



## **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 in English, given that the Court’s decision is presently only available in Spanish.<sup>1</sup>

### 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.

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<sup>1</sup> The Court’s judgment is available here: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_402\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_402_esp.pdf). Quotes in English in this Briefing Note have been prepared by REDRESS and are not official translations. Paragraph numbers cited are to the paragraph numbers in the judgment.

## THE FACTS OF THE CASE

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

On 25 February 2008 at 00:30, Azul was walking home on her own when a police vehicle drew up. One of the occupants of the vehicle asked her where she was going and said to her: "At this time? Be careful, because it's very late." Twenty minutes later the police returned, searched her, beat her and made her get into the police vehicle while they shouted "*cabro concha de tu madre!*" ("your mother's cunt!"). 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 stripped naked, beaten 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 made a criminal complaint at the police station at Casa Grande. On 24th March 2008 the prosecutor started a preliminary investigation against the police officers from the police station at Casa Grande for a 'crime against sexual freedom' committed against Azul. On 2nd April 2008 the prosecutor formalised a preparatory investigation for the crimes of rape and abuse of authority against three police officers.

On 5th May 2008 Azul requested the broadening of the complaint and asked for the investigation specifically to include the crime of torture. On 16th June 2008 the prosecutor decided not to broaden the investigation. This decision was appealed by Azul and the decision was confirmed on 28th August 2008. On 21st October 2008, the prosecutor requested the dismissal of the case that was continuing against the three police officers. On 9th January 2009, the judge dismissed the criminal case in relation to the crimes of aggravated rape and abuse of authority, and ordered that the file be closed.

On 20th November 2018, as part of complying with the recommendations included in the report of the Inter-American Commission into the merits of this case, the prosecutor reopened the investigation against those alleged to have been responsible for the crime of torture committed against Azul (as opposed to the previous domestic case which had concerned other charges). On 16th January 2019, the prosecutor asked the criminal judge to annul the previous decision dismissing the case 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 14th 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 lack of exhaustion of domestic remedies, (b) the subsidiarity of the Inter-American system, and (c) the fourth instance formula<sup>2</sup>. The Court rejected the preliminary objections put forward by the state.

### FINDINGS ON THE FACTUAL CONTEXT

The Court found that in Peruvian society, strongly-held prejudices against the LGBTI population existed both at the time of the events in question and continue today, and that in certain cases, these prejudices are expressed in acts of violence. "These violent acts are sometimes committed by state representatives, including members of the national police and the municipal public security guards, as occurred in the present 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, principally due to the fear of being discriminated against and/or attacked (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, various 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 self-identifies with a certain category or not. This violence can lead to hate crimes. Consequently, the ruling asserts that "the State cannot discriminate against a person on the basis of their sexual orientation, their gender identity and/or their gender expression" (§90).

*Violence against LGBTI persons has a symbolic objective, the victim is chosen with the aim of communicating a message of exclusion or subordination... [V]iolence committed for discriminatory motives has as its effect or objective the prevention or nullifying of the recognition, enjoyment or exercise of human rights and fundamental freedoms of the person who is the object of such discrimination, regardless of whether the person self-identifies within a certain category or not. (§93)*

*The Court also warns that on occasions it can be difficult to distinguish between discrimination on the basis of sexual orientation, and discrimination on the basis of gender expression. Discrimination on the basis of sexual orientation can be based on sexual orientation that is real or perceived, and can therefore include cases in which a person is discriminated against on the basis of the perception that others have regarding their sexual orientation. This perception can be influenced, for example, by*

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<sup>2</sup> 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.

*the way someone dresses, the way they have their hair, their mannerisms, or their way of behaving that does not comply with traditional norms or gender stereotypes, or which constitutes a gender expression that is non-normative. In the current case, the gender expression of the victim could be associated by third parties with a certain 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 a deprivation of liberty has discriminatory motives “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”.<sup>3</sup> The Working Group considers that one of the factors to take into account to determine the existence of discriminatory motives is if “[t]he authorities have made statements to, or conducted themselves toward, the detained person in a manner that indicates a discriminatory attitude”<sup>4</sup>. In addition, the expert María Mercedes Gómez stated that “one of the key elements [to establish whether a person was arrested due to prejudice] is that it is not possible to identify an apparent motive other than what is perceived by the victim, that is, that there is no distinct aim of the arrest. [As well as] the expressions that were used.” (§127)*

*This tribunal has indicated that detentions undertaken for discriminatory reasons are manifestly unreasonable and therefore arbitrary. As a result of the discriminatory nature of the deprivation of liberty it is not necessary to examine its purpose, necessity or proportionality to determine its arbitrariness. (§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 obligations to respect and guarantee these rights without discrimination as contained in article 1.1 of the Convention.

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

<sup>4</sup> 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 victims clothing, as well as the various signs of discriminatory treatment against the victim, the court concluded that Azul was forcibly stripped naked, beaten 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 tribunal has indicated that the mention of some of the alleged ill-treatment only in some of the statements does not signify that they are false or that the facts related lack truth. In this respect, this tribunal takes into account that the facts described by Ms Rojas Marín refer to a traumatic moment suffered by her, the impact of which may lead to certain inaccuracies when recalled. In the same way, in analysing these statements it ought to be taken into account that the sexual aggression represents a type of crime that the victim is not used to reporting, due to the stigma that such a complaint usually brings with it. In this sense, it is reasonable that Ms Rojas Marín did not mention the rape either in a media report which appeared at the time, or in the first oral complaint she made to the police. (§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 that, in general terms, rape, like torture, is intended, inter alia, to intimidate, degrade, humiliate, punish or control the victim. The victim's representatives alleged that the ill-treatment was undertaken with a discriminatory purpose. In this respect, the expert Juan Méndez indicated that "in order to decide if a case of torture has been motivated by prejudice against LGBTI persons" the following indicators can be used: "the pattern and characteristics of discrimination-based violence. For example, in cases of LGBTI persons, anal rape or the use of other forms of sexual violence"; "discriminatory insults, comments or gestures made by the perpetrators during the commission of the conduct or in its immediate context, with reference to the sexual orientation or gender identity of the victim" or "the absence of other motives". In the present case, one of the assaults suffered by the victim was anal rape. On this point, the expert María Mercedes Gómez indicated that the rape was undertaken using "a thing symbolically representing authority, such as the police baton, which sends a symbolic message of reinstating a masculinity that is seen to be threatened by the perception that the victim is not complying with the orders established by masculinity" (§163).*

*In addition, the violence used by the police against Ms Rojas Marín included stereotypical insults and threats of rape... This tribunal considers that the anal rape*

*and the remarks related to sexual orientation were also evidence of a discriminatory purpose, and therefore constituted 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 all LGBTI people, as 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,<sup>5</sup> and the guide of the World Health Organization (WHO) on the medico-legal care of the victims of sexual violence,<sup>6</sup> 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 Tribunal has ruled that in a criminal investigation of sexual violence it is necessary that: (i) the statement of the victim is obtained in a comfortable and secure environment that allows privacy and builds trust; (ii) the statement of the victim is recorded in such a way as to avoid or limit the need for the process to be repeated; (iii) medical, health and psychological care is provided to the victim both on an emergency basis and on an ongoing basis if this is required, by way of a treatment protocol whose objective is to reduce the impacts of the violation; (iv) a complete and detailed medical and psychological examination is immediately undertaken by appropriate and trained personnel, if possible of the gender requested by the victim, offering the victim the opportunity to be accompanied by someone they trust if they wish; (v) investigative actions are documented and coordinated and the evidence is carefully managed, taking sufficient samples, conducting studies to determine the possible perpetrators of the act, safeguarding other evidence such as the clothing of the victim, immediately investigating the crime scene and guaranteeing the chain of custody, and (vi) offering access to free legal help to the victim during the different stages of the process. (§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

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<sup>5</sup> 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>

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

statements made by Azul, especially that made during the reconstruction of the crime scene, constituted acts of revictimization, as she was forced to face her perpetrators while they made fun of her; (ii) the medical examination was undertaken after 72 hours and did not give an interpretation of the probable relation between the physical symptoms and the violence that was attested to by Azul; (iii) the important failures in evidence gathering, such as the failure immediately to safeguard the clothing of the victim 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 in an objective way (§205).

### **Duty to investigate discriminatory motive**

Notably, the Court found that when investigating violence, 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 all the required 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:

*...[T]his tribunal considers that when violent acts, such as torture, are being investigated, the State authorities have the duty to take all reasonable measures to uncover the existence of possible discriminatory motives. This obligation implies that, when there are concrete signs or suspicions of violence having been conducted for discriminatory motives, the State ought to do whatever is reasonable in the circumstances to gather and safeguard the evidence, explore all practical means to uncover the truth, and issue fully reasoned, impartial and objective decisions without leaving out doubtful facts that could indicate violence motivated by discrimination. The lack of an investigation on the part of the authorities of possible discriminatory motives could 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:

*...[I]n the medico-legal examination, in questioning, and in the decision of the administrative tribunal, the term "against nature" is used to refer to anal penetration. The use of this term stigmatises those who conduct this type of sexual act, labelling them "abnormal" for not conforming to heteronormative social principles. (§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 "injury to the anus or rectum are rarely caused by consensual intercourse"<sup>7</sup> (§191).

Indeed, the Court went further, stating:

*...[T]he opening of lines of inquiry about the social behaviour or previous sexual life of the victims in cases of gender-based violence is nothing more than a manifestation of policies or attitudes based on gender stereotypes. There is no reason that the same*

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<sup>7</sup> WHO Guidelines, *ibid.*, page 49.

*should not be applied to cases of sexual violence against LGBTI persons, or those perceived as such. In this sense, the Court considers that questions regarding the sex life of the presumed victim 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 criminal investigation of violence against members of the LGBTI community. The protocol shall be binding under domestic law, instruct State representatives to abstain from applying stereotypes (§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*,<sup>8</sup> and then developed further in another case in which discrimination was found against the LGBTI community: *Caso Atala Riffo vs. Chile*.<sup>9</sup>

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, within a reasonable period and through the use of staff trained in dealing with victims of discrimination and violence on the basis of sexual orientation, must promote and continue the necessary comprehensive, systematic and thorough investigations in order to identify, prosecute and, where appropriate, punish those responsible for the sexual violence and sexual torture suffered by Ms Rojas Marín, avoiding the application of discriminatory stereotypes or the use of any act that may be revictimizing.*  
(§229)

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

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<sup>8</sup> 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.

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

*[This public act of acknowledgement] ought to make reference to the human rights violations found in this judgment. Also, it ought to be carried out by way of a public ceremony in the presence of senior State officials and of Ms Rojas Marín or her legal representatives. (§233)*

*The State and the victim, and/or her legal representatives, shall agree on the way in which the public act of acknowledgement is to be undertaken, and on details such as the date and the place in which it takes place. (§234)*

- provide medical and psychological and / or psychiatric treatment:

*...[T]he Court considers that provision should be made for a reparation measure that provides suitable care for the physical, psychological or psychiatric ailments suffered by the victim taking into account her specific circumstances and background. This Court orders the State to provide, as a matter of priority, free medical treatment for Azul Rojas Marín which must include the provision of medication and, where required, transportation and other directly related and necessary expenses. The treatment should also be provided, as far as possible, in the centres closest to her place of residence, for as long as necessary. In providing psychological and/or psychiatric treatment, the particular circumstances and needs of the victim must also be considered, in accordance with what is agreed with her and after an individual assessment. (§236)*

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

*...[T]he Court considers it appropriate to order the State to adopt, within two years of the notification of this judgment, a protocol for the investigation and administration of justice during criminal proceedings in cases of LGBTI victims of violence. The protocol must be binding under domestic law. This protocol should be addressed to all public officials involved in the investigation and conduct of criminal proceedings in cases of LGBTI victims of violence, as well as to public and private health personnel involved in such investigations. This protocol should include an obligation for State agents to refrain from using discriminatory assumptions and stereotypes when receiving, processing and investigating complaints. (§242)*

*In drafting the protocol, the State must take into account the criteria established in international instruments on torture, as well as the standards developed in this judgment and in the jurisprudence of the Court. In this regard, the protocol should take into consideration that due diligence in cases of sexual violence and torture against LGBTI persons implies the adoption of special measures and the development of a process with a view to preventing their re-victimization.... For health personnel, public or private, the protocol shall include... at least the following guidelines: (i) medical examinations of the alleged victim must be carried out with prior informed consent, without the presence of security agents or other State officials, avoiding as far as possible more than one physical assessment; (ii) when reporting acts of rape, it is necessary that a full and detailed medical and psychological examination is carried out immediately by appropriate and trained personnel, if possible of the gender requested by the victim, offering the victim the opportunity to be accompanied by someone they trust if they wish; (iii) such examination shall be carried out in accordance with protocols*

*specifically aimed at documenting evidence in cases of sexual violence; and (iv) in psychological and/or psychiatric appraisals, doctors should refrain from inquiring into the victim's sexual background, and, in general, from using stereotypes relating to sexual orientation or gender expression. (§243)*

*Finally, with regard to public officials involved in the administration of justice, the protocol must include... at least the following: (i) justice officials must not engage in ill-treatment or discrimination of victims and must respect the sexual orientation and gender expression of all persons; (ii) alleged victims and witnesses, especially those belonging to the LGBTI community, should be able to report crimes in places where it is possible to guarantee their privacy, and (iii) methods should be designed to identify signs of whether sexual violence and torture has been committed on the basis of prejudice against non-normative sexual orientations, identities or gender expressions. (§244)*

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

*[This Tribunal] considers it appropriate to instruct the State to create and implement, within two years, a training plan for officers of the Peruvian National Police, the Public Prosecutor's Office, the judiciary and the municipal public security guards [serenazgo] aimed at sensitizing members of police bodies and prosecutors on: (i) respect for sexual orientation and gender expression in their dealings with civilians, especially of LGBTI persons who report having suffered sexual violence or torture; (ii) due diligence in conducting investigations and prosecutions related to discrimination, sexual violence and torture of LGBTI persons; and (iii) the discriminatory nature of stereotypes regarding sexual orientation and gender expression and the negative impact that their use has on LGBTI persons. (§248)*

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

*The Court welcomes the Peruvian State's progress in collecting data on violence against LGBTI persons. However, the Court understands that it is necessary to gather comprehensive information on the violence suffered by LGBTI persons in order to assess the real magnitude of this phenomenon and, accordingly, design strategies to prevent and eradicate further acts of violence and discrimination. The Court therefore orders the State to immediately design and implement within one year, through the relevant State agency, a system for gathering data and figures relating to cases of violence against LGBTI persons, in order to assess accurately and impartially the type, prevalence, trends and patterns of violence and discrimination against LGBTI persons, disaggregated by community, race, ethnic origin, religion or belief, health status, age, and class, or economic or migration status. In addition, the number of cases actually prosecuted should be specified, identifying the number of indictments, convictions and acquittals. This information must be disseminated by the State by way of an annual report, access to which is guaranteed for the entire population in general, and which preserves the anonymity of the victims. To that end, the State must submit to the Court an annual report each year for three years after the*

*implementation of the data collection system, indicating the actions that have been taken to that end. (§252)*

- eliminate the indicator of “eradication of homosexuals and transvestites” from the Citizen Security Plans of the Regions and Districts of Peru, which the Court considered was “highly discriminatory” and which “exacerbates prejudice against the LGBTI community, and, therefore, increases the possibility of discriminatory violence occurring, such as that which occurred in the present 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.

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