



BRIEFING NOTE: AZUL ROJAS MARÍN v PERÚ

Inter-American Court of Human Rights

12 March 2020

REDRESS

Ending torture, seeking justice for survivors

INTRODUCTION

On 12th March 2020 the Inter American Court of Human Rights (“the Court”) gave its judgment in which it found Peru responsible for torture and sexual violence against an LGBTI person by Peruvian police officers in 2008.

It is the first time in its history that the Court, the ultimate authority on human rights in the Americas, has considered a case of discriminatory torture.

REDRESS has prepared this Briefing Note in order to provide a summary of the case decision.¹

The key findings at a glance

The key issues decided by the Court can be summarised as follows:

- The arbitrary detention of LGBTI persons can be inferred when there are signs of discrimination and no other apparent reason for the detention;
- The purposive element of the definition of torture incorporates discrimination based on sexual orientation and gender identity;
- States have a duty to investigate violence motivated by discrimination against members of the LGBTI community, including a duty to investigate the discrimination element itself;
- The Court tackled structural discrimination through its comprehensive reparation measures.

The Court declared the State of Peru internationally responsible for the violation of the rights to personal liberty, personal integrity, privacy, not to be subjected to torture, judicial guarantees and the judicial protection of Rojas Marín. Peru was also responsible for the violation of the right to personal integrity of Rojas Marín's mother, Juana Rosa Tanta Marín, who died in 2017, and who suffered greatly due to what happened to Azul.

¹ The Court’s full judgment is available here: http://www.corteidh.or.cr/docs/casos/articulos/seriec_402_ing.pdf. Paragraph numbers cited are to the paragraph numbers in the judgment. An earlier version of this Briefing Note was prepared prior to the availability of the full judgment in English, and this amended version was produced in July 2020 to reflect more precisely the contents of the English judgment.

THE FACTS OF THE CASE

Azul was born on 30 November 1981. At the time of her detention on 25 February 2008 she identified as a gay man. Nowadays she identifies as a woman.

On 25 February 2008 at 00:30, Azul was walking home on her own when a police vehicle approached her. One of the occupants of the vehicle asked her where she was going and said: "So late! Be careful, because it's very late." Twenty minutes later the police approached her again, hit her with a police baton and made her get into the police vehicle while they shouted "*cabro concha de tu madre!*" (queer, motherfucker). The insults and derogatory remarks made clear reference to her sexual orientation and continued all the time she was detained. She was taken to the police station in Casa Grande where she was forcibly undressed, hit several times, and was the victim of torture and rape since on two occasions the police officers inserted a police baton into her anus. She remained in the police station until 06:00 the next morning without her detention being formally registered.

On 27 February 2008 Azul filed a criminal complaint at the police station in Casa Grande. On 24 March 2008 the prosecutor started a preliminary investigation against the police officers from the police station at Casa Grande for the offence "against sexual liberty by rape," against Azul. On 2 April 2008 the prosecutor formalised a preparatory investigation for the crimes of rape and abuse of authority against three police officers.

On 5 May 2008 Azul requested the broadening of the complaint and asked for the investigation specifically to include the crime of torture. On 16 June 2008 the prosecutor rejected the request. This decision was appealed by Azul and the decision was confirmed on 28 August 2008. On 21 October 2008, the prosecutor requested the dismissal of the proceedings against the three police officers. On 9 January 2009, the judge dismissed the criminal case in relation to the offences of aggravated rape and abuse of authority, and ordered that the case be closed.

On 20 November 2018, in compliance with the recommendations included in the report of the Inter-American Commission into the merits of this case, the prosecutor re-opened the investigation against those presumably responsible for the crime of torture committed against Azul (as opposed to the previous domestic case which had concerned other charges). On 16 January 2019, the prosecutor asked the criminal judge to annul the actions in the proceedings underway against the three police officers for the crimes of rape and abuse of authority against Azul, a step which would have enabled the torture complaint to proceed. On 14 August 2019, the judge refused the request to annul the proceedings based on the general principle of *res judicata*. The prosecutor appealed against that decision, but this appeal was declared inadmissible on procedural grounds.

FINDINGS OF THE COURT

FINDINGS ON THE PRELIMINARY OBJECTIONS

The state presented three preliminary objections, (a) the alleged failure to exhaust domestic remedies, (b) the subsidiarity of the Inter-American system, and (c) the ‘fourth instance’ objection². The Court rejected the preliminary objections put forward by the state.

FINDINGS ON THE FACTUAL CONTEXT

The Court found that in Peruvian society, strong prejudices against the LGBTI population existed both at the time of the events in question and continue today, and that in certain cases, this results in violence. “At times, this violence is committed by state agents, including members of the national police, and the municipal security service (*serenazgo*), as it is alleged occurred in this case,” the ruling concludes (§51). It cites as an example a survey carried out by the National Institute of Statistics and Informatics of Peru in 2017 that determined that 56.5% of the LGBTI population is afraid of expressing their sexual orientation and/or gender identity, the main reason being the fear of discrimination and/or aggression (72%). Yet, the Court found that prior to that survey, there was no data on the situation of the LGBTI population in the country and that violence against this group was effectively invisible.

The Court reiterated that “LGBTI people have historically been victims of structural discrimination, stigmatisation, and different forms of violence and violations of their fundamental rights”, and that a person’s sexual orientation, gender identity or gender expression are categories protected by the Inter-American Convention on Human Rights (§90).

The ruling finds that violence based on prejudice aims to prevent the person subject to discrimination from being able to exercise their human rights, regardless of whether the person identifies themselves with a certain category. This violence can result in hate crimes. Consequently, the ruling asserts that “the State cannot act against a person based on their sexual orientation, their gender identity and/or their gender expression” (§90).

Violence against LGBTI persons has a symbolic purpose, the victim is chosen in order to communicate a message of exclusion or subordination... [V]iolence for discriminatory reasons has the purpose or effect of preventing or annulling the recognition, enjoyment or exercise of the fundamental human rights and freedoms of the person who is the object of the discrimination, regardless of whether that person identifies themselves with a determined category. (§93)

The Court also notes that, at times, it may be difficult to distinguish between discrimination due to sexual orientation, and discrimination due to gender expression. Discrimination due to sexual orientation may be based on a real or perceived sexual orientation, so that it includes cases in which a person is discriminated against owing to the perception that others have of their sexual orientation. This perception may be influenced, for example, by clothing, hairstyle,

² This preliminary exception deals with the subsidiarity and complementarity of human rights courts and recognizes that the Court should not re-examine or re-decide decisions taken by national judicial authorities.

mannerisms or behavior that do not correspond to traditional or stereotypical gender standards or that constitute a non-normative gender expression. In this case, third parties could have associated the presumed victim's gender expression with a specific sexual orientation. (§94)

FINDINGS ON THE VIOLATIONS ALLEGED

RIGHT TO PERSONAL LIBERTY

The Court decided that the detention of Azul was illegal in the light of article 7 of the American Convention since the requirements of article 205 of the Peruvian Code of Criminal Procedure for detentions for the purpose of identification were not complied with. At the same time, they decided that, in the absence of a legal motive for an identity check of Azul, and the existence of elements that amount to discriminatory treatment for reasons of sexual orientation or non-normative gender expression, the Court should presume that the detention of Azul was undertaken for discriminatory reasons, therefore it was a manifestly arbitrary detention (§128).

The [UN] Working Group on Arbitrary Detention has indicated that deprivation of liberty is for discriminatory reasons “when it is apparent that persons have been deprived of their liberty specifically on the basis of their own or perceived distinguishing characteristics or because of their real or suspected membership of a distinct (and often minority) group”.³ The Working Group considered that one of the factors to take into account to determine the existence of discriminatory grounds was whether “the authorities have made statements to, or conducted themselves toward, the detained person in a manner that indicates a discriminatory attitude”⁴. In addition, expert witness María Mercedes Gómez indicated that “one of the essential elements [to establish that a person was detained based on prejudice] is that it is not possible to identify any other apparent grounds than the perception of the victim; in other words, there is no practical purpose for the detention. [And also] the expressions that were used.” (§127)

This Court has indicated that detentions for discriminatory motives are manifestly unreasonable and, therefore, arbitrary. Since the deprivation of liberty was discriminatory, it is not necessary to examine its purpose, necessity or proportionality to determine that it was arbitrary. (§129)

The development of this standard could be crucial to combat arbitrary arrests of LGBTI people around the world for reasons based on a person’s sexual orientation or gender identity.

Additionally, the court pointed out that the reasons for her detention had never been communicated to Azul.

As a result, the Court declared that Peru was internationally responsible for the violation of articles 7.1, 7.2, 7.3 and 7.4 of the American Convention on Human Rights, read alongside the obligation to respect and guarantee these rights without discrimination as contained in article 1.1 of the Convention.

³ UN Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/36/37, 19 July 2017, para. 48.

⁴ Ibid., para 48(c).

RIGHTS TO PERSONAL INTEGRITY AND TO A PRIVATE LIFE

Relying on their analysis of the statements of the victim, reports from the medical examinations and from the psychologists, blood analysis results, and the forensic analysis of the victim's clothing, as well as the various signs of discriminatory treatment against the victim, the court concluded that Azul was forcibly undressed, hit on several occasions, had derogatory remarks about her sexual orientation made against her by state representatives, and was a victim of rape (§157).

Significantly, the Court did not accept arguments put forward by Peru that alleged inconsistencies in Azul's statements undermined her history of the facts:

This Court has indicated that the mention of some of the alleged ill-treatment only in some of the statements does not mean that they are false or that the facts described are untrue. The Court takes into account that the facts described by Ms. Rojas Marín refer to a traumatic event that she suffered, the impact of which could lead to certain lack of precision when recalling them. Also, when analyzing the said statements, it must be taken into account that the sexual aggression corresponds to type of offense that, frequently, the victim does not report, owing to the stigma that this report usually entails. Thus, it is reasonable that Ms Rojas Marín did not mention the rape either in the media or in the first oral complaint made at the police station. (§148)

The Court's approach to this issue was in line with the guidance provided in the Istanbul Protocol when considering the testimony of victims of torture.

The Court examined the intentionality, the severity of suffering, and the purpose of the act, and concluded that the combination of abuse and aggression suffered by Azul - including the rape - constituted an act of torture on the part of the police officers. With regard to the purposive element, and following the expert opinions of Juan Méndez and María Mercedes Gómez, the Court found that sexual violence that involves anal rape, especially when carried out with a tool of authority such as a police baton (which also represents masculinity), all while derogatory remarks were made, shows that the specific motive of the crime was to discriminate against Azul:

...the Court has considered, in general, that rape, like torture, seeks, among other objectives, to intimidate, degrade, humiliate, punish or control the person subjected to it. The representatives argued that the abuse was inflicted for discriminatory purposes. In this regard, expert witness Juan Méndez indicated that "to determine whether a case of torture has been motivated by prejudice against LGBTI people" the following indicators can be used: "the method and characteristics of the violence inspired by discrimination. For example, in cases of LGBTI people, anal rape or the use of other forms of sexual violence"; "discriminatory insults, comments or gestures made by the perpetrators during the perpetration of the conduct or in its immediate context, referring to the sexual orientation or gender identity of the victim" or "the absence of other reasons". In this case, one of the aggressions suffered by the presumed victim was anal rape. On this point, the expert witness María Mercedes Gómez indicated that the rape carried out using "an instrument that symbolically represents authority, [such as] the police baton, [...] sends a symbolic message [...] of restoring a masculinity that is threatened by the perception of the victim as not complying with the established order of masculinity" (§163).

In addition, the violence used by the police agents against Ms. Rojas Marín included stereotypical insults and threats of rape. [...] The Court considers that the anal rape

and the comments relating to sexual orientation also reveal a discriminatory purpose, so that this was an act of violence based on prejudice. (§164)

The Court went further to label the treatment of Azul as a ‘hate crime’ given that it was the result of prejudice, and stated that the crime not only breached Azul’s rights but was also “a message to the whole LGBTI community, a threat to the freedom and dignity of this entire social group” (§165).

Consequently the court declared Peru to be internationally responsible for the violation of the rights to personal integrity, to a private life, and to not be subjected to torture, contained in articles 5.1, 5.2 and 11 of the American Convention read alongside article 1.1 of the Convention and articles 1 and 6 of the Inter American Convention to Prevent and Punish Torture (IACPPT).

This finding constitutes a major development under international law as this is the first case decided by an international tribunal to conclude that torture can take place with the specific purpose of discriminating against a person because of sexual orientation or gender identity.

RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION

The Court has previously developed specific standards regarding how sexual violence should be investigated in cases where the victims have been women. These standards are based principally on the guidance contained in the Istanbul Protocol,⁵ and the guide of the World Health Organization (WHO) on the medico-legal care of the victims of sexual violence,⁶ which refer to measures that should be taken in cases of sexual violence – regardless of whether the victims are men or women (§179). The Court concluded that the same standards are applicable in the present case, and summarised these requirements as follows:

This Court has stipulated that, in a criminal investigation into sexual violence, it is necessary that: (i) the victim’s statement is taken in a safe and comfortable environment that offers privacy and inspires confidence; (ii) the victim’s statement is recorded to avoid or limit the need to repeat it; (iii) the victim is provided with medical, psychological and hygienic care, both on an emergency basis and continuously if required, under a care protocol aimed at reducing the consequences of the rape; (iv) a complete and detailed medical and psychological examination is performed immediately by appropriate trained personnel, if possible of the sex preferred by the victim, advising the victim that they may be accompanied by a person of confidence if they so wish; (v) the investigative measures are coordinated and documented and the evidence is handled diligently, taking sufficient samples, performing tests to determine the possible perpetrator of the act, securing other evidence such as the victim’s clothing, investigating the scene of the incident immediately, and guaranteeing the proper chain of custody, and (vi) the victim is provided with access to free legal assistance at all stages of the proceedings. (§180)

Taking into account these standards, the Court decided that the State did not act with due diligence in investigating the sexual torture. The Court emphasised that: (i) the various statements made by Azul, especially that made during the reconstruction of the crime scene,

⁵ UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘Istanbul Protocol’ (2001), available at: <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

⁶ WHO Guidelines for medico-legal care for victims of sexual violence (2003), available at: <http://whqlibdoc.who.int/publications/2004/924154628X.pdf?ua=1>

constituted acts of revictimization, as she was forced to face her perpetrators while they made fun of her; (ii) the medical examination was performed 72 hours after the event and the report did not include an interpretation of the probable relation between the physical symptoms and the that was attested to by Azul; (iii) the important failures in collecting evidence, such as the failure to secure immediately the victim's clothing, and the police baton that had possibly been used, in order to submit these to expert examination; and, (iv) the use of stereotypes during the investigation by various state representatives which prevented the facts from being examined objectively (§205).

Duty to investigate discriminatory motive

Notably, the Court found that when investigating violent acts, including torture allegations, States have a duty to take all necessary steps to clarify if violence was motivated by prejudice and discrimination. The Court said that this implies that the State should collect and secure all the evidence, provide full reasons for its decisions and decide in an impartial and objective manner. The authorities should not ignore any facts that could establish that the violence was motivated by discrimination:

The Court also considers that when violent acts, such as torture, are being investigated, the State authorities have the obligation to take all reasonable measures to discover whether there are possible discriminatory motives. This obligation means that when there are specific indications or suspicions of violence based on discrimination, the State must do everything reasonable, according to the circumstances, to collect and secure the evidence, use all practical means to discover the truth, and issue fully reasoned, impartial and objective decisions, without omitting suspicious facts that could indicate violence based on discrimination. The authorities' failure to investigate possible discriminatory motives may, in itself, constitute a form of discrimination, contrary to the prohibition established in Article 1.1 of the [American] Convention. (§196)

The Court was particularly critical of the state representatives' use of stereotypes in its dealings with Azul:

...during the forensic medical examination, during the interrogations, and in the decision of the Administrative Court, the expression "unnatural" is used to refer to anal penetration. The use of this term stigmatises those who perform this type of sexual act, branding them as "abnormal" because they do not conform to heteronormative social rules. (§203)

Similarly, the Court emphasised that the judicial authorities did not take into account the specific features necessary for an effective investigation of allegations of torture and sexual violence, improperly discrediting the statements of the victim, not giving the necessary value to the expert analysis that had been undertaken, and assuming that Azul had been responsible for her own injuries (§218). In analysing the evidence, for example, the Court cited the World Health Organization which has stated that "anal and rectal injuries are seldom seen after consensual penetration."⁷ (§191).

Indeed, the Court went further, stating that:

... [O]pening lines of investigation into the previous social or sexual behaviour of victims in cases of gender-based violence is merely the expression of policies or attitudes based on gender stereotypes. There is no reason why this is not applicable cases of sexual violence against LGBTI people, or those perceived as such. In this

⁷ WHO Guidelines, *ibid.*, page 49.

regard, the Court considers that questions regarding the presumed victim's sexual life are unnecessary as well as revictimizing. (§202)

Definition of torture

The Court also reiterated that the inappropriate definition of torture that was contained in domestic legislation in Peru at the time of the facts, which did not contain discrimination as one of the potential purposes of torture, prevented the investigation into the ill-treatment of Azul from being broadened to include 'torture' as such.

Consequently, the Court concluded that the State had violated the rights to judicial guarantees and the judicial protection recognised in articles 8.1 and 25.1 read alongside article 1.1 and 2 of the American Convention and articles 1, 6 and 8 of the IACPPT.

RIGHT TO PERSONAL INTEGRITY OF AZUL'S MOTHER

Taking into account the presumption of the violation of personal integrity of family members in cases of torture, and the evidence available in the present case, the Court concluded that the State violated the right to personal integrity of Juana Rosa Tanta Marín, Azul's mother. Therefore, the State violated article 5 of the Convention, read alongside article 1.1.

REPARATIONS

The Court ordered comprehensive and holistic forms of reparation for both individual as well as societal harm. The most significant measures in terms of their potential strategic impact, and which Peru challenged during the litigation, are the measures requested by Azul and awarded by the Court to address structural discrimination as a cause of hate crimes. In this regard, the Court ordered Peru to adopt a protocol for the effective investigation and administration of justice in criminal proceedings relating to cases of violence against members of the LGBTI community. The protocol shall be binding under domestic law, instruct State representatives to abstain from using discriminatory presumptions and stereotyping (§242), and include due diligence standards developed by the Court in the judgement (§243). The Court also instructed the State to provide training to members of the justice system and the police on LGBTI rights and due diligence investigations (§248-249). Additionally, Peru must implement a data collection system to officially register all cases of violence against members of the LGBTI community, including disaggregated information (§252).

Whilst the range and scope of reparations ordered by the Court is impressive, it was somewhat disappointing that the Court did not accept the invitation made by Azul's legal representatives to articulate the breadth of its response by using the terminology of "transformative reparations", which was first enunciated by the Court in 2009 in *Caso González y otras ("Campo Algodonero") vs. México*,⁸ and then developed further in another case in which discrimination was found against the LGBTI community: *Caso Atala Riffo vs. Chile*.⁹

Nonetheless, the broad range of reparations ordered by the Court capture the essence of what transformative reparations are all about: triggering changes at the domestic level that could help to eliminate the root causes of the violations that Azul suffered, as well as giving due recognition to her and her story by challenging the context in which the violations took place. Those measures can be summarised as follows:

- promote and continue the investigations necessary to identify, prosecute, and, where appropriate, punish those responsible for the acts of torture:

[T]he State shall, within a reasonable time and by officials trained in dealing with victims of discrimination and violence based on sexual orientation, facilitate and continue the extensive, systematic and thorough investigations required to identify, prosecute and punish, as appropriate, those responsible for the sexual violence and torture suffered by Ms. Rojas Marín, avoiding the application of discriminatory stereotyping and any act that could revictimize her. (§229)

- publish the judgment and its official summary (§231);
- carry out a public act of acknowledgment of international responsibility:

⁸ Inter-American Court, *Caso González y otras ("Campo Algodonero") Vs. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 16 November 2009. Series C No. 205, para. 450.

⁹ Inter-American Court, *Caso Atala Riffo vs. Chile*. Merits, Reparations and Costs. Judgment of 24 February 2012. Serie C, No. 254, para. 267.

During this [public act of acknowledgement], reference must be made to the human rights violations declared in this judgment. Also, it must take place in a public ceremony in the presence of senior State officials and of Ms. Rojas Marín or her representatives. (§233)

The State and the victim, and/or her representatives, shall reach agreement on how the public act is executed as well as its particularities, such as the place and date. (§234)

- provide medical and psychological and / or psychiatric treatment:

[T]he Court considers it necessary to order a measure of reparation that provides appropriate treatment for the physical, psychological or psychiatric problems suffered by the victim based on her particularities and case history. The Court orders the State to provide Azul Rojas Marín with medical care, free of charge and immediately, and this should include the provision of medication and, if applicable, transport and other directly related and necessary expenses. Furthermore, this must be provided in the centers nearest to her place of residence, for as long as necessary. The psychological and/or psychiatric care should also take into account the victim's particular circumstances and need, as agreed with her and following an individual evaluation. (§236)

- adopt a protocol of investigation and administration of justice during criminal proceedings for cases of violence against LGBTI people:

[T]he Court finds it appropriate to order the State to adopt, within two years of notification of this judgment, a protocol on investigations and administration of justice in criminal proceedings involving members of the LGBTI community who are victims of violence. The protocol must be addressed at all the public officials who intervene in the investigation and processing of criminal proceedings in cases involving members of the LGBTI community who are victims of violence, as well as the public and private health care personnel who participate in such investigations. This protocol must include the obligation of State agents to refrain from using discriminatory presumptions and stereotyping when receiving, processing and investigating complaints. (§242)

When preparing the protocol, the State must take into account the criteria established in the international instruments on torture, as well as the standards developed in this judgment and in the Court's case law. This protocol must take into consideration that due diligence in cases of the rape and torture of LGBTI people entails the adoption of special measures and the development of a process designed to avoid their revictimization, so that it must include, as a minimum, the standards developed in paragraphs 178 to 204 of this judgment. In the case of public and private health care personnel, based on the standards developed in paragraphs 187 to 193 and 198 to 204 of this judgment, the protocol must include at least the following guidelines: (i) the medical examination of the presumed victim must be performed with prior informed consent, without the presence of law enforcement or other state agents, avoiding, insofar as possible, more than one physical assessment; (ii) as soon as a rape is reported, an immediate complete and detailed medical and psychological examination must be performed by trained and appropriate personnel, if possible of the sex preferred by the

victim, advising the victim that they may be accompanied by a person of confidence if they so wish; (iii) this examination must be performed based on protocols specifically addressed at documenting evidence in cases of sexual violence, and (iv) during psychological and/or psychiatric evaluations, doctors must refrain from inquiring into the victim's sexual history and, in general, using stereotypes of sexual orientation or gender expression. (§243)

Lastly, in the case of public officials who are employed in the administration of justice, the protocol must include [...] at least the following criteria: (i) agents of justice must not mistreat or exercise discrimination towards victims and must respect everyone's sexual orientation and gender expression; (ii) presumed victims and witnesses, especially those who are members of the LGBTI population, must be able to report offenses in spaces in which their privacy can be guaranteed, and (iii) methods should be designed to identify indications of whether the sexual violence and torture was committed based on prejudices involving sexual orientation or nonnormative gender identity or expression . (§244)

- create and implement a training plan for state representatives regarding violence against LGBTI people, including measures to sensitize them to the issues involved:

[The Court] finds it pertinent create and implement, within two years, a training plan for agents of the Peruvian National Police, the Public Prosecution Service, the Judiciary and the serenazgo aimed at raising the awareness of members of law enforcement agencies and prosecutors with regard to: (i) respect for sexual orientation and gender expression in their actions involving civilians, especially LGBTI people who report having suffered sexual violence or torture; (ii) due diligence in conducting investigations and judicial proceedings related to discrimination, sexual violence and torture of LGBTI people, and (iii) the discriminatory nature of stereotypes concerning sexual orientation and gender expression and the negative impact that their use has on LGBTI people. (§248)

- design and implement a system to collect and produce statistics about violence against LGBTI people:

The Court appreciates the progress made by the Peruvian State in the collection of data about violence against LGBTI people. However, the Court understands that comprehensive information on the violence suffered by LGBTI people must be collected in order to understand the true magnitude of this phenomenon and, on this basis, design strategies to prevent and to eliminate fresh acts of violence and discrimination. Therefore, the Court orders the State to design immediately and implement within one year, through the corresponding State entity, a system to compile data and figures linked to cases of violence against LGBTI people "in order to be able to uniformly and accurately assess the type, prevalence, trends and patterns of violence and discrimination against" LGBTI persons, disaggregating "the data by community, race, ethnicity, religion or belief, health status, age, class, and migration or economic status." The number of cases prosecuted should also be specified, identifying the number of indictments, convictions and acquittals. The State must publish this information each year in the corresponding report, ensuring that the general public have access to it, while keeping the identity of the victims confidential. The State must present

the Court with an annual report for three years following the implementation of the data collection system indicating the relevant actions taken. (§252)

- eliminate the indicator involving the “eradication of homosexuals and transvestites” from the public safety plans of the Regions and Districts of Peru, which the Court considered was “highly discriminatory” and which “exacerbates the prejudices against the LGBTI population, and, therefore, promotes the possibility of violence based on prejudice occurring, as in this case” (§255).
- pay to the victims the amounts established in the judgment for compensation for material and moral damages, as well as the payment to the legal representatives of costs and expenses, and reimbursement of the Court’s Victims’ Legal Assistance Fund (which had paid certain expenses of the experts and witnesses).

THE LITIGATION PROCESS

Azul was jointly represented in the proceedings by REDRESS, the Coordinadora Nacional de Derechos Humanos (CNDH) and Promsex, who originally filed the complaint before the IACHR in April 2009. The three organisations played important and different roles in the litigation. REDRESS specialises in strategic litigation nationally and internationally, including before the Inter-American System, regarding the prohibition of torture and the right to reparation, the CNDH is an umbrella organisation that brings together many regional and local NGOs in Peru, and Promsex is an NGO specialising in sexual and reproductive rights in Peru, including the protection of LGBTI rights .

The case was decided on the merits through the IACHR's report 24/18. Given that Peru did not comply with the recommendations made by the IACHR, the case was referred to the Court in August 2018. The Commission had noted this would be the first case before the Court dealing with violence against LGBTI persons. The Court held a hearing in August 2019, and decided the case in March 2020, as set out above.

Photo of Azul Rojas Marín on cover: Courtesy of Promsex.

redress.org

REDRESS

87 Vauxhall Walk
London, SE11 5HJ
United Kingdom

REDRESS Nederland

Laan van Meerdervoort 70
2517 AN, Den Haag
Nederland

 [@REDRESSTrust](https://twitter.com/REDRESSTrust)

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