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New York, November 11, 2020

Judge Elizabeth Odio Benito
President
Inter-American Court of Human Rights
San José, Costa Rica



[HRW.org](https://www.hrw.org)

Subject: Human Rights Watch *Amicus Curiae* in the Case of *Vicky Hernández and Family v. Honduras*

I. INTRODUCTION

Human Rights Watch (“HRW”) respectfully submits this brief to the Inter-American Court of Human Rights (“*Inter-American Court*” or “*this Court*”) as *amicus curiae* in the case *Vicky Hernández and Family v. Honduras*, filed by La Red Lésbica Cattrachas and Robert F. Kennedy Human Rights on behalf of three family members of the decedent in the case.

HRW submits that the jurisprudence of this Court establishes that the obligation of states party to the Inter-American Convention on Human Rights (“*Convention*”) to protect the right to life under Article 4, read in conjunction with Article 1, includes an obligation to conduct an effective investigation when an individual has been killed as a result of the use of force, died or disappeared in violent or suspicious circumstances, or sustained life-threatening injuries, irrespective of whether those allegedly responsible are state agents or private persons or are unknown, or if the injuries are self-inflicted.

That being the case, HRW urges this Court to harmonize its jurisprudence on the duty of effective investigation under the right to life with that of the European Court of Human Rights (“*European Court*”) by clarifying

- a) the importance of the duty of effective investigation under the right to life in securing the right to life and deterring violations of that right;
- b) that failure to conduct an effective investigation may give rise to an independent violation of the right to life under Article 4 of the American Convention, separate from (i) a substantive violation of the right to life under

- Article 4; and (ii) a violation of the rights to a fair trial and to judicial protection under Articles 8 and 25 of the Convention; and
- c) that the duty of effective investigation under the right to life requires the state to take all reasonable steps to investigate and uncover any possible discriminatory motives, including, as in the killing of Vicky Hernández, possible discrimination on the basis of sexual orientation, or gender identity or expression.

HRW urges this Court to consider the state's obligation to protect the right to life against violence motivated by discrimination against the victim's sexual orientation, or gender identity or expression, in the Honduran context, where lesbian, gay, bisexual, and transgender ("*LGBT*") victims of lethal and fatal violence face barriers to accountability. HRW research illustrates how authorities dismiss LGBT people's complaints or respond in a discriminatory manner when LGBT people seek to secure effective investigations into acts of violence committed against them.

II. STATEMENT OF INTEREST

a. History and Mandate of Human Rights Watch

Human Rights Watch is a nonprofit, nongovernmental organization that investigates and reports on violations of fundamental human rights in over 100 countries worldwide with the goal of securing the respect of those rights for all persons. By exposing and calling attention to human rights abuses committed by both state and non-state actors, HRW seeks to bring international public opinion to bear upon offending governments and others to end abusive practices.

HRW is known for accurate and impartial fact-finding. To ensure its independence, the group does not accept government funding, directly or indirectly, or support from any private funder that could compromise its objectivity in reporting on human rights violations.

HRW has previously filed *amicus* briefs before various international tribunals and human rights bodies, including the Inter-American Court of Human Rights.

b. *Human Rights Watch's Work on LGBT Rights*

HRW has had a dedicated Lesbian, Gay, Bisexual, and Transgender Rights Program since 2004 which leads the organization's work documenting and highlighting the violence and inequality that LGBT people around the world face based on their sexual orientation or gender identity, including in Latin America and the Caribbean. HRW's LGBT Rights Program aims to integrate LGBT rights into the broader rubric of human rights. To that end, HRW advocates for laws and policies that will protect the dignity of all people by allowing LGBT individuals to enjoy their fundamental human rights. Such advocacy includes legal interventions in relevant cases, such as before the European Court of Human Rights in the case of *Kaos GL v. Turkey* on the freedom of expression of an LGBT organization,¹ before the Inter-American Commission on Human Rights in the case of *Gareth Henry et al. v. Jamaica* on laws criminalizing same-sex conduct,² and before the United States Supreme Court and the Constitutional Court of Ecuador on same-sex marriage.³

c. *Human Rights Watch's Work on LGBT Rights in Honduras*

In May 2009, HRW published a report entitled "*Not Worth a Penny*": *Human Rights Abuses against Transgender People in Honduras*.⁴ Nearly all the 35 people HRW interviewed in Honduras in late 2008 and early 2009 were victims of or eye witnesses to harassment, beatings, and ill treatment of transgender people at the hands of police. At least 17 *travestis* were killed in public places in Honduras between 2004 and May 2009; many more were beaten, stabbed, or shot. Transgender people and LGBT organizations also experienced police inaction and failure to investigate cases that they registered with the police.

In October 2020, HRW published a report entitled "*Every Day I Live in Fear*": *Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to*

¹ *Kaos GL v. Turkey*, Judgment of 22 November 2016, Eur. Ct. H.R., Application no. 4982/07, available at <http://hudoc.echr.coe.int/eng?i=001-168765>.

² *Gareth Henry et al. v. Jamaica*, Report of 2 July 2018, Inter-Am. Comm. H.R. No. 80/18, Petition 1850-11, available at <http://www.oas.org/en/iachr/decisions/2018/JAAD1850-11EN.docx>.

³ *Obergefell v. Hodges*, Judgment of 26 June 2015, U.S. Supreme Court, 576 U.S. 644, available at https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf; *Case 0011-18-CN*, Judgment of 12 June 2019, Ecuador Constitutional Court, available at <http://sgc.corteconstitucional.gob.ec:8494/FichaRelatoria.aspx?numdocumento=11-18-CN/19>.

⁴ Human Rights Watch, "*Not Worth a Penny*": *Human Rights Abuses against Transgender People in Honduras*, May 2009, available at <https://www.hrw.org/report/2009/05/29/not-worth-penny/human-rights-abuses-against-transgender-people-honduras>.

*Asylum in the United States.*⁵ For this report, HRW conducted 25 additional interviews with LGBT people about the violence that they face in Honduras. Many LGBT Hondurans described a complex web of violence and discrimination, including from state and non-state actors, that threatens their physical safety, limits their life choices, and in some cases leads them to flee their country.⁶ And while almost all victims of violence in Honduras face challenges obtaining redress in the face of fragile institutions, corruption, and the violence of organized criminal organizations, LGBT victims with whom HRW spoke noted additional barriers in the form of stigma and discrimination from the police, other law enforcement agents, and judicial institutions who are charged with keeping them safe.

III. A STATE PARTY TO THE AMERICAN CONVENTION HAS AN OBLIGATION TO CONDUCT EFFECTIVE INVESTIGATIONS INTO FATAL OR LETHAL ATTACKS UNDER THE RIGHT TO LIFE UNDER ARTICLE 4(1), READ IN CONJUNCTION WITH ARTICLE 1(1)

This Court has acknowledged that the right to life under Article 4(1), in conjunction with the obligation to respect rights under Article 1(1), requires that states conduct an effective investigation into any deprivation of life related to alleged criminal acts. This obligation includes, but is not limited to, preserving evidentiary material at the crime scene, identifying witnesses, obtaining statements, and conducting autopsies.

As this Court noted in *Myrna Mack Chang v. Guatemala*, the right to life under Article 4(1) of the American Convention, read in conjunction with Article 1(1), is comprised of both negative and

⁵ Human Rights Watch, “*Every Day I Live in Fear*”: *Violence and Discrimination Against LGBT People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States*, October 2020, available at <https://www.hrw.org/report/2020/10/07/every-day-i-live-fear/violence-and-discrimination-against-lgbt-people-el-salvador#2311>

⁶ The Inter-American Commission on Human Rights has also published on the high levels of violence, noting in a 2019 report that 155 LGBT murders occurred between 2014 and 2019. *Human Rights Situation in Honduras*, Inter-Am. Comm. H.R., OEA/Ser.L/V/II., Doc. 146, 27 August 2019, para. 277, available at <https://www.oas.org/es/cidh/informes/pdfs/Honduras2019.pdf> (“[T]he Commission continues to receive abundant information from the civil society on acts of violence committed against people sexual orientation and diverse gender identity and expression. The IACHR notes with concern the 155 murders of gay people, lesbians and trans occurred in the last 5 years, including two cases that happened during the time the IACHR was conducting its on-site visit occurred on June 30 and July 7, 2018. According to the data provided about cases of violence, most of the murders occurred against gay men and trans women. Also, regarding the trans women, the IACHR notes with concern that according to the information, all the victims were under 34 years old, which reinforces the low average lifespan of this population in the hemisphere.”).

positive obligations.⁷ States must not only ensure that no person is arbitrarily deprived of their life, but must also adopt all appropriate measures to “prevent, try, and punish the deprivation of life as a consequence of criminal acts, in general[.]”⁸ This Court held that safeguarding the right to life requires “[s]tates to effectively investigate deprivation of the right to life and to punish all those responsible [...] as not doing so would create, within the environment of impunity, conditions for this type of facts to occur again, which is contrary to the duty to respect and ensure the right to life.”⁹

This Court expanded on the duty to investigate under the right to life in *Servellón-García et al. v. Honduras*, where it noted that “one of the conditions to effectively guarantee the rights to life, humane treatment, and personal liberty is the compliance with the duty to investigate the violations to the same, which derive from Article 1(1) of the Convention, along with the substantive right that must be protected, or guaranteed.”¹⁰ There, this Court held that an effective investigation of a violation to the right to life requires that “once the state authorities become aware of the fact, they must begin a serious, impartial, and effective investigation *ex officio* and without delay.”¹¹

While the facts of both *Myrna Mack Chang* and *Servellón-García et al.* involve killings for which state agents were responsible, this Court has been clear that the duty to investigate extends to any potential criminal act that deprives a person of their life, irrespective of the perpetrator. As early as in *Velásquez-Rodríguez v. Honduras* this Court has made clear that the context in which state agents are identified as responsible for the deprivation of life “does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations [...] The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with

⁷ *Myrna Mack Chang v. Guatemala*, Judgment of 25 November 2003, Inter-Am. Ct. H.R. (Ser. C) No. 101, para. 153, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf.

⁸ *Id.*

⁹ *Id.*, para. 156.

¹⁰ *Servellón-García et al. v. Honduras*, Judgment of 21 September 2006, Inter-Am. Ct. H.R. (Ser. C) No. 152, para. 119, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_152_ing.pdf.

¹¹ *Id.*

impunity to the detriment of the rights recognized by the Convention.”¹² When discussing the nature of the duty to investigate this Court said, “it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective [...] Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.”¹³

IV. THIS COURT SHOULD HARMONIZE ITS JURISPRUDENCE WITH THAT OF THE EUROPEAN COURT, CLARIFYING THAT FAILURE TO CONDUCT AN EFFECTIVE INVESTIGATION MAY GIVE RISE TO A DISCRETE VIOLATION UNDER ARTICLE 4, SEPARATE FROM SUBSTANTIVE VIOLATIONS OF THE RIGHT TO LIFE, OR TO A FAIR TRIAL, OR JUDICIAL PROTECTION

While the Inter-American Court has established that the right to life under Article 4, in conjunction with the obligation to respect rights under Article 1(1), requires that states conduct effective investigations into any alleged deprivation of the right to life, this Court should harmonize its jurisprudence on the right to life with that of other tribunals, notably the European Court of Human Rights. It should clarify that failure to execute an effective investigation is a distinct obligation and may give rise to a separate and independent violation from a) a substantive violation of the right to life under Article 4; and b) a violation of the rights to a fair trial and to judicial protection under Articles 8 and 25 of the American Convention.

Like the Inter-American Court, the European Court of Human Rights has repeatedly ruled that there is an obligation to carry out an effective investigation under the right to life, guaranteed under Article 2 of the European Convention on Human Rights (“*European Convention*”).¹⁴ The European Court has emphasized that “the essential purpose of such investigation [into deprivation of life] is to secure the effective implementation of the domestic laws which protect the right to life and to

¹² *Velásquez-Rodríguez v. Honduras*, Judgment of 29 July 1988, Inter-Am. Ct. H.R. (Ser. C) No. 4, paras. 172-76, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

¹³ *Id.*, para. 177.

¹⁴ See e.g., *McCann and Others v. The United Kingdom*, Judgment of 27 September 1995, Eur. Ct. H.R., Application no. 18984/91, para. 161, available at <http://hudoc.echr.coe.int/fre?i=001-57943> (concerning lethal force by State agents); *Iorga v. Moldova*, Judgment of 23 March 2010, Eur. Ct. H.R., Application no. 12219/05, para. 26, available at <http://hudoc.echr.coe.int/eng?i=001-97883> (concerning suspicious deaths or disappearances); *Tahsin Acar v. Turkey* [GC], Judgment of 8 April 2004, Eur. Ct. H.R., Application no. 26307/95, para. 226, available at <http://hudoc.echr.coe.int/eng?i=001-61698> (concerning suspicious deaths or disappearances); *Kolevi v. Bulgaria*, Judgment of 5 November 2009, Eur. Ct. H.R., Application no. 1108/02, paras. 191-215, available at <http://hudoc.echr.coe.int/eng?i=001-95607> (concerning high-profile assassinations); *Paul and Audrey Edwards v. The United Kingdom*, Judgment of 14 March 2002, Eur. Ct. H.R., Application no. 46477/99, available at <http://hudoc.echr.coe.int/eng?i=001-60323> (concerning inter-prisoner violence); *Opuz v. Turkey*, Judgment of 9 June 2009, Eur. Cr. H.R., Application no. 33401/02, paras. 150-51, available at <http://hudoc.echr.coe.int/eng?i=001-92945> (concerning domestic violence).

ensure the accountability of the perpetrators.”¹⁵ The European Court, however, has gone further than the Inter-American Court in defining the parameters of the obligation of effective investigation under the right to life, including by explaining that it can give rise to a separate and independent violation under the right to life. The European Court held that “the procedural obligation to carry out an effective investigation under Article 2 has evolved into a separate and autonomous duty. Although it is triggered by the acts concerning the substantive aspects of Article 2 it can give rise to a finding of a separate and independent ‘interference.’”¹⁶ Underlying the European Court’s approach is that the right to life is one of the most fundamental provisions in the European Convention, which together with the prohibition on torture and inhuman or degrading treatment or punishment, the Court considers “enshrines one of the basic values of democratic societies[.]”¹⁷ It is because of this “fundamental character” that there is a procedural obligation to carry out an effective investigation into loss of life, and why failure to meet that procedural obligation gives rise to a violation of the right to life.¹⁸

This is reflected in the European Court’s case law, where it has found on multiple occasions violations of the right to life on both substantive and procedural grounds. For example, in *Luluyev and Others v. Russia*, the European Court found both a violation of the substantive the right to life due to state agents’ location near the place of the victim’s apprehension and the circumstances in which the victim’s body was found, and a procedural violation due to the manner in which the criminal investigation was conducted.¹⁹ The European Court has also found violations of the right to life on only procedural grounds. For example, in *Tahsin Acar v. Turkey* the European Court did not finding a substantive violation of the right to life when contradictory eyewitness statements

¹⁵ *McCann and Others v. The United Kingdom*, *supra* note 14, para. 161.

¹⁶ *Šilih v. Slovenia* [GC], Judgment of 9 April 2009, Eur. Ct. H.R., Application no. 71463/01, para. 159, available at <http://hudoc.echr.coe.int/fre?i=001-92142>.

¹⁷ *Giuliani and Gaggio v. Italy* [GC], Judgment of 25 August 2009, Eur. Ct. H.R., Application no. 23458/02, para. 204, available at <http://hudoc.echr.coe.int/eng?i=001-93948>.

¹⁸ *Armani da Silva v. The United Kingdom* [GC], Judgment of 30 March 2016, Eur. Ct. H.R., Application no. 5878/08, para. 229-39, available at <http://hudoc.echr.coe.int/eng?i=001-161975>.

¹⁹ *Luluyev and Others v. Russia*, Judgment of 9 November 2006, Eur. Ct. H.R., Application no. 69480/01, paras. 73-101, available at <http://hudoc.echr.coe.int/e?i=001-77926>. See also *Taniş and Others v. Turkey*, Judgment of 2 August 2005, Eur. Ct. H.R., Application no. 65899/01, paras. 195-211, available at <http://hudoc.echr.coe.int/eng?i=001-70021> (*finding both a violation of the substantive aspect of the right to life when police summoned and threatened the disappeared, and a procedural violation when the investigation into the disappearances was inadequate*); *Olewnik-Cieplińska and Olewnik v. Poland*, Judgment of 5 September 2019, Eur. Ct. H.R., Application no. 20147/15, paras. 110-46, available at <http://hudoc.echr.coe.int/eng?i=001-195544> (*finding both a violation of the substantive aspect of the right to life when authorities’ committed errors and omissions in a kidnapping case, and a procedural violation when 17 years after the kidnapping the circumstances of the events had not been fully clarified*);

were the only evidence against gendarmerie officers, but did find a procedural violation of the right to life when the criminal investigation failed to verify information and obtain relevant evidence.²⁰

The European Court has also elaborated on the relationship between the procedural aspects of the right to life and the right to an effective remedy under the European Convention. The European Court made clear that “although the failure to comply with such an obligation may have consequences for the right protected under Article 13 [the right to an effective remedy], the procedural obligation of Article 2 is seen as a distinct obligation.”²¹ For example, the European Court has held that “where the alleged violations have implied direct responsibility of the State agents, the Court has found that the requirements of Article 13 are broader than a Contracting State’s obligation under Articles 2 [...] to conduct an effective investigation into the death and/or disappearance of a person who has been shown to be under their control and for whose welfare they were accordingly responsible.”²² Such nuances are reflected in the European Court’s case law, where it has found a violations of the right to life on procedural grounds in conjunction with a violation of the right to effective remedy. For example, in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, the European Court found a procedural violation of the right to life for failure to carry out an effective investigation into the circumstances surrounding decedent’s death, and concurrently a violation of the right to effective remedy for the failure to secure and implement an appropriate legal framework that would have enabled the decedent’s allegations relating to breaches of his right to life to have been examined by an independent authority.²³ The

²⁰ *Tahsin Acar v. Turkey* [GC], *supra* note 14, paras. 206-34. *See also Scavuzzo-Hager and Others v. Switzerland*, Judgment of 7 February 2006, Eur. Ct. H.R., Application no. 41773/98, paras. 38-86, available at <http://hudoc.echr.coe.int/eng?i=001-72322> (not finding a substantive violation of the right to life when it was impossible for police officers to know that the drug-dependent suspect was so vulnerable that the slightest impact on his body could lead to fatal complications, but finding a procedural violation because the investigation did not look into whether the force used by the police caused or hastened his death); *Kaya v. Turkey*, Judgment of 19 February 1998, Eur. Ct. H.R., Application no. 158/1996/777/978, paras. 86-92, available at <http://hudoc.echr.coe.int/eng?i=001-58138> (not finding a substantive violation of the right to life due to deeply conflicting accounts of circumstances in which victim was killed, but finding a procedural violation due to assumptions by the public prosecutor and insufficiencies with respect to the forensic examination, autopsy, and further enquiries); *Mocanu and Others v. Romania*, Judgment of 17 September 2014, Eur. Ct. H.R., Application nos. 10865/09, 45886/07, 32431/08, paras. 314-26, 352-53, available at <http://hudoc.echr.coe.int/eng?i=001-146540> (not finding a substantive violation of the right to as the killing took place in 1990 prior to the Convention coming into force against Romania, but finding a procedural violation due to inadequacies of the investigation after 1994 when Romania was a party to the Convention).

²¹ *Šilih v. Slovenia*, *supra* note 16, para. 154.

²² *Tagayeva and Others v. Russia*, Judgment of 13 April 2017, Eur. Ct. H.R., Application no. 26562/07 and 6 others, para. 619, available at <http://hudoc.echr.coe.int/eng?i=001-172660>.

²³ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], Judgment of 17 July 2014, Eur. Ct. H.R., Application no. 47848/08, paras. 130-53, available at <http://hudoc.echr.coe.int/eng?i=001-145577>.

European Court has also found violations of the right to life on procedural grounds without a violation of the right to effective remedy. In *Tagayeva and Others v. Russia*, it found a procedural violation of the right to life due to failures to properly secure, collect and record evidence, but found no violation of the right to effective remedy because the State had employed adequate compensation mechanisms and procedures aimed at establishing the knowledge necessary to elucidate the facts.²⁴

The Inter-American Court of Human Rights should build upon its jurisprudence underscoring the right to life under Article 4 of the American Convention as one of the most fundamental provisions, and expand on the duty of effective investigation under the right to life, harmonizing its legal jurisprudence with the European Court. Specifically, the Inter-American Court should clarify that duty of effective investigation under the right to life can give rise to a separate and independent violation under the right to life, as well as a separate and independent violation under the rights to a fair trial and to judicial protection.

V. THIS COURT SHOULD CLARIFY THAT THE DUTY OF EFFECTIVE INVESTIGATION UNDER THE RIGHT TO LIFE INCLUDES AN OBLIGATION TO INVESTIGATE AND UNCOVER WHETHER A VIOLENT ACT WAS MOTIVATED BY ANTI-LGBT DISCRIMINATION

This Court's jurisprudence establishes that the duty of effective investigation under the right to life is crucial "to respect and ensure the right to life" and deter violations of it.²⁵ In expounding on what an effective investigation entails this Court has articulated that "[t]he state authorities that carry out an investigation must, *inter alia*, a) identify the victim; b) recover and preserve the evidentiary material related to the death; c) identify possible witnesses and obtain their statements with regard to the death that is being investigated; d) determine the cause, form, place, and time of death, as well as any procedure or practice that could have caused it; and e) distinguish between a natural death, an accidental death, suicide, and homicide."²⁶

In the *Azul Rojas Marín et al. v. Peru*, this Court further established that when investigating violence against a person who is lesbian, gay, bisexual or transgender, an effective investigation requires state authorities to determine whether that violence is motivated by anti-LGBT discrimination. When investigating violent acts, state authorities "have a duty to take all reasonable

²⁴ See e.g., *Tagayeva and Others v. Russia*, *supra* note 22, paras. 623-32.

²⁵ *Myrna Mack Chang v. Guatemala*, *supra* note 7, para. 156.

²⁶ *Servellón-García et al. v. Honduras*, *supra* note 10, para. 120.

measures to uncover whether there are possible discriminatory grounds.”²⁷ This Court held that under the rights to a fair trial and to judicial protection, protected under Articles 8 and 25 of the American Convention, when there are “concrete indications or suspicions of violence for discriminatory reasons”, there is a duty on states to investigate properly according to the circumstances by, *inter alia*, collecting and securing the appropriate evidence. No facts can be omitted from the investigation if they can lead to establishing that the violence was motivated by discrimination; doing so could in itself entail a violation of the non-discrimination provision under Article 1(1).²⁸

HRW submits that where there is reason to believe that a life threatening or fatal attack is motivated by anti-LGBT discrimination, the obligation of effective investigation under the right to life must also include an investigation of this motive. As the European Court has said in the case of the killing of a Black victim, “where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society’s condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.”²⁹ It underscored that “[c]ompliance with the State’s positive obligations under Article 2 of the Convention [right to life] requires that the domestic legal system must demonstrate its capacity to enforce criminal law against those who unlawfully took the life of another, irrespective of the victim’s racial or ethnic origin.”³⁰ Likewise, in a case involving victims from the Roma community, the European Court emphasized that “[w]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events [...] The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned,

²⁷ *Azul Rojas Marín et al. v. Peru*, Judgment of 12 March 2020, Inter-Am. Ct. H.R. (Ser. C) No. 402, para. 124, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_402_esp.pdf. For jurisprudence confirming sexual orientation is a protected ground under Article 1, see *Atala Riffo and daughters v. Chile*, Judgment of 24 February 2012, Inter-Am. Ct. H.R. (Ser. C) No. 239, para. 93, available at https://corteidh.or.cr/docs/casos/articulos/seriec_239_ing.pdf; *Duque v. Colombia*, Judgment of 26 February 2016, Inter-Am. Ct. H.R. (Ser. C) No. 310, paras 104-05, available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_310_esp.pdf.

²⁸ *Azul Rojas Marín et al. v. Peru*, para. 196.

²⁹ *Menson v. The United Kingdom*, Admissibility Decision of 6 May 2003, Eur. Ct. H.R., Application no. 47916/99, available at <http://hudoc.echr.coe.int/eng/?i=001-23192>.

³⁰ *Id.*

impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.”³¹

The European Court has ruled that the same holds true for violence motivated by hatred, prejudice or discrimination against a victim’s sexual orientation or identity. In a case involving violent attacks on LGBT persons who had taken part in an LGBT pride parade, the European Court held: “When investigating violent incidents [...] State authorities have a duty to take all reasonable steps to uncover any possible discriminatory motives, which the Court concedes is a difficult task [...] The authorities must do whatever is reasonable in the circumstances to collect and secure the evidence, to explore all practical means of discovering the truth, and to deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination [...] Treating violence and brutality arising from discriminatory attitudes on an equal footing with violence occurring in cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”³² There, the Court found that “the authorities did not take reasonable steps with the aim of examining the role played by possible homophobic motives behind the attack. The necessity of conducting a meaningful inquiry into the possibility of discrimination motivating the attack was indispensable given the hostility against the LGBTI community in the respondent State and in the light of the applicants’ submissions that hate speech, that was clearly homophobic, had been uttered by the assailants during the incident.”³³

The Inter-American Court of Human Rights should take this opportunity to confirm the duty of effective investigation under the right to life under Article 4, includes a duty to investigate discriminatory motives, harmonizing its jurisprudence with the European Court.

³¹ *Nachova and Others v. Bulgaria* [GC], Judgment of 6 July 2005, Eur. Ct. H.R., Application nos. 43577/98 and 43579/98, para. 160, available at <http://hudoc.echr.coe.int/eng?i=001-69630>.

³² *M.C. and A.C. v. Romania*, Judgment of 12 April 2016, Eur. Ct. H.R., Application no. 12060/12, para. 113, available at <http://hudoc.echr.coe.int/eng?i=001-161982>.

³³ *Id.*, para. 124. See also *Aghdgomelashvili and Japaridze v. Georgia*, Judgment of 8 October 2020, Eur. Ct. H.R., Application no. 7224/11, para. 40, available at <http://hudoc.echr.coe.int/eng?i=001-204815> (finding that the protraction of an investigation exposed the domestic authorities’ long-standing inability, which can also be read as unwillingness, to examine the role played by homophobic and/or transphobic motives in the alleged police abuse, and that there was a pressing need to conduct a meaningful inquiry into the possibility that discrimination had been the motivating factor behind the police officers’ conduct, given the well-documented hostility against the LGBT community in the country at the material time).

VI. INVESTIGATING HOMOPHOBIC MOTIVATION IS PARTICULARLY IMPORTANT IN A COUNTRY LIKE HONDURAS WHERE AUTHORITIES FORGO EFFECTIVE INVESTIGATIONS IN LIFE-THREATENING CIRCUMSTANCES FOR LGBT PEOPLE

In Honduras, where LGBT people face high levels of life-threatening violence, the Inter-American Commission on Human Rights has characterized the state response to such violence as involving “widespread impunity” and a judicial disregard for “the possible motivations based on prejudice.”

³⁴ HRW research reflects this reality for LGBT people in Honduras, showing that authorities dismiss LGBT people’s complaints or further subject them to discriminatory treatment when they try to access effective investigations. This occurred in cases that HRW documented between 2006 and 2020, depicting a context where the lack of effective investigations presents a sustained threat to the right to life.

For example, Juan Y., a 35-year-old trans man, told Human Rights Watch that he was gang-raped in Santa Lucía municipality in Francisco Morazán department in 2013. When Juan reported it to the police, they did not take down the complaint, did not provide him with any documentation of his complaint, and did not send him for a forensic medical examination.³⁵ Instead Juan said that an officer noted, “a woman cannot go out alone,” while another said, “but raping you is like raping a man.”³⁶

In May 2019, William M., a 36-year-old transgender man, was on his way home from work at an LGBT rights organization in Comayagüela when a military police³⁷ patrol stopped him, verbally abused him on the basis of his gender identity and an officer touched his breasts and his genitals.³⁸ William filed a complaint at the prosecutor’s office, and said that the staff there refused to write down that it was a sexual assault because there was “no penetration,” annotating the complaint as

³⁴ *Human Rights Situation in Honduras*, Inter-Am. Comm. H.R., *supra* note 6, para. 275-86.

³⁵ Human Rights Watch interview with Juan Y. (pseudonym), Tegucigalpa, May 17, 2019, in “*Every Day I Live in Fear*,” *supra* note 5, p. 101.

³⁶ *Id.*

³⁷ The Military Police is a special command of the Armed Forces that was created by former president Porfirio Lobo Sosa in 2013 with the principal mandate of fighting organized crime, but that also overlaps with the National Police in responding to common crime. *La Gazeta*, República de Honduras, Tegucigalpa, M.D.C., August 24, 2013, No. 33,211, available at <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/Ley%20de%20la%20Policia%20Militar%20del%20Orden%20Publico%20%283%2C9mb%29.pdf> (accessed May 26, 2020).

³⁸ Human Rights Watch interview with William M., Tegucigalpa, May 16, 2019, in “*Every Day I Live in Fear*,” *supra* note 5, pp. 109-10.

robbery, discrimination, and abuse of authority.³⁹ As of June 2020, William had not heard back from the prosecutor's office.⁴⁰

In December 2008, Diana was standing by a store in an area of San Pedro Sula where sex workers do business, at around 10 pm, when a group of men threw rocks at her. She ran away, but one man with a gun followed her and took her purse. Police officers were standing nearby but did not help Diana even though she screamed for help. When a Human Rights Watch researcher asked if she considered filing a complaint, Diana said, "I didn't file a complaint because I have done so before and it leads nowhere. Another time, around three years ago, I got to the police station full of blood and they did not even listen to me. So what is the point?"⁴¹

Cynthia, a transgender sex worker, told Human Rights Watch that in September 2007, an off-duty police officer solicited her for sex, asking her to get into his car. When she asked for payment upfront, he took out his gun and threatened to kill her. They fought, the gun discharged during the struggle, and she threw herself out of the car. Cynthia went to the Prosecutor's office in Tegucigalpa and filed a complaint, but two years after she had still not heard back from the office despite repeated inquiries.⁴² In 2009, Human Rights Watch asked prosecutors about Cynthia's case, sharing the case number, but they said it was not in their files.

Of the roughly 50 LGBT Hondurans with whom Human Rights Watch spoke in 2008-09 and 2019-20, none expressed confidence that authorities would respond adequately to complaints about violence against them. Such lack of confidence, coupled with documented impunity for life-threatening violence against LGBT people, highlights the importance of securing the duty to effective investigation under the right to life in Inter-American Court jurisprudence.

VII. CONCLUSION

HRW urges this Court to confirm that a state party to the Inter-American Convention on Human Rights violates the right to life under Article 4, read in conjunction with Article 1, when it a) fails

³⁹ *Id.*

⁴⁰ Human Rights Watch telephone interview with William M., June 11, 2020.

⁴¹ Human Rights Watch interview with Diana, San Pedro Sula, December 11, 2008, in "*Not Worth a Penny*," *supra* note 4, pp. 31-32.

⁴² Human Rights Watch interview with Cynthia, Tegucigalpa, February 18, 2009, in "*Not Worth a Penny*," *supra* note 4, p. 29.

to execute an effective investigation into any suspected unlawful deprivation of life; and b) fails to investigate anti-LGBT discrimination as motivation under the obligation to investigate deprivations of the right to life of LGBT victims.

By taking the opportunity in *Vicky Hernández and Family v. Honduras* to elaborate on its jurisprudence on this important legal question, including by clarifying that failure to execute an effective investigation is a separate and independent violation of Article 4, this Court would enhance the obligation of the state to protect the right to life of LGBT persons, not least in a country like Honduras where impunity for violent crimes is too often the norm.

A handwritten signature in black ink, appearing to read 'Aisling Reidy'.

Aisling Reidy
Senior Legal Advisor
Human Rights Watch

A handwritten signature in black ink, appearing to read 'Cristian González Cabrera'.

Cristian González Cabrera
Researcher
Human Rights Watch