documents; rather, to the contrary, it must establish the reason for denying the provision of said information, demonstrating that it has adopted all the measures under its power to prove that, in effect, the information sought did not exist. It is essential that, in order to guarantee the right to information, the public powers act in good faith and diligently carry out the necessary actions to assure the effectiveness of this right, particularly when it deals with the right to the truth of what occurred in cases of gross violations of human rights such as those of enforced disappearances and the extrajudicial execution in this case."¹⁴²

76. As a consequence, the Court ordered the State to continue its initiatives toward locating, systemizing and publicizing all information on the Guerrilha do Araguaia, as well as the information on the human rights violations that took place during the military regime.¹⁴³ It also exhorted the State to take all legislative, administrative or other kinds of measures necessary to strengthen the legal framework on access to information, in keeping with inter-American standards.¹⁴⁴

¹³⁹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Paras. 222 and 292.

¹⁴⁰ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 210.

¹⁴¹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Paras. 211 and 212.

¹⁴² I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 211.

¹⁴³ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

¹⁴⁴ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 293.

77. As of this report's publication deadline, the Inter-American Court has not issued any ruling on monitoring of compliance with this judgment.

D. Examination of the components for reparation of freedom of expression in inter-American case law

78. Inter-American case law has developed an extensive catalog of measures of reparation, some of which have been granted in cases related to violations of the right to freedom of expression. In the 13 cases on which the Inter-American Court has ruled on to date, the Tribunal has ordered measures related to all five of the components of reparation described in the first section of this report. Given the nature of the cases that are brought before inter-American bodies, some components have been more developed than others. However, there is a significant amount of doctrine and case law on each of the ways in which the States can comply with their international obligation to provide reparations, as demonstrated in the following analysis on the right to freedom of expression.

1. Measures of restitution

79. Given the nature of the right to freedom of expression, some violations or improper restrictions of this right can be redressed through measures of restitution. This is demonstrated in inter-American case law, which in a number of cases has ordered states to adopt different measures whose direct purpose is to restore the exercise of the right to freedom of expression and thereby end the violation or undue restriction.

80. With the exception of the case of *Cepeda Vargas v. Colombia*, in all the cases litigated before the Inter-American Court on freedom of expression, the IACHR has requested measures of reparation that include components of restitution derived from the violation of Article 13 of the American Convention. In the vast majority of cases, the Court has ordered measures of this kind; in others it referenced the issue but did not directly order the measures given that in some cases the States involved had already taken measures to satisfy this requirement; and in still others, it has not directly mentioned the requested measures of restitution, as in the cases of *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*.

81. In inter-American case law, measures of restitution have been granted to order: i) the direct restitution of the right to freedom of expression; ii) the restitution of other rights in the Convention violated through the exercise of an indirect restriction on freedom of expression, as is the case with the rights to property, citizenship and work; and iii) access to public information. Following, each of these scenarios is presented in more detail.

82. First, in the cases brought before them, the inter-American bodies have found that actions that represent undue restrictions to freedom of expression must be lifted, revoked or discontinued in order to guarantee the restitution of full exercise of the right. This can be done by reversing measures taken by government authorities including legislative, administrative or judicial measures that block freedom of expression, or by removing obstacles that have been put in place by private parties. Also, restitution can require material measures such as the return of confiscated material or access to information requested.

83. There is one important conceptual clarification that should be made on this point. On different occasions, the Inter-American Court has ordered the reform of constitutional and legal frameworks as a form of reparation.¹⁴⁵ Even in the text itself of the Tribunal's rulings, legal reforms have generally been considered to be a manner of preventing violations from being repeated, and they are therefore usually categorized as guarantees of non-repetition. It is true that the modification of legal frameworks is a measure that goes beyond the specific violation and that it is set up as a prospective measure for preventing the repetition of the same conduct in other possible cases. However, it is also true that the modification of the laws that led to the specific violation of the right, whether carried out directly or through precedent, is a measure that is necessary for lifting the restrictions that led to the violation and that prevent the specific victims of the case from the free exercise of the right. Thus, modification of laws is an unavoidable step toward restoring the right that was infringed upon, and therefore its restorative nature is evident. For example, and administrative or judicial sanction that is the result of legislation improperly limiting freedom of expression cannot be lifted or nullified as long as the legislation itself that led to the order is not modified. Therefore, it will not be enough in the majority of cases to restore the right, and a structural legal reform will also be necessary.

84. An example of an order that included an administrative measure intended to provide restitution of the exercise of freedom of expression can be found in the *Case of the Last Temptation of Christ v. Chile*, in which the Court found that the showing of the movie had been blocked through an administrative measure issued by the "Film Ratings Council" of Chile, violating the prohibition on prior censorship. The IACHR requested the "authorization of the cinematographic exhibition and publicity of the film" be granted as a measure of reparations. In that case, the Court order the State to "modify its legal system in order to eliminate prior censorship and allow the cinematographic exhibition and publicity of the film 'The Last Temptation of Christ.'"¹⁴⁶ Thus, the order for restitution combined a measure of legal reform - constitutional in this case - with the reversal of administrative acts that specifically prevented the movie's distribution.

85. Other administrative measures can refer not to the revocation of actions but rather to the material execution of certain measures that restore the rights violated. Thus in concert with the obligation to ensure the right - established by Article 1(1) of the American Convention - States have been ordered to take positive measures to allow for the exercise of freedom of expression. An emblematic case in this regard is the *Case of Palamara Iribarne v. Chile*, in which, as a measure of restitution, the IACHR asked the Court to order the State to take measures to "return all seized copies of the book as well as its master copy" and to "allow immediate publication of the book."¹⁴⁷

86. In this case, the Court found that the initial administrative investigation of Mr. Palamara, the decision to suspend his authorization to publish in a newspaper, and the

¹⁴⁵ See: I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations, and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 97; *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 254; *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 128; *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Paras. 172 and 173.

¹⁴⁶ I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations, and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 97.

¹⁴⁷ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 229.

decision to terminate in advance the contract between Mr. Palamara and a State entity constituted indirect measures of restricting freedom of thought and expression.¹⁴⁸ As a consequence, the Court ruled that the State had to allow the publication of his book. In addition, it ordered that the State must “within a period of six months, deliver back to him all materials seized” from Mr. Palamara, including the copies of the book and related material that was confiscated by the State.¹⁴⁹ Third, the Court ruled that given the importance of the electronic version of the text to the author's ability to update and change it, it was necessary for the State - should it not have the electronic version of the book - to take the necessary measures to rescue all the information from the print version and digitalize it in an electronic version, all within a time period of six months.¹⁵⁰

87. The Court has had more opportunities to address measures of restitution of the exercise of freedom of expression as a result of judicial rulings have been used to restrict the right protected by Article 13 of the American Convention.¹⁵¹ This was the case in the cases *Herrera Ulloa v. Costa Rica*,¹⁵² *Ricardo Canese v. Paraguay*,¹⁵³ *Palamara Iribarne v. Chile*,¹⁵⁴ *Kimel v. Argentina*,¹⁵⁵ and *Usón Ramírez v. Venezuela*.¹⁵⁶ It is important to clarify that even though in some of these cases the Court did not order specific measures of restitution - given that some States had already adopted measures to partially correct the violations - the Court did make reference to the existence and scope of those measures.¹⁵⁷

88. The first case in which the Court established doctrine on the significance and scope of measures of reparation of restrictions to freedom of expression resulting from court

¹⁴⁸ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 94.

¹⁴⁹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 250.

¹⁵⁰ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 251.

¹⁵¹ In these cases, measures with restorative potential can also have the potential to recognize the dignity of the victims, meaning they can be classified - as the Court itself has done in some cases - as measures of satisfaction. As described in the first section of this report, international tribunals have found that investigation of and punishment for violations, along with the judicial resolution of what happened, can have a reparatory effect in the sense that it satisfies the need for recognition and rectification of the good name of the victims and their families. For this reason, judicial measures are usually considered to be measures of satisfaction. However, in the cases addressed by inter-American case law on freedom of expression, it should be highlighted that in addition to their significance as a provider of dignity, the purpose of the orders of the Inter-American Court is to restore the exercise of the right by eliminating the validity of a judicial measure directly blocking free expression.

¹⁵² I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 188 and 195.

¹⁵³ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 199.

¹⁵⁴ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 253.

¹⁵⁵ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123.

¹⁵⁶ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁵⁷ So it as in the cases of *Ivcher Bronstein v. Peru* and *Ricardo Canese v. Paraguay*, in which the Court refrained from ordering the measures of restitution requested on taking into consideration that the State had already taken measures to resolve the IACHR's request Cf. I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 180; *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 199.

rulings was in the *Case of Herrera Ulloa v. Costa Rica*. In this case, the IACHR argued that the criminal conviction of Mr. Herrera Ulloa was an indirect restriction on his exercise of freedom of expression. In order to remedy this restriction, the IACHR asked the Court to "nullify" the court ruling, this including five parts: i) nullifying the criminal conviction of Mr. Herrera; ii) nullifying the order to publish the judgment "under the same conditions as the articles that were the subject of the criminal complaint;" iii) removing the hyperlink to the news item published in "La Nación Digital;" iv) nullifying the award for civil damages; and, v) nullifying the order to reimburse costs.¹⁵⁸

89. Based on the facts of the case and the damages proved by the Inter-American Court, with this case this Tribunal began to establish a doctrine that it would repeat in subsequent cases with some variations. First of all, the Court has found that in cases such as these, the measure of restitution *par excellence* is "to nullify" the ruling - or rulings - in all its effects. Depending on the case, this could include actions such as: i) nullifying the finding of criminal liability of the individual being charged;¹⁵⁹ ii) nullifying the punishment, whether prison, crimes or the barring of exercise of public functions;¹⁶⁰ iii) nullifying the civil recovery awards that could result from the violation of the criminal law;¹⁶¹ iv) nullifying of orders to publish the rulings in media outlets;¹⁶² v) nullifying the orders to suppress informative material in the electronic media or to "remove hyperlinks;"¹⁶³ vi) nullifying orders to the media to place hyperlinks to the rulings to convict on their webpages or websites;¹⁶⁴ vii) nullifying orders to pay procedural costs;¹⁶⁵ viii) nullifying orders to register those being charged in criminal registries or judicial criminal registries;¹⁶⁶ ix) and

¹⁵⁸ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁵⁹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123; *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 253; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195; *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁶⁰ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Kimel v. Argentina*. Judgment of May 2, 2008. Series C No. 177. Para. 123; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195.

¹⁶¹ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 123; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195.

¹⁶² I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶³ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶⁴ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶⁵ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195.

¹⁶⁶ I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 195; *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 253; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 195.

guaranteeing that the victim “can enjoy his [or her] personal liberty without the conditions that were imposed on him.”¹⁶⁷

90. Additionally, as can be deduced from the measures previously cited, the Court has found that the cessation of the effects of the rulings should include their scope with regard to third parties, as is the case with the media. Finally, it is important to highlight that the Court has typically ordered that its decisions be complied with through “all the judicial and administrative measures and any other necessary measures,”¹⁶⁸ measures that should be adopted within a time period that varies between six months and one year.

91. Second, the measures of reparation ordered by the Court that are restorative in nature and whose objective is the restoration of a right under the Convention that has been violated as a mechanism of indirect restriction on freedom of expression should be mentioned. In this regard, we find Inter-American case law includes cases in which measures of reparation have been ordered that cover rights such as nationality (Art. 20 of the American Convention on Human Rights), property (Art. 21), personal freedom (Art. 7) and the right to movement and residency (Art. 22).

92. The *Case of Ivcher Bronstein v. Peru* clearly exemplifies the scope of these measures of reparation. In that case, the IACHR requested three measures of an eminently restorative nature: i) to order the reestablishment of Peruvian nationality and its full and unconditional recognition, with all corresponding rights and attributes; ii) to order the reestablishment of the enjoyment and exercise of the right to property with regard to his shares in the company, and to order the recovery of all his attributes as its shareholder and manager; iii) to guarantee Mr. Ivcher the enjoyment and exercise of his right to freedom of expression and, in particular, to cease the acts of harassment and persecution against him and against his family and company. In addition to freedom of expression, three other rights are intrinsically related with these measures: the rights to nationality, property and humane treatment.¹⁶⁹

93. The Court ruled on all three issues, even though it did not order all the measures requested. With regard to restitution of nationality, the Court found it to be an appropriate measure of reparation, but did not order it given that the State had already done so while the case was being processed before the Court.¹⁷⁰ With regard to restitution of property, the Court ordered the State to “facilitate the conditions” for Mr. Bronstein to be able to take the necessary steps to recover the use and enjoyment of his rights as majority shareholder of the firm and obtain compensation for the dividends and other payments that would have corresponded to him as majority shareholder and director of that firm. Toward doing so, the Court ordered the application of domestic law and ordered that the disputes must be submitted before the national authorities with jurisdiction.¹⁷¹ Finally, with regard to

¹⁶⁷ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁶⁸ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁶⁹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 171.

¹⁷⁰ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 180.

¹⁷¹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 181.

the threats and other indirect measures to limit the right, the Court was less specific and indicated generally that the State must “guarantee Mr. Ivcher the right to seek, investigate and distribute information and ideas.”¹⁷²

94. Another case involving these kinds of measures is the *Case of Ricardo Canese v. Paraguay*, in which the nullification of restrictions on authorizations for Mr. Canese to leave the country was sought. However, the measure was not granted because as of the date of the issuing of the judgment of the Inter-American Court, the State had already taken measures to nullify these restrictions.¹⁷³ Similarly, in the above-mentioned *Case of Usón Ramírez v. Venezuela*, as a result of the order to nullify the court ruling, the Court ordered that the release of Mr. Usón Ramírez be guaranteed.¹⁷⁴ Finally, in the *Case of Palamara Iribarne v. Chile*, in addition to the restitution of property, a reparation was sought over the loss of work opportunities affecting Mr. Palamara, as he was a contractor with a State agency and had his contract terminated over his book. However, on this issue, instead of ordering a measure of restitution of work - as it has done in other cases not related to freedom of expression - the Court opted to order a measure of compensation, pursuant to the requests of the IACHR and the representatives of the victim.¹⁷⁵

95. Third, the subject of restorative measures includes measures ordered not as a result of restrictions on the distribution of information available to society, but rather to correct those situations in which access to information held by the State is sought. In cases such as these, when access to information is improperly refused, freedom of expression is restricted, and therefore the obvious measure for exercising the right is none other than guaranteeing access to the requested information.

96. Inter-American case law includes at least four cases in which this measure of reparation has been mentioned: *Claude Reyes v. Chile*,¹⁷⁶ *Ríos et al. v. Venezuela*,¹⁷⁷ *Perozo et al. v. Venezuela*,¹⁷⁸ and *Gomes Lund v. Brazil*.¹⁷⁹ In *Claude Reyes v. Chile*, the Inter-American Court was clear in granting this measure, even though it placed it in the section on “Other measures of satisfaction and guarantees of non-repetition.” The Court was explicit on ordering that the State must, through the corresponding agency, “provide the information requested by the victims, if appropriate, or adopt a justified decision in this

¹⁷² I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 182.

¹⁷³ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 199.

¹⁷⁴ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 168.

¹⁷⁵ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 135. Paras. 239 *et seq.*

¹⁷⁶ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para 158.

¹⁷⁷ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para 406.

¹⁷⁸ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para 416.

¹⁷⁹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

regard.”¹⁸⁰ Also, the Court found that should the State argue that it is not the responsibility of the Foreign Investment Committee to provide part of the information requested, it had the responsibility to provide justification for why it would not provide that information.¹⁸¹

97. The IACHR requested a similar measure in the recent case of *Gomes Lund v. Brazil*.¹⁸² Specifically, the Commission asked the Court to order the State to take all the legal actions and make all the modifications necessary to systemize and make public all the documents related to military operations against the *Guerrilha do Araguaia*.¹⁸³ Although the Court found that access to information was the pertinent measure for correcting the lack of a guarantee of this right, in this specific case it declined to accede to the Commission's request. The Court took into account certain State actions toward systemizing and publicizing documents on the military regime period, including those related with the *Guerrilha do Araguaia*, and as a consequence found that it was not necessary “to rule on an additional measure of reparation in this regard, notwithstanding that the State must continue to develop the initiatives for the systematization and publication of all the information on the *Guerrilha do Araguaia*, as well as the information related to the human rights violations which occurred during the military regime, guaranteeing access to this information.”¹⁸⁴

98. For its part, in the cases of *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*, the IACHR asked the Court to order the State “to grant the victims, employees of RCTV, access to official sources of information and allow them to cover news stories, that is, the exercise of the right to freedom of expression” as a measure of restitution of freedom of expression.¹⁸⁵ In the case of *Perozo et al. v. Venezuela*, the Court found it pertinent to “order, as a guarantee of non-repetition,” that the journalists’ access to information and official sources be reestablished, ordering the State to take “the necessary measures to prevent undue restrictions on and direct or indirect obstacles to the exercise of their freedom of to seek, receive and distribute information.”¹⁸⁶

2. Measures of compensation

99. Measures of economic compensation or indemnity have been common in cases related to violations of freedom of expression, even though they have not been ordered in every case. In fact, the Court did not order measures of this kind in four cases:

¹⁸⁰ See I/A Court H.R. *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 158.

¹⁸¹ Cf. I/A Court H.R. *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 159.

¹⁸² I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

¹⁸³ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 288.

¹⁸⁴ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 292.

¹⁸⁵ I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para 399. For its part, in the *Case of Perozo et al.*, the IACHR asked the Court to order the State to “guarantee the victims free access to sources of information without interference or arbitrary conditions of any nature.” I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para 408.

¹⁸⁶ I/A Court H.R. *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 416.

The Last Temptation of Christ v. Chile, Claude Reyes v. Chile, Ríos et al. v. Venezuela, and Perozo et al. v. Venezuela. In the remaining cases, the Inter-American Court ordered monetary indemnities for non-pecuniary damages and, in some of those cases, for pecuniary damages as well.

100. An indemnity for pecuniary damages seeks to compensate for the violations' impact on personal assets. Towards doing this, the Court takes into account the circumstances of the case, the evidence provided, its own case law and the relevant pleadings presented by the parties. The Court is particularly strict when evaluating the evidence provided in support of this measure of reparation. Although in certain cases, based on the evidence provided the Court has turned to establishing specific amounts in equity, if the party has not sufficiently proven specific damage the Court dismisses the claim. The cases of *Ricardo Canese v. Paraguay*¹⁸⁷ and *Tristán Donoso v. Panama*¹⁸⁸ are examples of this situation.

101. In the former, the damaged party requested indemnity both for the income no longer received from working due to the criminal proceeding and for the expenses incurred in that proceeding. On this first claim, the Court ruled not to award any indemnity because "there are insufficient elements in the body of evidence to allow it to establish an approximate amount for the earnings Mr. Canese failed to receive, or the activities he failed to receive earnings for abroad."¹⁸⁹ With regard to the aforementioned indirect damages, the Court did not find it pertinent to establish any indemnity because the representatives did not indicate which were the expenses incurred that "had a causal link to the facts of the case, and that differed from those he assumed in relation to the procedures before the domestic judicial bodies... [and] nor did they establish clearly the other losses of a pecuniary nature suffered by the victim, over and above the alleged loss of earnings."¹⁹⁰

102. The Court made a similar ruling in the case of *Tristán Donoso v. Panama*. Therein, the Court ruled not to grant an indemnity on failing to find evidence of income no longer received for professional activities. As a consequence, the Court did not have evidence allowing it to effectively confirm that those losses took place, whether they were the result of the facts of the case, and - eventually - what those amounts would be.¹⁹¹

103. In cases in which the Court has found pecuniary damages to be proven, it has generally addressed two issues: loss of future earnings and indirect damages. With regard to the subject of loss of future earnings - that is, income not received by the victims as a direct consequence of the violation - three cases can be highlighted: *Palamara Iribarne v. Chile, Kimel v. Argentina, and Usón Ramírez v. Venezuela*. In the *Palamara* case, the Court took into account that the victim had signed a contract to provide services to a State agency, and that contract was terminated early. In the measure, the Court based the value

¹⁸⁷ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. Para. 206.

¹⁸⁸ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 27, 2009. Series C No. 193. Para. 184.

¹⁸⁹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. Para. 202.

¹⁹⁰ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. Para. 203.

¹⁹¹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment dated January 27, 2009. Series C No. 193. Para. 184.

of the indemnity on what Mr. Palamara would have earned had the contract not been canceled.¹⁹² In the same case, the Court set an indemnity in equity to cover the victim's income lost as a result of the deprivation of his use and enjoyment of his copyright as author of the book. In contrast, in the *Kimel* case, the Court did not have any similar source of reference. Nevertheless, the Court ordered the payment of an indemnity for pecuniary damages in equity, taking into account "Mr. Kimel's impossibility to move forward with new work proposals and projects and the alleged impairment of his professional career."¹⁹³ Similarly, in the case of Usón Ramírez, the Court took into account that the victim was a retired general who had served in various public offices, including Finance Minister. Under this measurement, even though the total income no longer received had not been proven, the Court found that the trajectory of Mr. Usón Ramírez' career allow for it to be established with "sufficient certainty" that during the more than three years that he was in prison, he would have been able to perform some kind of remunerated activity or profession.¹⁹⁴

104. Monetary indemnities for indirect damages have also been ordered in three cases: *Palamara Iribarne v. Chile*, *Cepeda Vargas v. Colombia* and *Gomes Lund v. Brasil*. In the *Palamara* case, the Court ordered an indemnity to cover the expenses incurred as a consequence of military criminal proceedings being brought against Mr. Palamara Iribarne and of the order to leave the government housing where he was living along with his three children within the period of one week.¹⁹⁵ In the *Cepeda Vargas* and *Gomez Lund* cases, the Court ordered indemnities for expenses incurred by relatives of the murder victim and those forcibly disappeared, respectively. Regarding the former, the Court found that in murder cases, it can be assumed that direct relatives incur "various expenses" due to the crime. Also, in this case the Court took into account that some relatives had to leave the country, meaning they incurred various expenses to maintain themselves abroad and reinstall themselves in Colombia.¹⁹⁶ In the second case, the Court also assumed that the relatives incurred "expenses related to medical services and care and those related to the search for information and the bodily remains of the disappeared victims to the present date."¹⁹⁷

105. On the other hand, the Court has ruled that non-pecuniary damage "may include distress and suffering caused directly to the victim or the victim's relatives, the impairment of an individual's core values, and changes of a non-pecuniary nature in the everyday life of the victim or the victim's family."¹⁹⁸ In accordance with the case law of the Court, an indemnity of this kind can be established in equity and based on a prudent

¹⁹² I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 239.

¹⁹³ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 110.

¹⁹⁴ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 180.

¹⁹⁵ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 243.

¹⁹⁶ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 247.

¹⁹⁷ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 304.

¹⁹⁸ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 244.

valuation, given that it cannot be calculated with precision.¹⁹⁹ It usually includes the suffering, afflictions, fear and anguish experienced by the victims.²⁰⁰ In order to determine their significance, the Court has taken into account factors such as the violations committed, the suffering caused, the treatment received by the victims, the time that has passed, the denial of justice and information, and changes in living conditions.²⁰¹

106. The Court has taken into account certain situations related with the violation of the right to freedom of expression as causing fear, anguish and suffering, including: acts of persecution,²⁰² the bringing of criminal proceedings,²⁰³ imposition of criminal sentences,²⁰⁴ restrictions on leaving the country,²⁰⁵ registration in criminal registries,²⁰⁶ preventative detention,²⁰⁷ and restrictions on freedom of expression derived from the conditions of conditional liberty,²⁰⁸ among others.

107. For its part, the Court has reiterated in different cases related with violations of freedom of expression that these acts have direct consequences on the professional, personal and family lives of the victims.²⁰⁹ Even when each of these effects depends on the specific violation and the circumstances of each case, the Court has pointed to particular situations in which each one of these dimensions has been affected. Thus the Court has ruled on effects on family life on three occasions. In the *Case of Kimel v. Argentina*, the

¹⁹⁹ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 183.

²⁰⁰ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰¹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 310.

²⁰² I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 184.

²⁰³ See: I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 246; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118; *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 200.

²⁰⁴ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 245; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118; *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190; *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰⁵ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205.

²⁰⁶ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

²⁰⁷ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰⁸ I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²⁰⁹ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 205.

Court ruled that the criminal proceeding affected family life and financial stability.²¹⁰ In the cases of *Palamara* and *Usón Ramírez*, the Court was clearer on the effect on family life. In the first of these cases, the Court ruled that the violations of the right to freedom of thought and expression, the lack of procedural guarantees to which he was subjected on being judged by military tribunals in military criminal proceedings brought against him, the various arbitrary deprivations of his liberty, and the lack of effective judicial protection “hindered family relationships since the facts of this case forced the victim’s family to separate.”²¹¹ Finally, in the case of *Usón*, the Court found that having been sentenced to a several-year prison term, the victim was unjustifiably separated from his family, producing damage for which compensation must be provided.²¹²

108. The Court ruled specifically with regard to the effects on professional life in the *Kimel*, *Palamara* and *Tristán Donoso* cases. In the first case, when establishing the value of the indemnity for non-pecuniary damages, the Court took into account the fact that Mr. Kimel had been “discredited in his work as a journalist,” to the “detriment of his professional life.”²¹³ Similarly, the Court weighed the fact that Mr. Palamara had had “difficulties in finding work related to his profession.”²¹⁴ With regard to Mr. Tristán Donoso, the Court also found that he was “discredited as a professional, firstly before two important audiences: the authorities of the Colegio Nacional de Abogados [National Bar Association] and the Catholic Church, to which he provided legal counsel; and before society, due to the criminal conviction handed down against him,”²¹⁵ with his discrediting being deserving of reparations.

109. Finally, with regard to effects on personal life, the Court has taken into account consequences including the feeling of “defenselessness and powerlessness before the actions of military authorities”²¹⁶ suffered by Mr. Palamara, the “anxiety, anguish and depression”²¹⁷ faced by Mr. Kimel, and the violation of privacy of Mr. Tristán Donoso,²¹⁸ among other effects.

3. Measures of satisfaction

²¹⁰ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

²¹¹ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 246.

²¹² I/A Court H.R. *Case of Usón Ramírez v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 186.

²¹³ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

²¹⁴ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 246.

²¹⁵ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190.

²¹⁶ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 247.

²¹⁷ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 118.

²¹⁸ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 190.

110. Measures of satisfaction have been regularly adopted in cases on the violation of Article 13 of the Convention. The Inter-American Court has used this method of reparation in 11 of the 13 cases in which States were declared responsible for the violation of freedom of expression. Even in the remaining two cases - *The Last Temptation of Christ v. Chile* and *Herrera Ulloa v. Costa Rica* - the Court made reference to these kinds of measures on indicating that the judgment in itself constituted "a form of reparation and moral satisfaction of significance and importance for the victims."²¹⁹

111. In the same sense, with the exception of the cases of *The Last Temptation of Christ v. Chile* and *Usón Ramírez v. Venezuela*, in all the cases of freedom of expression litigated before the Inter-American Court, the IACHR has requested measures of satisfaction. It should be clarified, however, that in the case of *Palamara Iribarne v. Chile*, the IACHR requested that the copies of the book written by the petitioner that had been confiscated be returned and that its publication be allowed immediately, as measures of both restitution and satisfaction.²²⁰ This type of measure fits more appropriately in the category of restitution.

112. There are three measures of satisfaction that are usually adopted by the Court in response to violations of the right to freedom of expression. The most frequent measure has been the publication of certain sections of the judgment and the operative paragraphs, something that has been ordered by the Court in 10 of the 13 cases on freedom of expression ruled on to date.²²¹ In fact, this measure was not ordered only in the three cases ruled on first in the subject, those being *The Last Temptation of Christ v. Chile*, *Ivcher Bronstein v. Peru* and *Herrera Ulloa v. Costa Rica*. Subsequent to these cases, the Court has ordered the measure without fail. The other two measures that have been ordered in several cases, although less than the previous measure, are the carrying out of public acts of recognition of responsibility;²²² and the investigation of the facts leading to the violations, as well as bringing to trial and eventually punishing those responsible.²²³ Additionally, in several

²¹⁹ I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs.* Judgment dated February 5, 2001. Series C No. 73. Para. 99; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107. Para. 200.

²²⁰ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135. Para. 229.

²²¹ See: I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs.* Judgment of August 31, 2004. Series C No. 111. Para. 209; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135. Para. 252; *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151. Para. 160; *Case of Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 2, 2008. Series C No. 177. Para. 125; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment dated January 27, 2009. Series C No. 193. Para. 197; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194. Para. 405; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 195. Para. 415; *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207. Para. 176; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 220; *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219. Para. 273.

²²² See: I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 2, 2008. Series C No. 177. Para. 126. Cf: *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment dated May 26, 2010. Series C No. 213. Para. 223; *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219. Para. 273.

²²³ See: I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74. Para. 187; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits,*

cases the Court has highlighted that the judgment constitutes in itself a measure of satisfaction.²²⁴

113. The partial publication of the judgment in which the State is declared internationally responsible has been adopted in a variety of different kinds of cases. The measure has been considered in response to cases of criminalization,²²⁵ acts of violence that prevent or annulled freedom of expression,²²⁶ prior censorship,²²⁷ and access to information.²²⁸ In all these cases, the Court has ordered the State to publish once in the official newspaper and in another newspaper with national circulation the operative paragraphs of the judgment, as well as certain other parts, usually including the chapter on the facts. A time period of six months is granted to comply with this measure. It should be highlighted that in some cases, the Court has considered additional ways of distributing the ruling as a measure of satisfaction. In the last three cases on freedom of expression ruled on by the Court- *Usón Ramírez v. Venezuela*,²²⁹ *Manuel Cepeda Vargas v. Colombia*²³⁰ and *Gomes Lund et al. v. Brazil*²³¹- as well as in *Palamara Iribarne v. Chile*,²³² the Court ordered the State to publish the sentence in full on a government website. Additionally, in the most

Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. Para. 404; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 414; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 216.

²²⁴ See: I/A Court H.R. *Case of "The Last Temptation of Christ " (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 99; *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 183; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 245; *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 156; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 403; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 413; *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 165.

²²⁵ See: I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 209; *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 252; *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 125; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para. 197.

²²⁶ See: I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 405; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 415; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 220.

²²⁷ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 252.

²²⁸ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 160.

²²⁹ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 176.

²³⁰ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 220.

²³¹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 273.

²³² I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment dated November 22, 2005. Series C No. 135. Para. 252.

recent case (*Gomes Lund et al. v. Brazil*), in response to a petition from the representatives of the victims, the Court ordered the publication of the judgment in the form of an electronic book.²³³

114. The carrying out a public act of recognition of international State responsibility has been considered to be an adequate measure of satisfaction when the violation of Article 13 of the Convention takes place as a consequence of other serious human rights violations, especially attacks on life and personal integrity. Effectively, two of the three cases in which the Court has ordered a measure of this kind - to wit, *Manuel Cepeda Vargas v. Colombia*²³⁴ and *Gomes Lund et al. v. Brazil*²³⁵ - address multiple violations of rights involving attacks on life and personal integrity in the context of the grave situation of political violence. In this sense, a public act of recognition works as a measure of satisfaction to address a complex situation of human rights violations that includes violations of the right to freedom of expression.

115. In contrast with this, this type of measure of satisfaction has been unusual in cases in which the violation of freedom of expression does not take place in connection with violations of the rights to life or humane treatment. The only case in which the Court ordered that a public act of recognition be carried out was *Kimel v. Argentina*.²³⁶ In other similar cases like *Herrera Ulloa v. Costa Rica*, *Ricardo Canese v. Paraguay*, *Palamara Iribarne v. Chile*, *Tristán Donoso v. Panama* and *Usón Ramírez et al. v. Venezuela*, the Court refrained from ordering a measure of this kind even though, identical to the *Kimel* case, they address the criminalization of the exercise of freedom of expression in matters of obvious public interest. In fact, in some of these cases the Court did not establish the measure satisfaction even though it was requested by the IACHR. Effectively, in the cases *Ricardo Canese v. Paraguay* and *Herrera Ulloa v. Costa Rica*, the IACHR asked that the Court order the delivery of a public apology for the violations committed by the States. Similarly, in the case of *Tristán Donoso v. Panama*, the IACHR sought public recognition of international responsibility from the State. In the first two cases, the Court declined to order the measure by arguing that the judgment in itself constituted a form of reparation.²³⁷ In the case of *Tristán Donoso*, the Court, referencing the *Kimel* case, indicated the following: "Although in a recent case involving the right to freedom of expression it was considered pertinent to hold a ceremony of public recognition due to the particular circumstances thereof, such measure is often, although not exclusively, ordered as reparation for violations of the rights to life, to humane treatment and to personal liberty. The Tribunal does not believe such measures to be necessary in order to redress the violations verified in the instant case. Along such lines, the measure ordering that the criminal conviction and its consequences be

²³³ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 273.

²³⁴ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 223.

²³⁵ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

²³⁶ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 126.

²³⁷ I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 211; *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 2, 2004. Series C No. 107. Para. 200.

set aside, the instant Judgment, and its publication constitute important reparation measures."²³⁸

116. In the case of *Kimel v. Argentina*, in which for the first time, a public act of recognition was ordered as a measure of reparation on the subject of freedom of expression, the Court limited itself to ordering it that the act be carried out.²³⁹ In subsequent judgments in the cases of *Manuel Cepeda Vargas v. Colombia* and *Gomes Lund et al. v. Brazil*, the Court set more specific conditions on the way in which that recognition must be carried out. Thus in the case of *Manuel Cepeda Vargas v. Colombia*, the Court specified the minimum content to which the act must make reference and also ruled that the "public ceremony must be decided with the agreement and participation of the victims, if they so wish. To create awareness about the consequences of the facts of the instant case, this acknowledgment act or event should be held in the Congress of the Republic of Colombia, or in a prominent public place, in the presence of members of the two chambers, as well as the highest-ranking State authorities."²⁴⁰ Likewise, the Tribunal highlighted the value of the public act in this case for "the recovery of the victims' memory, the recognition of their dignity, and the consolation of their heirs."²⁴¹ In a similar sense, in the case of *Gomes Lund et al. v. Brazil*, the Court established that "The act should be carried out during a public ceremony, in the presence of high-ranking national authorities and of the victims in the present case,"²⁴² and that "The State should agree on the terms of compliance of the public act of acknowledgment with the victims or their representatives, as well as the particularities required, such as location and date for it to be carried out."²⁴³ Additionally, it ordered that the "act should be disseminated via the media."²⁴⁴

117. Investigating and bringing to trial those responsible constitute measures of satisfaction (as well as guarantees of non-repetition) that are adequate in cases involving indirect restrictions on freedom of expression that result from infractions or crimes committed by public officials or private individuals. In the four cases in which the Court has ordered the measure, Article 13 of the Convention was violated as a consequence of arbitrary actions on the part of public officials - *Case of Ivcher Bronstein v. Peru* - acts of violence and harassment committed by private individuals - *Case of Perozo et al. v. Venezuela* and *Case of Ríos et al. v. Venezuela* - and one attack against life - *Case of Manuel Cepeda Vargas v. Colombia*. According to inter-American case law, as a measure of

²³⁸ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 200.

²³⁹ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 126.

²⁴⁰ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 224.

²⁴¹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 223.

²⁴² I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

²⁴³ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

²⁴⁴ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 277.

reparation in these types of cases, States must investigate the facts leading to the violations in order to identify and punish those responsible for them.²⁴⁵

118. In cases in which the violation of Article 13 of the Convention has affected the right to seek and receive information, the Court has ordered that the information requested be turned over to the victims or, should it not be turned over, that justification be provided for the denial, all as a measure of satisfaction. The Court ruled thusly in the case of *Claude Reyes et al. v. Chile*,²⁴⁶ although it should be noted that the IACHR had requested this measure as restitution. In the case of *Gomes Lund v. Brazil*, the Court found that the State must take “all the measures necessary to locate and identify the remains of the disappeared victims and then return them to their family members.”²⁴⁷

119. Other measures of satisfaction in response to violations of freedom of expression include acts of highly symbolic content that have the capacity to revalue and dignify the victims’ position in society. Examples of this include the measures of reparation adopted by the Court in the case of *Manuel Cepeda Vargas v. Colombia*, one of them consisting of granting a scholarship in the name of the murdered senator for university-level studies in communication sciences or journalism at a public university in Colombia.²⁴⁸ The other measure was the preparation and publication of a documentary on the victim’s life as a journalist and politician.²⁴⁹

4. Measures of rehabilitation

120. These measures of reparation have been the least common in Inter-American cases related to violations of freedom of expression. The Court has only adopted them in the cases of *Manuel Cepeda Vargas v. Colombia* and *Gomes Lund et al. v. Brazil*. In the former case, the Court indicated that it “must order a measure of reparation that provides appropriate care for the mental and moral sufferings that the victims endured owing to the violations declared in this judgment.”²⁵⁰ In a similar sense, the Court noted in the case of *Gomes Lund* that “a measure of reparation that provides appropriate care for the physical and psychological effects suffered by the victims”²⁵¹ was necessary. Based on this, in both cases the Court found that the State had the obligation to provide free and immediate

²⁴⁵ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 187; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 413; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 404; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 216.

²⁴⁶ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 158.

²⁴⁷ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 263.

²⁴⁸ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 233.

²⁴⁹ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 228.

²⁵⁰ I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 235.

²⁵¹ I/A Court H.R. *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 267.

medical and psychological treatment for the victims, for as long as necessary and including the provision of medication.²⁵²

121. As noted, the cases of *Gomes Lund* and *Manuel Cepeda Vargas* share the fact that the violation of freedom of expression took place in the context of a much broader situation of the violation of rights, including attacks on life and personal integrity. In this sense, the measures of rehabilitation have been considered to provide adequate reparation for victims who have been subjected to complex situations of rights violations. In contrast, in cases of the violation of freedom of expression that do not follow this pattern - the reparation of the psychological and emotional suffering caused, for example, by bringing a criminal proceeding and imposing a sentence - have functioned fundamentally through the adoption of measures of compensation for non-pecuniary damages. The Court has ruled this way even in cases in which there is evidence of the existence of effects on mental health. For example, in the case of *Kimel v. Argentina*, one of the pieces of evidence taken into account for setting the size of the non-pecuniary damages was the testimony of a psychiatric doctor who stated that Mr. Kimel was suffering from a "extended psychic trauma" consisting of "posttraumatic stress syndrome with clinical manifestations of general anxiety, depressive symptoms and somatization disorders."²⁵³ Despite this evidence, the Court opted to establish a measure of compensation instead of rehabilitation.

5. Guarantees of non-repetition

122. Measures oriented toward establishing guarantees of non-repetition have been requested by the IACHR and adopted by the Court in the vast majority of the cases of violations of the right to freedom of expression.

123. The guarantees of non-repetition usually ordered in inter-American case law can be placed into three categories: a) adjustment of the domestic legal system to Inter-American standards on the subject of freedom of expression; b) training of public officials on the right to freedom of expression; and c) adoption of measures oriented toward guaranteeing effective protection of the right violated.

124. Adjustment of the domestic legal system is a measure that is particularly appropriate in cases in which the violation of the right to freedom of expression has taken place because of or under the protection of legal provisions. In inter-American case law, a measure of this kind was used in the case of *The Last Temptation of Christ v. Chile*, in which the Court ruled that the State must "modify its legal system in order to abolish prior censorship."²⁵⁴ Additionally, this guarantee of non-repetition has been used in the majority of cases of criminalization with the purpose being for States to modify their criminal codes. In the cases of *Ricardo Canese v. Paraguay* and *Tristán Donoso v. Panamá*, the Court did not adopt a measure of this nature on finding that the State in question had already reformed

²⁵² I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations*. Judgment dated May 26, 2010. Series C No. 213. Para. 235; *Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219. Para. 267.

²⁵³ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 115.

²⁵⁴ I/A Court H.R. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, Reparations and Costs*. Judgment dated February 5, 2001. Series C No. 73. Para. 97.

their criminal law systems in order to adjust them to inter-American standards on freedom of expression.²⁵⁵

125. In the cases of *Palamara Iribarne v. Chile*, *Kimel v. Argentina* and *Usón Ramírez v. Venezuela*, the Court ordered some variety of adjustment of the laws under which the victims were subjected to criminal proceeding and punished. The Court gave specific instructions in each case on the scope of the reforms to be implemented. In *Palamara Iribarne v. Chile*, it found with regard to the legislation on *desacato* that the State must adopt “such measures as may be required to repeal and modify whatever legal provisions may be incompatible with the international standards on freedom of thought and expression, in a manner such that all persons are allowed to exercise democratic control over all state institutions and officials through the free expression of their ideas and opinions on their performance in office without fearing future retaliation;”²⁵⁶ in *Kimel v. Argentina* it ordered that the “lack of accuracy [in criminal proceedings with regard to slander and defamation]” must be adjusted “so that, consequently, they do not affect the exercise of the right to freedom of thought and expression;”²⁵⁷ and in *Usón Ramírez v. Venezuela*, after noting that the article of the Organic Code of Military Justice under which the victim was brought to trial and found guilty “[did] not strictly define the criminal behavior... resulting in a broad, vague and ambiguous legal definition,”²⁵⁸ found that the State must modify the law to adjust it to articles 2, 7, 8, 9 and 13 of the Convention. It also ordered that the State must repeal the domestic law that allows civilians to be tried by military courts.²⁵⁹

126. The second guarantee of non-repetition, which consists of the training of public officials, constitutes an adequate measure for addressing institutional failings leading to a specific case of the violation of the right to freedom of expression. An example of this type of measure can be found in the case of *Claude Reyes v. Chile* in which, upon confirming the failings of the State on the issue of the guarantee to access to information, the Court ordered that it must “within a reasonable time... provide training to public entities, authorities and agents responsible for responding to requests for access to State-held information on the laws and regulations governing this right; this should incorporate the parameters established in the Convention concerning restrictions to access to this information that must be respected.”²⁶⁰

127. In other cases, however, the Court has not considered it necessary to order this type of measure. Thus, in the case of *Tristán Donoso v. Panama*, the Court did not accept the petition of the representatives of the victims to order training for judicial officials on standards of protection of the right to honor and freedom of expression in matters of

²⁵⁵ Cf. I/A Court H.R. *Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs*. Judgment of August 31, 2004. Series C No. 111. Para. 210; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 209.

²⁵⁶ I/A Court H.R. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135. Para. 254.

²⁵⁷ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177. Para. 128.

²⁵⁸ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 173.

²⁵⁹ I/A Court H.R. *Case of Usón Ramírez et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207. Para. 172.

²⁶⁰ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 165.

public interest. According to the Court, it was “sufficient that the State ensure that this Judgment be widely disseminated through its publication.”²⁶¹

128. The third category of non-repetition guarantee corresponds to the adoption of the measures necessary to guarantee the effective protection of the right. This is a generic measure that, depending on the circumstances of the case, can be manifested in more specific orders, but that in other cases maintains a high degree of generality, such that it allows States a significant margin for interpretation. For example, in the cases *Ríos et al. v. Venezuela* and *Perozo et al. v. Venezuela*, both related to acts of violence and harassment of journalists by private parties, the Court limited itself to ordering the State to adopt “the measures necessary to avoid illegal restrictions and direct or indirect hindrances on the exercise of the freedom to seek, receive and impart information of the alleged victims.”²⁶² As can be noted, the Court only established the objective that must be reached with the measure, leaving the State with the authority to define whatever measures it may find pertinent to achieve it.

129. One case in which the Court adopted a more specific measure was in that of *Claude Reyes v. Chile*. In it, the Tribunal ordered the Chilean State to “adopt the necessary measures to guarantee the protection of the right of access to State-held information, and these should include a guarantee of the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for taking a decision and providing information, and which is administered by duly trained officials.”²⁶³ The Court handed down a generic order, but in addition to that indicated at least one specific a measure that must be implemented toward effectively guaranteeing the protection of the right in question.

130. The Court has not always found it necessary to establish measures of this nature. One example is the case of *Ivcher Bronstein v. Peru* in which the IACHR asked that the Court order the adoption of legislative and administrative measures to prevent the repetition of similar facts and the future, but the Court declined to do so, arguing that the State had already “taken steps to this end.”²⁶⁴ Specifically, the measure made reference to the passage by the Congress of Peru of a resolution fully reestablishing the contentious jurisdiction of the Inter-American Court in Peru.

²⁶¹ I/A Court H.R. *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment dated January 27, 2009. Series C No. 193. Para. 211.

²⁶² I/A Court H.R. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194. Para. 406; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195. Para. 416.

²⁶³ I/A Court H.R. *Case of Claude Reyes et al v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151. Para. 163.

²⁶⁴ I/A Court H.R. *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 74. Para. 185.