REPORT No. 2/16
CASE 12.484
MERITS
LUIS ROLANDO CUSCUL PIVARAL *ET AL* (PERSONS LIVING WITH HIV/AIDS)
GUATEMALA
APRIL 13, 2016

I. SUMMARY

1. On August 26, 2003, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission" or "the IACHR") received a petition lodged by the Center for Justice and International Law – CEJIL (Centro por la Justicia y Derecho Internacional), the National Network for Persons Living with HIV/AIDS (Red Nacional de Personas que Viven con el VIH/SIDA), the Association for People United (Asociación Gente Unida), Life Project (el Proyecto Vida), the Fernando Iturbide Foundation for the Prevention of AIDS (Fundación Preventiva del SIDA Fernando Iturbide) and the Comprehensive health Association (Asociación de Salud Integral) (hereinafter "the petitioners"), alleging international responsibility of the State of Guatemala (hereinafter "Guatemala," "the State" or "the Guatemalan State") for failing to provide medical treatment to 39 persons living with HIV/AIDS:[1] Luis Rolando Cuscul Pivaral, Francisco Sop Gueij, Corina Robledo, Petrona López González, Aracely Cinto, Olga Marina Castillo, Israel Pérez Charal, Karen Judith Samayoa, Juana Aguilar, Darinel López Montes de Oca, Luis Rubén Álvarez Flores, Audiencio Rodas, Luis Edwin Cruz Gramau, Martina Candelaria Álvarez Estrada, Maria Felipe Pérez, Sayra Elisa Barrios, Felipe Ordóñez, Santos Isacax Vásquez Barrio, Ismera Oliva García Castañon, Guadalupe Cayaxon, Sandra Lisbeth Zepeda Herrera, Cesar Noe Cancinos Gómez, Santos Vásquez Oliveros, Maria Vail, Julia Aguilar, Sebastián Emilia Dueñas, Zoila Pérez Ruiz, Santiago Valdez, Pascula de Jesús Mérida, Iris Carolina Vicente Baullas, Reina López Mújica, Marta Alicia Maldonado Paz, José Cupertino Ramírez, José Rubén Delgado, Elsa Miriam Estrada, Ismar Ramírez Chajón, Félix Cabrera, Silvia Mirtala Álvarez and Facundo Gómez Reyes. Subsequently, the petitioners added ten other alleged victims: Alberto Quiché Cuxeva, Rita Dubón Orozco, Ingrid Janeth Barillas Martínez, Luis Armando Linares, Mardo Luis Hernández, Jorge Armando Tavárez, Miguel Lucas Vail, Dora Marina Martínez, Melvin Geovanny Ajtún and Teresa Magdalena Ramírez Castro.

2. According to the petitioners, the State did not provide any type of medical care to the alleged victims from the time they were diagnosed with HIV/AIDS, as of the 1990s until 2006. They contended that the judicial recourse pursued in order to remedy this situation was ineffective. The petitioners argued that the alleged victims only began to receive medical treatment from the State beginning in 2006 to 2007. They further claimed that this care continues to be highly inadequate and is not comprehensive, inasmuch as they lack access to antiretroviral medicine and to public health care facilities. They maintained that this situation has led to the deteriorating health status of the alleged victims and that eight of these persons have even died as a consequence of this situation.[2]

3. The State recognized that the alleged victims at first did not receive public medical care in response to their condition as persons living with HIV/AIDS. It contended, nonetheless, that these persons were receiving medical care from an international organization. The State argued that several different general comprehensive health care measures were subsequently implemented for all persons living with HIV/AIDS in Guatemala. It claimed that as of the present time the alleged victims were receiving comprehensive and adequate medical care from public entities.

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[1] According to World Health Organization, the human immunodeficiency virus (HIV) is a disease, which infects a person's immune system cells, destroying or impairing this function. Acquired Immunodeficiency Syndrome (AIDS) is a term used to refer to the most advance stages of HIV infection and is defined by the presence of some opportunistic infections or cancers related to HIV. In the instant case, it is claimed that the alleged victims have HIV and AIDS. Consequently, in the report, the term "HIV/AIDS" will be used.

[2] Alberto Quiché Cuxeva, Facundo Gómez Reyes, Reina López Mujica, Ismar Ramírez Chajón, Petrona López González, Rita Dubón Orozco, Luis Cruz and María Vail.

4. After examining the available information, the Commission concluded that the State of Guatemala is responsible for the violation of the rights to life, humane treatment, and judicial protection, as established in Articles 4.1, 5.1, and 25.1 of the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention"), in connection with Article 1.1 of the same instrument to the detriment of the individuals named in the instant report. Based on these conclusions, the IACHR made its recommendations to the State of Guatemala.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The initial petition was received on August 26, 2003. The case proceedings, from the time the petition was initially lodged until issue of the decision on admissibility, are described in detail in Admissibility Report 32/05 of March 7, 2005.[3] In said report, the IACHR concluded that the petition was admissible with regard to the rights set forth in Articles 4 and 25 of the American Convention, in connection with Article 1.1 of said instrument. Additionally, the Commission found inadmissible the rights established in Articles 8, 24 and 26 of the American Convention.

6. On March 16, 2005, the IACHR forwarded a communication to the parties notifying them of the admissibility report and placing itself at their disposal with a view to reaching a friendly settlement. The petitioners submitted observations on May 13, 2005, requesting that the case proceed to the merits stage. The petitioners submitted observations on the merits on September 5, 2005; and on April 26, May 18 and August 22, 2006. For its part, the State submitted observations on the merits on May 16 and October 6, 2005; and April 21, June 28 and October 2, 2006.

7. Subsequently, the Commission summoned the parties to a hearing, which was held on October 19, 2006 during the 126th Period of Sessions.

8. After that occasion, the petitioners submitted observations on August 30, 2007; March 24, June 27 and September 20, 2008; August 7, 2009; March 16, September 13 and December 10, 2010; September 30 and October 20, 2011; March 1, March 8, March 16 and July 4, 2012 and December 7, 2015.

9. For its part, the State submitted observations on January 9, April 30 and August 5, 2008; March 23 and September 11, 2009; January 22, August 26 and October 5, 2010; and February 28 and November 26, 2012.

Precautionary Measures

10. On August 26, 2003, along with the initial petition, the petitioners filed a request for precautionary measures on behalf of the 39 alleged victims named in their initial petition. On April 21, 2004, the Commission conveyed to the State its decision to grant precautionary measures to the 39 individuals, who were the subject of said request, on the grounds that they were allegedly not receiving adequate medication through Guatemala's public health system. Said precautionary measure was issued in MC No. 321-02.[4] The precautionary measures are still in force to date and the IACHR continues to monitor compliance with them.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

[3] See, IACHR, Report No. 32/05, Petition 642-03, Admissibility, Luis Rolando Cuscul Pivaral *et al* (Persons living with HIV/AIDS), Guatemala, March 7, 2005. Available at: http://www.cIDH,oas.org/annualrep/2005sp/Guatemala642.03sp.htm

[4] Precautionary measure No. 321-02 was granted on behalf of ten persons living with HIV/AIDS in 2002, who are not parties to the case. Then, in April 2004, the 39 persons listed in the initial case petition were included in said precautionary measure.

11. The petitioners noted that the alleged victims living with HIV/AIDS are economically disadvantaged persons and most of them live far away from Guatemala City. They explained that, like other persons living with HIV/AIDS in a generally similar stage of the condition, it is imperative for them to receive medical care and antiretroviral medicines, as well as the appropriate clinical testing to monitor the development of the disease. Notwithstanding, they claimed that since the time they were diagnosed with HIV/AIDS, from the 1990s to 2006, the State has not provided any type of medical treatment. Specifically, they argued that the State has not granted comprehensive treatment, has not conducted the necessary cell count testing and has not dispensed antiretroviral drugs.

12. The representatives argued that as of 2002, the Ministry of Health had only distributed antiretroviral drugs to 27 persons, none of whom are alleged victims in this case. They alleged that this situation is a violation of the Constitution and, specifically, the General Law to fight HIV and AIDS, which was approved in 2002.

13. As to **the right to judicial protection,** the petitioners claimed that a group of almost twenty persons living with HIV/AIDS sent a letter on May 27, 2002, to then President of the Republic Alfonso Portillo, requesting that the appropriate steps be taken to ensure care for all persons living with HIV/AIDS. They said that they cited as a basis for their request Article 48 of the Law on HIV/AIDS, which establishes that every person must receive comprehensive care immediately and equally with respect to other persons. They claimed that the President of the Republic did not respond to said communication and that, consequently, thirteen of the alleged victims filed a special appeal for constitutional relief (an *amparo* claim) with the Constitutional Court, which was denied.

14. The petitioners asserted that prior to the ruling of the Constitutional Court, in August 2002 they held a meeting with the President of the Republic. They claimed that he informed them that he would order the transfer of a special budget allocation of 500,000.00 Quetzals to cover treatment for needy persons living with HIV/AIDS, while a serious and committed State policy was drawn up and implemented. The petitioners contended that said transfer of funds was carried out and only served to provide drugs to 80 persons living with HIV/AIDS, none of who were alleged victims in the instant case. They also noted that they do not know why those persons were selected to receive the treatment.

15. The alleged victims' representatives noted that the Constitutional Court denied the *amparo* claim because of the President's decision to appropriate the aforementioned budget outlay, which was of a special nature. They claimed that the Constitutional Court "did not address the real objective of the *amparo* suit," which was the need to issue a general and universal policy aimed at ensuring access to health and therefore, keeping persons living with HIV/AIDS alive. They contended that the ruling on the *amparo* claim only took into account the short-term presidential initiative, in both the quantitative and qualitative dimensions, which did not meet the expectations of comprehensive treatment required by the claimants. They claimed that the President's concession was "a temporary and insignificant fix in light of the magnitude of the problem and, therefore, his solution was ineffective."

16. The petitioners alleged that in 2006 a process slowly got under way to move patients under the treatment of the organization Doctors without Borders to public health care units. They claimed that the treatment provided by said non-profit organization, which was unaffiliated with the State, was sporadic and, in some instances, not adequate enough to provide a comprehensive response to the situation of all the alleged victims.

17. They contended that the process of moving patients was highly complex, mostly because of the State's inability to make adequate physical facilities, as well as the required medicines, available. They further alleged that the treatment was exclusively focused in Guatemala City, which had a serious effect on the alleged victims, who did not reside in said location. They claimed that the alleged victims living in Coatepeque (3), Retalhuleu (16), Mazatenango (2), San Marcos (9) and Quetzaltenango (2) had no access to treatment and drugs, inasmuch as their economic situation is precarious and they are not in a position to be able to afford transportation costs to the capital city.

18. They noted that, subsequently, the public health service was expanded to the regions of Coatepeque, Quetzaltenango and Izabal. The petitioners claimed that the health of those persons not regularly receiving the necessary drugs has deteriorated. It was also pointed out that some of the alleged victims, who were women, endured pregnancy without the proper treatment and were unable to adequately monitor the health status of the babies they gave birth to.

19. With regard to a chart submitted by the State on the health status of the alleged victims, the petitioners raised different issues. They contended that said chart offered inaccurate, incomplete and incorrect information, only noting that the alleged victims "are in good health." The petitioners add that it is worrying that the State does not report on what adequate and effective steps it has taken to learn of the individual status of each alleged victim, as well as to verify that each one is receiving adequate treatment.

20. They argued that the State's information does not mention any of the recent changes in the treatment plan of several persons nor does it report the dates when the most recent viral load and CD4 cell count tests were performed. They further alleged that it did not report on any of the different opportunistic diseases affecting almost all of the victims.

21. They claimed that the State even reported on one person who is not an alleged victim in the case and gave incorrect information about the place of treatment of another person, which stands as evidence of its lack of interest in providing adequate medical treatment to the alleged victims. They contended that in the hospitals where several of the alleged victims receive treatment, no antiretroviral drugs are provided.

22. Regarding the thirteen persons, for whom the State indicates that it has no information,[5] the petitioners noted that it is troubling that the State does not have access to the information and that adequate and effective mechanisms are not in place to learn of the individual status of each one of them.

23. The petitioners reported that they conducted an evaluation of the clinical files of each of the alleged victims as well as directly interviewing them. They contended for the most part that their treatment is incomplete and they identified the following common issues: i) lack of capacity of State authorities to conduct their own diagnosis of the disease, compelling them to resort to private institutions in order to test; ii) lack of adequate and comprehensive treatment; iii) the fact that CD4 cell count and viral load testing is not performed regularly and, in some instances, no records are available of any testing ever being performed; iv) the fact that the clinical files are incomplete; and v) the lack of necessary psychological assistance.

24. They noted that the Presidential Human Rights Commission itself held in 2008 that "one of the situations being monitored is assistance to [HIV/AIDS] patients in treatment facilities, inasmuch as there is evidence of failures in this regard." They additionally asserted that in 2010, nearly 300 complaints were filed with the Special Human Rights Ombudsman for lack of access to antiretroviral drugs. They claimed that in October, the Human Rights Ombudsman denounced problems of short supply and expired antiretroviral drugs, as well as lack of viral load and CD4 cell count test kits.

25. With regard to the **right to life,** the petitioners alleged that the State violated this right of the eight alleged victims, who died as a result of the State failing to provide medical care to treat the diseases that afflicted them as a consequence of HIV/AIDS.[6] They argued that the information gathered by Dr. Calderon, who is a petitioner in the case, regarding the deterioration of the health of the alleged victims and the causes of their deaths, serves to corroborate that all eight persons died from opportunistic infections such as tuberculosis or pneumonia. The petitioners contended that such infections arise when the patients' defenses are low, which proves that the treatment regime being received by them was inadequate. They argued that

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[5] Facundo Gómez, Reina López, Ismar Ramírez, Alberto Quiché, Rita Dubón, Luis Cruz, Israel Pérez, Karen Samayoa, Sandra Zepeda, Santiago Valdéz, Félix Cabrera, Silvia Álvarez, and Teresa Ramírez.

[6] Alberto Quiché Cuxeva, Facundo Gómez Reyes, Reina López Mujica, Ismar Ramírez Chajón, Petrona López González, Rita Dubón Orozco, Luis Cruz and María Vail.

the alleged victims did not have access to the necessary medications to fight off the opportunistic diseases they were afflicted with.

26. Petitioners alleged that even though the deceased alleged victims did eventually receive antiviral treatment, they lacked regular access every six months, as established in national and international protocols, to the indispensable viral load, CD4 cell count and genotypic and phenotypic testing to monitor the infection, adjust the treatment regime when required and thus prevent the appearance of opportunistic diseases. They further contended that the Guatemalan State did not conduct any investigation into these deaths, even though their written records indicated that it would do so.

27. The petitioners also alleged that the State violated **the rights to life and humane treatment** of the surviving alleged victims. They argued that the State failed to meet the positive obligation of preventing irreparable harm to the lives, integrity and health of the alleged victims, because it failed to adopt the necessary measures to provide them with adequate medical treatment, thus placing their lives in immediate jeopardy. The petitioners claimed that the duty of the State to adopt positive measures is heightened with regard to the protection of the lives and health of persons living with HIV/AIDS. They contended that the right to life and humane treatment are undeniably linked to the right to health in the instant case and, therefore, it is binding on the State to effectively provide public health services.

28. They alleged that up until 2006 and 2007, the State did not provide any type of medication and treatment to the alleged victims and that, on the contrary, legislative measures were taken, which hampered access to antiretroviral drugs, particularly to the generic drugs that are less costly but have the same effects. They further argued that the legislation tends to protect new products on the Guatemalan market manufactured by transnational laboratories, while restricting accessibility and production of generic products, which are imported or produced in national laboratories, whose prices are notably lower than the brand-name products.

29. The petitioners claimed that the alleged victims received temporary treatment from an international non-profit. They also argued that the fact that some of the victims were diagnosed by a non-profit agency does not relieve the State of its obligation to supplement and oversee the actions of these private entities. Additionally, they rejected the arguments of the State regarding the lack of medical treatment because of the government's lack of economic resources. They stressed that the State cannot exonerate itself of its international obligations for economic reasons.

30. According to the petitioners, the alleged victims stopped receiving treatment from the organization Doctors Without Borders from 2006 to 2007, as it was of a temporary nature. They further noted that their cases were transferred to public health care facilities. They contended that since that time, up to the present date, the treatment provided by the State to the alleged victims has been highly inadequate and is not comprehensive in nature.

31. The petitioners assert that for persons living with HIV/AIDS, comprehensive treatment including antiretroviral drugs and technologies such as viral load and CD4 cell count testing is a guarantee of life, both in quality as well as in length. They explained that every person living with HIV/AIDS requires specific medical treatment, which includes at least antiretroviral therapy and education in order to make the most of the drugs, viral load testing and treatment of opportunistic diseases. They noted that antiretroviral medicines, which are a combination of drugs that block the reproduction of HIV/AIDS inside the body, are considered the ideal treatment to prevent the progression of HIV/AIDS and, in so doing, to achieve a clear improvement in patients' health and for them to lead a normal work and social life for a long time.

32. They maintain that because of the deaths of the eight alleged victims for lack of treatment from the State, it can be presumed that the surviving alleged victims are at serious risk. They contend that the inadequate medical treatment received by the alleged victims from the State has worsened their health conditions. They reiterated that most of the surviving alleged victims have been afflicted with opportunistic diseases, which through testing and adequate medication were easily preventable. Some of the diseases cited

by them were: chronic malnutrition, anemia, deafness, recurring respiratory infection, pneumonia, ocular trauma, urinary infections, etc.

33. The petitioners claimed that the treatment given by the State is ineffective because: i) there have been protracted periods of short supply of medicines; ii) there are problems of accessibility to treatment because of the low number of public facilities with any type of service available for persons living with HIV/AIDS; iii) facilities are understaffed with health care workers, who have received specialized training in treating persons with HIV/AIDS; and iv) there is a shortage of the necessary testing kits in order to properly manage HIV/AIDS, as well as the appearance of opportunistic diseases. Their contention is that all of these factors have led to a rapid deterioration in the health of the victims, who are at imminent risk of death.

34. The petitioners alleged that in light of the absence of adequate treatment, they have been compelled to seek alternatives to attempt to save lives, resorting to donated medications or the purchase thereof. They argued that the failure to test has made it impossible to figure out the most suitable treatments for each particular case.

35. Regarding the **right to equal protection,** they argued that at first only 27 persons with HIV/AIDS received antiretroviral medicines from the State, which constituted 0.7% of the total number of persons afflicted with the disease. They claimed that 99.3% of those persons stricken, among which the alleged victims are included, "with the exact same rights, have to [stand by and] watch how their affliction constitutes a death sentence issued by the State itself, because access to medicines is banned for them." They contended that this constituted blatant discrimination against them.

36. They noted that subsequently, with the transfer of the alleged victims to State services where sporadic treatment is received, a distinction was created between them and the persons who also have HIV/AIDS and are not treated by the State, even though all are under equal circumstances. They contended that the State is obligated to adopt positive measures to turn the existing discriminatory situation around or change it with regard to the alleged victims of the case, who have not been provided medical treatment to enable them to lead a dignified life on an equal basis. They maintained that in most instances, the victims have been provided inadequate treatment, which has worsened their health situation and lives.

37. As for **progressive development of the right to health,** the petitioners alleged that the right to health includes obligations of immediate effect, such as, preventing discrimination, as well as making sure that certain drugs, known to be essential medications, are available and accessible throughout its jurisdiction. They asserted that according to the WHO, these medications include antiretroviral drugs. They contended, however, that the State did not absolutely provide them with these medications until 2006 and 2007; and subsequently did so only partially and off and on.

38. Lastly, with respect to the **right to humane treatment,** the petitioners submitted a list of family members and loved ones of the alleged victims, who have been adversely affected by the facts of the case. As to the State's questioning of the list, the petitioners replied that it is made up of the names of family members or loved ones, who have been accompanying the alleged victims throughout their illness and their struggle to receive medical care and treatment. They noted that in some instances, the alleged victims were unable to resort to their next-of-kin out of fear of rejection, because they were stigmatized by their own families. They further explained that it is common in Guatemala for people from the same family to not be registered under the same surname. Additionally, they clarified that calling the same person a victim and a family member of another victim does not mean that the person was counted twice but rather that person actually holds two separate statuses.

B. Position of the State

39. In its first written submissions in 2004, the State recognized that a negligible number of persons living with HIV/AIDS in Guatemala were receiving health care from the government. It claimed that "to the extent possible as permitted by the budget, it provides free treatment" and that many low-income

persons living with HIV/AIDS were precluded from gaining access to health treatment because it was too costly.

40. The State noted that, in the context of the *amparo* suit for relief brought before the Constitutional Court, the President of the Republic at the time held a meeting with the Sector Coordinator for Combating AIDS, wherein he pledged to appropriate a half a million quetzals for treatment of persons living with HIV/AIDS. It asserted that said amount of money was transferred to the National AIDS Program for the treatment of 80 adults and 80 children, who were treated at State-run facilities.

41. The State contended that, even though it did not directly provide medical treatment to persons living with HIV/AIDS, different international non-profit organizations did provide it, such as Doctors Without Borders and other donor agencies. The State recognized that "most of the treatment in the country is assumed by Doctors Without Borders."

42. In June 2004, the State reported – in general terms and without providing documentary support or individually identifying the alleged victims by name – on treatment that 26 persons were supposedly receiving at Doctors Without Borders, Proyecto Vida, Coatepeque (11); Doctors Without Borders, Yaloc Clinic (5); Doctors Without Borders of Coatepeque (4); Infectious Disease Clinic of Roosevelt Hospital (1); Roosevelt Hospital Bristol Study (1); Guatemalan Institute of Social Security - IGSS (3); Military Hospital (1). It also clarified that the 11 persons did not have access to medications.

43. The State noted that as for the 11 persons, who still did not have treatment, their personal information and addresses were transferred on an expedited basis to the Ministry of Public Health and the Director of the National AIDS Program in order to be provided to the appropriate clinics and allocate the antiretroviral drugs to them.

44. In its submission of May 2005, the State claimed that the alleged victims could receive free treatment at the Roosevelt or San Juan de Dios Hospitals, located in Guatemala City, with it "subsequently being defined, based on results, whether they meet the minimum requirements to be able to gain access to ARV medications in the country." It contended that if they do not meet the minimum requirements, "they will continue to be treated and once they meet the criteria (…) the necessary treatment will be started on them."

45. The State claimed to have taken several general steps toward comprehensive treatment for all persons living with HIV/AIDS in Guatemala such as i) coordinating with Doctors Without Borders to take on patient treatment; and ii) purchasing medications in the international and national arenas in order to ensure extension of coverage to persons with HIV/AIDS.

46. Subsequently, the State reported that beginning in 2006, persons who were treated by Doctors Without Borders were being transferred to care financed by the Ministry of Health. It noted that Doctors Without Borders stay in the country was the result of consensus-based planning with said Ministry.

47. It indicated that for 2006, the budget allocated to the National AIDS Program was increased to 20 million quetzals. It claimed: "this increase shows not only the good will, but a concrete action of financial commitment to improve, decentralize and strengthen actions both of prevention and of treatment in the country."

48. With regard to the alleged victims, the State reported that from 2006 to 2007, they were moved to government-run treatment units in order to continue their treatment. It recognized that at first some medications were in short supply but that strategies were put into place to remedy the situation. Additionally, it recognized that after the transfer of patients, the persons had to go to Guatemala City to receive their treatment. It indicated that eventually units were created in different areas of the country in order to provide treatment service to persons living with HIV/AIDS.

49. Additionally, the State noted that it had the support of the Global Fund project "Intensification of Activities in HIV/AIDS Prevention and Integrated Care among vulnerable groups and in

Priority Areas of Guatemala." It contended that as a result of this, care and treatment coverage of persons with HIV/AIDS in the country has been increased. It claimed that beginning in 2006 and 2007, all people living with HIV/AIDS, who meet the clinical requirements to begin antiretroviral treatment and who go to the treatment clinics, are being covered.

50. In its written submission of 2012, the State submitted individualized information on the treatment tracking most of the alleged victims, in particular, scheduled appointments and visits they made. It asserted that "despite the difficulties faced in the purchase and supply of antiretroviral drugs" the alleged victims have not stopped receiving treatment. It further claimed in its written submission of 2012 that the alleged victims receive antiretroviral medicines as well as services, tests and controls as required by the disease they are afflicted with.

51. With respect to the alleged victims about whom no information was submitted, the State argued that the units where they are treated refused to report how they are provided care under the argument of confidentiality of the cases. It contended that one of the petitioners, Dr. Arathoon, is the head of the "Luis Angel García family clinic/San Juan de Dios General Hospital, a facility where three of the alleged victims receive care and which has not sent in any information under the argument of confidentiality of the records.

52. The State also argued in its written submission of 2012, that in some instances, alleged victims did not keep their appointments at the health care facilities. It also claimed that some of the alleged victims are inconsistent in attending their scheduled appointments, which is harmful to their health status, "which in short eludes the best intentions of the State to provide services and medical supplies in a timely fashion."

53. In light of the petitioners' information on the lack of adequate treatment for the alleged victims as well as on the deterioration of their health status, the State argued that said information must be verified "inasmuch as it does not provide the source nor the health status on the latest date when the patients infected with HIV/AIDS visited the health service." It further contended that "even though it is true people experience difficulties over the course of the infection, the important thing in this case and over these 6 years is the current wellbeing of each person as a consequence of the treatment provided."

54. With respect to the death of the eight alleged victims, the State argued that "there is no clear evidence that it was due to non-availability of antiretroviral treatment provided to them by the Ministry of Health, because an opportunistic infection was coursing through some of them." It claimed that it must be verified whether the deaths were the result of the lack of care and treatment by the State, of circumstances other than the infection or as a consequence of the refusal to seek the necessary care. Regarding this last point, the State contended that in the records of the treatment facilities, it appears that some persons abandoned their treatment. However, the State did not submit concrete information about this situation with regard to the eight deceased persons.

55. Concerning this aspect, the State argued that there are complications and consequences of the disease itself that are totally independent of the quality of care and treatment that is provided, that can compromise the lives of the persons. It also contended that adherence to treatment and keeping doctors appointments is a very important component, which depends on the person his or herself and not on the provision of the health care service. The State claimed that it is important to note that even under antiretroviral treatment, extraneous circumstances may arise, which lead to the death of a patient.

56. With respect to the list of family members and loved ones of the alleged victims submitted by the petitioners, the State raised different challenges. It argued that it is not possible for the alleged victims themselves to also appear on this list as family members or loved ones of other alleged victims. It also contended that persons are included on the list, who do not have any close tie to the alleged victims, such as friends, aunts/uncles, nephews/nieces, and [life] partners and, therefore, should be excluded. It claimed that the surnames of some family members or loved ones did not match the surname of the alleged victims.

IV. ANALYSIS OF THE MERITS

A. Proven Facts

1. Relevant Provisions of Law

57. The 1985 Political Constitution of Republic of Guatemala establishes the following:[7]

> Article 93.- Right to Health. Enjoyment of health is a fundamental right of the human being, without any discrimination.
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> Article 94.- Obligation of the State regarding health and social assistance. The State shall ensure the health and social assistance of all inhabitants. It shall conduct, through its institutions, activities of prevention, promotion, recovery, rehabilitation, coordination and the relevant complementary activities in order to strive for their most complete physical, mental and social wellbeing.
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> Article 95.- Health, public good. The health of the inhabitants of the Nation is a public good. All persons and institutions are obligated to safeguard the preservation and recovery thereof.

58. In July 2000, Decree No. 27-2000 – General Law to Combat the Human Immunodeficiency Virus HIV and Acquired Immunodeficiency Syndrome AIDS and for the Promotion and Defense of Human Rights of Persons living with HIV/AIDS was approved.[8] Reproduced hereunder are some of the relevant provisions of that law:

> Article 2.- Purpose of the Law.
> The purpose of the instant law is to create a legal framework enabling the implementation of the necessary mechanisms for education, prevention, epidemiological surveillance, research, care and tracking of Sexually Transmitted Diseases –STD-, as well as to ensure respect for, the promotion, protection and the defense of the human rights of persons affected by these diseases.
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> Article 35.- Care of persons.
> Every person diagnosed with HIV/AIDS infection must receive integrated care immediately and on an equal basis with other persons, for which the will, dignity, individuality and confidentiality must be respected. No health care worker may refuse to provide the care that is required by a person living with HIV/AIDS, while taking the recommended biosafety measures.
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> Article 36.- Human rights in general.
> Every person living with HIV/AIDS has rights and duties as proclaimed in the Universal Declaration of Human Rights and in the International Agreements on Human Rights and in the International Agreements on Human Rights signed by the State of Guatemala, the stipulations of the Political Constitution of the Republic and those provided for in the instant law.

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[7] Political Constitution of the Republic of Guatemala. Available at: https://www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-const.pdf

[8] Decree No. 27-2000 – General Law to Combat the Human Immunodeficiency Virus HIV and Acquired Immunodeficiency Syndrome AIDS and for the Promotion, Protection and Defense of Human Rights of Persons with HIV/AIDS. Available at: http://www.osarguatemala.org/sites/all/docs%20e%20investigaciones/Trilogia%20de%20leyes%20DECAP.pdf

> Article 37.- Discrimination.
> Discrimination against persons living with HIV/AIDS is prohibited, contrary to human dignity, in order to ensure respect for the physical and mental integrity of these persons.
>
> Article 48.- Right to services of care.
> The Ministry of Public Health and Social Assistance shall provide care services to persons living with HIV/AIDS, ensuring counseling, support and up-to-date medical treatment, individually or in a group. This care may be at home or outpatient and shall be designed to meet their physical, psychological and social needs. Additionally, through the Medication Accessibility Program -PROAM-, the Ministry of Public Finance and Economics shall implement a program that enables access nationally and internationally to quality antiretroviral medicines, at affordable prices for persons living with HIV/AIDS.

59. Additionally, on September 6, 2002, the Regulation of Decree No. No. 27-2000 was approved.[9] Some of the relevant provisions hereunder appear verbatim:

> Article 2.- National emergency.
> After declaring HIV/AIDS as an urgent problem of the nation, the institutions of the government must support any activities of care and prevention that are necessary to enforce compliance with and respect for the human rights enshrined in the international treaties and conventions signed and ratified by Guatemala.
>
> Article 31.- Care for persons.
> THE MINISTRY OF PUBLIC HEALTH AND SOCIAL ASSISTANCE shall ensure that all of its health care units have the basic equipment and necessary supplies to allow for comprehensive quality care and that universally accepted biosafety measures are observed. In no instance may the lack of equipment or supplies be used as an excuse to not provide care to a person with HIV/AIDS.
>
> Article 32.- Access to medicine.
> In keeping with Articles 35 and 48 of the Law, the MINISTRY OF PUBLIC HEALTH AND SOCIAL ASSISTANCE shall provide, at units that have the minimum capacity, quality comprehensive care, including access to antiretroviral medicines in accordance with national HIV/AIDS treatment Protocols. The Protocols shall be developed and updated periodically by said Ministry, with the participation and assistance of technical, scientific and academic and civil society organizations. Said Protocols must be approved by the Ministry of the Branch through the NATIONAL AIDS PROGRAM. In order to achieve better quality and prices of antiretroviral drugs, a commission shall be set up, coordinated by the NATIONAL AIDS PROGRAM with delegates from the Ministries of Public Finance, Economy and from the Medication Accessibility Program -PROAM- for the purchase thereof on the national and international markets, respecting the quality requirements established by the Office of Regulation, Surveillance and Control of Health of the MINISTRY OF PUBLIC HEALTH AND SOCIAL ASSISTANCE. The Medication Accessibility Program -PROAM- will be able to distribute the antiretroviral drugs to affiliated pharmacy facilities that have responsible chemist-pharmacist staff and under the responsibility and supervision of an attending physician, who must extend the appropriate

[9] Regulation of Decree No. 27-2000. Available at: http://www.osarguatemala.org/sites/all/docs%20e%20investigaciones/Trilogia%20de%20leyes%20DECAP.pdf

prescription for the medication to be dispensed. The Program referred to in this paragraph shall not make direct sales to individuals.

Article 35.-Funding
THE MINISTRY OF PUBLIC HEALTH AND SOCIAL ASSISTANCE shall transfer to the National AIDS Program the funds allocated for exclusive use and implementation of the strategies and actions set forth in the Law, which should encourage the decentralized use thereof at the level of health areas, health districts and the community itself. The Ministry of Public Finance shall allocate and include in the General Budget of Revenue and Expenditures of the State the specific line item of funding so that the National AIDS Program is able to sustainably and permanently execute the programs established for education, prevention, epidemiological surveillance, research, care and monitoring/tracking of STD/HIV/AIDS.

60. Additionally, on November 30, 2005, the Ministry of Public Health and Social Assistance (MSPAS) approved Governmental Decision No. 638-2005.[10] The goals of said decision are as follows:

(…) Strengthen integrated treatment of STDs, HIV and AIDS, with a multidisciplinary, inter-sectorial, multicultural and gender-based approach, within a framework of respect for human rights. (…) Control expansion of the epidemic and reduce the negative impact thereof, for both the affected persons and for their social setting. (…) Promoting and implementing actions aimed at the most vulnerable strata of the population and parts of the national territory where the epidemic is concentrated as identified through studies and periodic reporting. (…)
The Government of the Republic of Guatemala pledges to allocate in the General Budget of Revenue and Expenditures of the State, an annual budget line item for the strengthening and operation of the National STD, HIV and AIDS Prevention and Control Program and of the programs that other ministries and government entities are mandated to carry out. Additionally, ensure, through sufficient human, technical and financial resources, that the commitments agreed upon by the State for execution of the financial support granted by the Global Fund are honored.[11]

2. About the Alleged Victims

61. The Commission notes that the instant case is about the alleged violation of rights to the detriment of 49 persons living with HIV/AIDS: Luis Rolando Cuscul Pivaral, Francisco Sop Gueij, Corina Robledo, Petrona López González, Aracely Cinto, Olga Marina Castillo, Israel Pérez Charal, Karen Judith Samayoa, Juana Aguilar, Darinel López Montes de Oca, Luis Rubén Álvarez Flores, Audiencio Rodas, Luis Edwin Cruz Gramau, Martina Candelaria Álvarez Estrada, Maria Felipe Pérez, Sayra Elisa Barrios, Felipe Ordóñez, Santos Isacax Vásquez Barrio, Ismera Oliva García Castañon, Guadalupe Cayaxon, Sandra Lisbeth Zepeda Herrera, Cesar Noe Cancinos Gómez, Santos Vásquez Oliveros, Maria Vail, Julia Aguilar, Sebastián Emilia Dueñas, Zoila Pérez Ruiz, Santiago Valdez, Pascula de Jesús Mérida, Iris Carolina Vicente Baullas, Reina López Mújica, Marta Alicia Maldonado Paz, José Cupertino Ramírez, José Rubén Delgado, Elsa Miriam Estrada, Ismar Ramírez Chajón, Félix Cabrera, Silvia Mirtala Álvarez, Facundo Gómez Reyes, Alberto Quiché Cuxeva, Rita Dubón Orozco, Ingrid Janeth Barillas Martínez, Luis Armando Linares, Mardo Luis Hernández, Jorge Armando Tavárez, Miguel Lucas Vail, Dora Marina Martínez, Melvin Geovanny Ajtún and Teresa Magdalena Ramírez Castro.

[10] Government Decision No. 638-2005, November 30, 2005. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_132631.pdf

[11] Government Decision No. 638-2005, November 30, 2005. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_132631.pdf

62. As explained by the petitioners, the alleged victims were diagnosed with HIV/AIDS from 1992 to 2003. The State did not refute this information.

63. The petitioners submitted general and specific information about the situation of the alleged victims. As for the general circumstances that apply to all or several of the alleged victims, which were not refuted by the State, the following points can be cited:

- Many of the alleged victims are unemployed, low-income persons, who do not live in Guatemala City.
- Several of the alleged victims are the head of household and have several children. Also, several family members and loved ones of the alleged victims also have HIV/AIDS.
- Despite requesting medical care from public health care facilities, including access to antiretroviral drugs, they did not receive any state assistance until 2006 and 2007, which impacted their health. As of said date, most of the alleged victims received some type of medical care from international organizations.

64. According to the petitioners, in 2002, the Ministry of Health only provided antiretroviral medicine to less than 1% of the population with HIV/AIDS in Guatemala. In this regard, in June 2002, then Minister of Health Mario Bolaños declared that "lack of resources is the reason why the Ministry of Health can only cover 27 persons living with HIV/AIDs."[12] The petitioners alleged and the State did not refute that none of these 27 persons mentioned by the Minister at the time was an alleged victim in the case.

65. The Commission notes that, according to the World Health Organization, the human immunodeficiency virus (HIV) is a disease that attacks the cells of the immune system, impairing or destroying this function. The term acquired immunodeficiency syndrome (AIDS) is used to refer to the most advanced stages of HIV infection and is marked by the presence of some opportunistic infection or HIV-related cancer.[13] With regard to treatment of persons with HIV/AIDS, the World Health Organization has emphasized viral load and CD4 cell count testing in order to assess immune function, administer the appropriate antiretroviral drugs, evaluate the effectiveness of the treatment and treat and prevent the appearance of drug resistance.[14]

66. Hereunder, the Commission provides a listing of the names and available information about each alleged victim, starting with the eight deceased persons and then listing the living persons.

2.1 Information about the deceased alleged victims

67. The petitioners claimed that as a result of the failure of the State to provide medical care, eight of the alleged victims passed away:

- **Alberto Quiché Cuxeva**, died on January 4, 2001. The petitioners noted that he died of pneumonia and that no timely CD4 cell count and viral load testing had been performed on him. The State did not refute the petitioners' allegations and did not provide any documentary support to indicate that he received any medical care prior to his death.

- **Facundo Gómez Reyes**, died on February 27, 2003. The petitioners noted that he died of tuberculosis and that no viral load, CD4 cell count, and genotypic and phenotypic testing had been conducted on him. They further contended that there was a ten-month window for him to have been treated, but that because of the failure to treat him he deteriorated greatly as

[12] Annex 1. Press story: 'Fighting for more lives' ["*En lucha por más vida*"] published in Prensa Libre on June 14, 2002. Annex to petitioners' communication of August 26, 2003.

[13] For more information, see: http://www.unaids.org/es

[14] WHO, Draft Global Health Sector Strategy on HIV for 2016-2021. Available at: http://www.who.int/hiv/strategy2016-2021/GHSS_HIV_SP_06012016.pdf?ua=1

each day went by, until he needed to be hospitalized, which he rejected because he wished to die at home. The State did not refute the petitioners' allegations and did not introduce any documentary supporting evidence to indicate that he received any medical care prior to his death.

- **Reina López Mujica** was diagnosed in 2002 and passed away on November 6, 2003. The petitioners indicated that she began treatment with Doctors Without Borders in May 2002 and died of tuberculosis and acute anemia produced by antiretroviral drugs. They claimed that no genotypic or phenotypic testing was performed on her in order to adjust her treatment regime, nor was testing done in general in order to assess her health status. The State did not refute the petitioners' allegations and did not introduce any supporting documentary evidence to indicate that she received medical care prior to her death.

- **Ismar Ramírez Chajón** was diagnosed in 1996 and passed away in December 2003. The petitioners claimed that he died of multi-resistant tuberculosis. They noted that before he died he was hospitalized in the Roosevelt Hospital, treatment was provided to him at the IGSS where, they allege, he developed resistance to medications. They contended that despite this situation, no genotypic or phenotypic testing was done on him, which was indicated in order to respond to the multi-resistance he presented. The State did not refute the petitioners' allegations.

- **Petrona López González**, died in January 2004. The petitioners noted that he died of pneumonia. They claimed that even though prior to his passing he was being monitored at the clinical facility of San Bernardino, no viral load or CD4 cell count testing was performed on him. They contended that just before passing away, he was so weak that he could not make it to a hospital. The State did not refute this failure to test the alleged victim. The Commission notes that the State only indicated that Mrs. López had a medical appointment on June 12, 2007.

- **Rita Dubón Orozco**, died on June 27, 2006. The petitioners indicated that she died of pneumonia and that no viral load, CD4 cell count and genotypic and phenotypic testing was performed on her. The State did not refute this failure to test the alleged victim.

- **Luis Edwin Cruz Gramau**, died in January 2008. The petitioners claimed that no phenotypic or genotypic testing was done on him. The State did not refute this failure to test the alleged victim.

- **Maria Vail López** was diagnosed in 2001 and passed away on March 28, 2011. The petitioners claimed that the disease was not diagnosed by the State. They contended that CD4 cell count and viral load testing was not performed on her regularly, which caused several opportunistic diseases in her, such as dermatitis, otitis and histoplasmosis. The State did not refute this failure to test the alleged victim. The State only noted that Mrs. Vail's health status was good and that she regularly went to her medical appointments. The Commission notes that the State claimed that her last medical visit was December 21, 2011.

2.2 Information on the living alleged victims

68. The petitioners claimed that the remaining surviving 41 alleged victims did not receive care from the State until 2006. They further contended that the care they received subsequent to that date has not been comprehensive. Said information has not been refuted by the State through any documentation to indicate otherwise. In actuality, this information is consistent with the State's general recognition indicating that prior to that year, it offered care to a small group of the population with HIV/AIDS. The petitioners noted that subsequently the alleged victims have received inadequate medical care, which includes a failure to conduct testing, lack of access to medicine because of the periodical short supply thereof, among other

irregularities. The IACHR sums up hereunder the information provided by the parties as to each of the living alleged victims:

- **Luis Rolando Cuscul Pivaral** was diagnosed in 1994. The petitioners indicated that Mr. Cuscul is afflicted with lipodystrophy, as a result of his condition as a person living with HIV/AIDS. They claimed that despite that, he has received no treatment for said condition. The State did not refute the petitioners' claim. The State noted that Mr. Cuscul attends his medical appointments at the Roosevelt Hospital and that his health status is good.

- **Luis Rubén Álvarez Flores** was diagnosed in 2002. The petitioners contended that no genotypic and phenotypic testing has been done on him. The State did not refute the petitioners' allegations. The State noted that Mr. Álvarez attended medical appointments at the UAI hospital, Antigua, Guatemala. It recognized that different tests were not performed on him, including CDF cell count and viral load.

- **Francisco Sop Gueij** was diagnosed in 2000. The petitioners claimed that as of 2007, he was taken to Coatepeque hospital periodically. They contended that he has not been administered several tests in order to prevent the appearance of opportunistic diseases. The State did not refute the petitioners' allegations. It noted that Mr. Sop went to medical appointments at said hospital and that his health status is good.

- **Corina Robledo Alvarado** was diagnosed in 2001. The petitioners alleged that genotypic and phenotypic testing has not been done on her. The State did not refute the petitioners' allegations. It noted that Mrs. Robledo went to medical appointments at the Roosevelt Hospital and that her health status is good.

- **Aracely Cinto** was diagnosed in 1997. The petitioners claimed that her treatment only began in 2007 at the Coatepeque hospital. They contended that no viral load or CD4 cell count testing was been regularly done on her. The State did not refute the petitioners' allegations. It noted that Mrs. Cinto attends medical appointments at said hospital and that her health status is good.

- **Olga Marina Castillo** was diagnosed in 2002. The petitioners indicated that she is receiving antiretroviral treatment. The State did not submit information on her situation.

- **Israel Pérez Charal**. The petitioners noted that he is receiving antiretroviral treatment. The State did not submit information on his situation.

- **Karen Judith Samayoa** was diagnosed in 2002. The petitioners indicated that she is receiving antiretroviral treatment. The State did not submit information on her situation.

- **Juana Aguilar** was diagnosed in 2000. The petitioners noted that Mrs. Aguilar contracted opportunistic diseases such as herpes, recurring infections of the respiratory tract, viral tonsillitis, severe bacterial infections and scabies. The contended that it was due to the sporadic care she received at the Coatepeque hospital. The State did not refute the petitioners' allegations. It noted that Mrs. Aguilar went to medical appointments at said hospital and that her health status is good.

- **Darinel López Montes de Oca**. The petitioners claimed that he presented several opportunistic diseases because his CD4 cell count and viral load testing has been off and on. The State des not refute the petitioners' allegations. It indicated that Mr. López goes to medical appointments at the Coatepeque hospital and that his health status is good.

- **Audiencio Rodas** was diagnosed in 2001. The petitioners reported that he contracted opportunistic diseases such as oral leukoplakia, severe bacterial pneumonia and herpes zoster. They claimed that it was a result of the sporadic care he is receiving at the Coatepeque hospital, including the lack of CD4 cell count and viral load testing. The State did not refute the petitioners' allegations. It noted that Mr. Rodas shows up for medical appointments at the Coatepeque hospital and that his health status is good.

- **Martina Candelaria Álvarez Estrada** was diagnosed in 2002. The petitioners claimed that CD4 cell count and viral load testing is not conducted on her regularly and periodically. They contended that this caused Mrs. Álvarez to contract opportunistic diseases such as neuropathy, arthralgia and diarrhea. The State did not refute the petitioners' allegations. It indicated that Mrs. Álvarez shows up for medical appointments at the Coatepeque hospital and her health status is good.

- **Maria Felipe Pérez** was diagnosed in 2001. The petitioners contended that CD4 cell count and viral load testing is not conducted periodically and regularly on her. The State did not refute the petitioners' allegations. It noted that Mrs. Pérez shows up for medical appointments at the Coatepeque hospital and her health status is good.

- **Sayra Elisa Barrios** was diagnosed in 2002. The petitioners alleged that CD4 cell count and viral load testing is not conducted periodically and regularly on her. They claimed that the sporadic nature of the care received at Coatepeque hospital has caused several opportunistic diseases in her. The State did not refute the petitioners' allegations. It noted that Mrs. Barrios shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Felipe Ordóñez** was diagnosed in 2002. The petitioners alleged that CD4 cell count and viral load testing is not conducted periodically and regularly on him. They contended that this caused Mr. Ordóñez to contract opportunist diseases such as liver problems, slight hearing loss, runny diarrhea and grade II malnutrition, and spots in his mouth. The State did not refute the petitioners' allegations. It noted that Mr. Ordóñez shows up for medical appointments at Coatepeque hospital and his health status is good.

- **Santos Isacax Vásquez Barrio** was diagnosed in 2003. The petitioners claimed that he has never been tested for viral load and his last CD4 count was in September 2007. They contended that this cause him to contract opportunistic diseases such as syphilis, neurosyphilis, fever, bloody diarrhea, cough, vomiting white phlegm, slight aphonia, pharyngitis, herpes zoster and cutaneous mycosis. The State did not refute the petitioners' allegations. It claimed that Mr. Vásquez shows up for medical appointments at Coatepeque hospital and his health status is good.

- **Ismera Oliva García Castañon** was diagnosed in 2003. The petitioners claimed that no genotypic and phenotypic testing has been done on her. The State did not refute the petitioners' allegations. It noted that Mrs. García shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Guadalupe Cayaxon** was diagnosed in 2002. The petitioners contended that the necessary testing has not been done on her and that it has cause several opportunistic diseases in her. The State did not refute the petitioners' allegations. It noted that Mrs. Cayaxon shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Sandra Lisbeth Zepeda Herrera** was diagnosed in 1999. The petitioners indicated that she is receiving antiretroviral treatment. The State did not submit information on her situation.

- **Cesar Noe Cancinos Gómez** was diagnosed in 2002. The petitioners alleged that CD4 cell count and viral load testing has not been done periodically and regularly on him. They contended that it caused him to contract opportunistic diseases such as recurrent oral candidiasis, upper respiratory infection and diarrhea. The State did not refute the petitioners' allegations. It noted that Mr. Cancinos shows up for medical appointments at Coatepeque hospital and his health status is good.

- **Santos Vásquez Oliveros** was diagnosed in 2002. The petitioners alleged that no genotypic or phenotypic testing has been done on him. The State did not refute the petitioners' allegations. It noted that Mr. Vásquez shows up for medical appointments at Coatepeque hospital and his health status is good.

- **Julia Aguilar** was diagnosed in 2002. The petitioners alleged that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it caused her to contract opportunistic diseases such as acute tonsillitis, parasites, pharyngitis, acute diarrhea, sarcoidosis, neuropathy, moderate cervicitis, urinary infection, sinusitis, diarrhea, calcaneal spur, peptic disease, and obesity. The State did not refute the petitioners' allegations. It noted that Mrs. Aguilar shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Sebastián Emilia Dueñas** was diagnosed in 2002. The petitioners alleged that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it caused him to contract opportunistic diseases such as recurrent oral candidiasis, upper respiratory infection and diarrhea. The State did not refute the petitioners' allegations. It noted that he shows up for his medical appointments at Coatepeque hospital and his health status is good.

- **Zoila Pérez Ruiz** was diagnosed in 2002. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it caused her to contract opportunistic diseases such as cervical adenopathy, vaginal candidiasis, scabies, disseminated tuberculosis, tonsillitis, back pain, herpes, pneumonia, peripheral neuropathy and mycosis in both feet. The State did not refute the petitioners' allegations. It noted that Mrs. Pérez shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Santiago Valdez** was diagnosed in 2002. The petitioners alleged that he has not received comprehensive care and, consequently, is afflicted with oral candidiasis, dermamycosis and minor mucocutaneous manifestations. The State did not refute the petitioners' allegations and did not submit information on the situation of Mr. Valdez.

- **Pascuala de Jesús Mérida** was diagnosed in 2001. The petitioners claimed that viral load testing has not been conducted periodically or regularly. They contended that it caused her to contract opportunistic diseases. The State did not refute the petitioners' allegations. It noted that Mrs. De Jesús shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Iris Carolina Vicente Baullas** was diagnosed in 2003. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it caused her to contract opportunistic diseases such as laryngitis, cutaneous rash, scabies, bacterial pneumonia, lumbar pain, vaginal candida, conjunctivitis, vaginal discharge, osteopenia, colitis, insomnia, peripheral neuropathy, moderate cervicitis, and peptic disease. They reported that Mrs. Vicente decided to move to the United States because of the lack of care in Guatemala. The State did not refute the petitioners' allegations. It recognized that Mrs. Vicente traveled to the United States in 2007.

- **Marta Alicia Maldonado Paz** was diagnosed in 2001. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it caused her to contract opportunistic diseases such as vulvar and anal papilomatosis, oral and vaginal candidiasis, oral papilomatosis, tinia pedis, grade II malnutrition and histoplasmosis. The State did not refute the petitioners' allegations. It noted that Mrs. Maldonado shows up for medical appointments at Coatepeque hospital and her health status is good.

- **José Cupertino Ramírez** was diagnosed in 2001. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it caused him to contract opportunistic diseases such as pharyngitis, mycosis, syphilis, and genital herpes. The State did not refute the petitioners' allegations. It noted that Mr. Cupertino shows up for medical appointments at Coatepeque hospital and him health status is good.

- **Elsa Miriam Estrada** was diagnosed in 2000. The petitioners alleged that she is afflicted with pneumonia because of a change in medication regime received at Coatepeque hospital. They contended that the inconsistent care has caused several different opportunistic diseases in her. The State did not refute the petitioners' allegations. It noted that Mrs. Estrada shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Félix Cabrera** was diagnosed in 1996. The petitioners contended that beginning in 2002 he was receiving care at the IGSS on an off-and-on basis, and as of 2013 steady treatment was successfully achieved. The State did not submit information on the situation of Mr. Cabrera.

- **Silvia Mirtala Álvarez** was diagnosed in 2002. The petitioners alleged that CD4 cell count, viral load and genotypic testing have not been conducted. They contended that it has caused her to contract opportunistic diseases. They claimed that her treatment in the IGSS has been seriously affected by short supply of medicine, which has led to resistance to antiretroviral drugs. The State did not submit information on the situation of Mrs. Álvarez.

- **Ingrid Barillas Martínez**. The petitioners noted that she is receiving antiretroviral treatment at Roosevelt hospital. The State claimed that Mrs. Barillas shows up for medical appointments at said facility and that her health status is good.

- **Luis Armando Linares**. The petitioners noted that he is receiving antiretroviral treatment at Roosevelt hospital. The State claimed that Mr. Linares shows up for medical appointments at said facility and that his health status is good.

- **Mardo Luis Hernández**. The petitioners alleged that phenotypic and genotypic testing has not been conducted. The State did not refute the petitioners' allegations. It noted that Mr. Hernández shows up for medical appointments at Coatepeque hospital and that his health status is good.

- **Jorge Armando Tavarez**. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it has caused him to contract opportunistic diseases such as cryptococcal meningitis, pulmonary tuberculosis, blurry vision, oral candidiasis, acute wasting syndrome, oral leucoplasia vellosa, genital ulcers, pneumocystis pneumonia, genital herpes, DCA, malaria and peripheral neuropathy. The State did not refute the petitioners' allegations. It noted that Mr. Tavarez shows up for medical appointments at Coatepeque hospital and his health status is good.

- **Miguel Lucas Vail**. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it has caused him to contract opportunistic diseases such as oral candidiasis, infections of the upper respiratory tract and diarrhea. The State did not refute the petitioners' allegations. It noted that Mr. Vail shows up for medical appointments at Coatepeque hospital and his health status is good.

- **Dora Marina Martínez**. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it has caused her to contract opportunistic diseases. They further alleged that the inconsistency in antiretroviral treatment has caused lipodystrophy in her. The State did not refute the petitioners' allegations. It noted that Mrs. Martínez shows up for medical appointments at Coatepeque hospital and her health status is good.

- **Melvin Yovani Ajtún**. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it has caused him to contract opportunistic diseases such as skin rashes, atypical pneumonia, oral candidiasis, pharyngitis, oral papilomatosis, and oral leukoplakia vellosa. The State did not refute the petitioners' allegations. It noted that Mr. Ajtún shows up for medical appointments at Coatepeque hospital and his health status is good.

- **Teresa Magdalena Ramírez Castro**. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it has caused her to contract opportunistic diseases such as cryptocococcus, toxoplasmosis, fibromatosis and hyperglycemia. The State did not refute the petitioners' allegations and did not submit information on the situation of Mrs. Ramírez.

- **José Rubén Delgado**. The petitioners claimed that CD4 cell count and viral load testing have not been conducted periodically or regularly. They contended that it has caused him to contract opportunistic diseases such as Cryptococcus on the skin, scabies, eye trauma, trauma ocular, pruritic papular eruption, herpes, grade II malnutrition, lipotomy, diarrhea, dizziness, otitis and cephalea. The State did not refute the petitioners' allegations. The Commission notes that the State only indicated that Mr. Delgado died in 2009.

2.3 Information on family members of the alleged victims

69. The petitioners provided a list of the family members of the alleged victims, who they considered affected in the instant case. The individual identity of said family members and their respective link to the alleged victims is listed in the Single Annex to this merits report.

3. Recourses Pursued

3.1 Letters addressed to the President of the Republic at the time and other senior officials

70. The petitioners and other civil society representatives engaged in strategies and initiatives to raise the profile of persons living with HIV/AIDS in Guatemala in order to demand comprehensive medical care for said persons, including provision of the necessary medicines. Accordingly, they sought the support of the State by sending letters to different officials, as explained hereunder.

71. Additionally, on November 23, 2001, the Association for the Coordination of Sectors in the Fight Against AIDS sent a letter to then Minister of Health Mario Bolaños in order to request a meeting with

him to discuss: i) the Regulations of the HIV/AIDS Law; ii) the integrated HIV/AIDS care unit; and iii) the situation of short, medium and long term antiretroviral treatment.[15]

72. On May 27, 2002, the Association for the Coordination of Sectors in the Fight Against AIDS and other organizations representing persons living with HIV/AIDS in Guatemala sent a letter to then President of the Republic Alfonso Portillo.[16] They claimed that the State only provided antiretroviral treatment to 27 persons exclusively with public funding, which constitutes a violation of Article 4 of the Constitution.[17] They contended that the treatment should be universal and accessible to every person who needs it in keeping with the Constitution and the HIV/AIDS Law.[18] They alleged that said treatment has been denied to them systematically by the Ministry of Health through "temporizing, stalling tactics or passing responsibility on to an international entity that provides antiretroviral treatment."[19]

73. On June 10, 2002, the Ombudsman for Human Rights sent a communication to the President of the Republic at the time regarding the letter sent on May 27, 2002.[20] He noted that the people receiving antiretroviral treatment from an international agency only receive it for three years and that it is a small number of people.[21] He noted that according to estimates, four thousand persons need said treatment. He claimed that "he unconditionally supports this demand, which is a just request for the right to life and to non-violation of human rights based on discrimination, inasmuch as the State is giving treatment to 27 persons."[22] He also noted that the request should be "dealt with as soon as possible because the lives of each of the persons living with HIV/AIDS depends on it."[23]

3.2 *Amparo* suit brought before the Constitutional Court

74. On July 26, 2002, twenty two persons, including thirteen of the alleged victims,[24] and civil society organizations –Association for the Coordination of Sectors in the Fight against AIDS, Positive People Association and Association for Integrated Health- brought a special appeal for relief (*amparo)* with the Constitutional Court in order to get "the constitutionally recognized right to health restored for each and every one of us people living with HIV/AIDS."[25] They claimed that they urgently needed medical care.[26] They

[15] Annex 2. Letter of the Association for the Coordination of Sectors in the Fight against AIDS dated November 23, 2001. Annex to petitioners' communication of August 26, 2003.

[16] Annex 2. Letter of the Association for the Coordination of Sectors in the Fight against AIDS dated May 27, 2002. Annex to petitioners' communication of August 26, 2003.

[17] Annex 2. Letter of the Association for the Coordination of Sectors in the Fight against AIDS dated May 27, 2002. Annex to petitioners' communication of August 26, 2003.

[18] Annex 2. Letter of the Association for the Coordination of Sectors in the Fight against AIDS dated May 27, 2002. Annex to petitioners' communication of August 26, 2003.

[19] Annex 2. Letter of the Association for the Coordination of Sectors in the Fight against AIDS dated May 27, 2002. Annex to petitioners' communication of August 26, 2003.

[20] Annex 3. Communication from the Ombudsman for Human Rights dated June 10, 2002. Annex to petitioners' communication of August 26, 2003.

[21] Annex 3. Communication from the Ombudsman for Human Rights dated June 10, 2002. Annex to petitioners' communication of August 26, 2003.

[22] Annex 3. Communication from the Ombudsman for Human Rights dated June 10, 2002. Annex to petitioners' communication of August 26, 2003.

[23] Annex 3. Communication from the Ombudsman for Human Rights dated June 10, 2002. Annex to petitioners' communication of August 26, 2003.

[24] Luis Rolando Cuscul Pivaral, Luis Armando Linares, Facundo Gómez Reyes, Marta Alicia Maldonado Paz, Miguel Lucas Vail, Ingrid Barillas Martínez, Jorge Armando Tavarez, Melvin Yovani Ajtún, Mardo Luis Hernández, Alberto Quiché Cuxeva, Teresa Magdalena Ramírez Castro, Rita Dubón Orozco and Dora Marina Martínez.

[25] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

noted that at least 4000 persons diagnosed with HIV/AIDS are living in Guatemala and that the State only provides medicines to 27 persons.[27]

75. They also argued in this suit that a State policy, which conforms to the financial reality of the State, should strive to use quality generic antiretroviral drugs, which are substantially less costly than those used by the State.[28] They also contended that at the time of the filing of the *amparo* claim, they had not received any response to their letter sent on May 27, 2002 addressed to the President of the Republic.[29] They argued that, consequently, the President "passed over and ignored [their] petition and did not issue any type of instruction, resolution or decision to reflect his interest in fulfilling the constitutional mandate."[30]

76. The claimants also alleged that the State was violating their right to life and health.[31] They requested that the President be ordered to issue "the transfer of the necessary budget funding for the purchase, systematic and daily distribution of the antiretroviral treatments needed to preserve [their] lives, as well as adequate and permanent monitoring of persons living with HIV/AIDS in Guatemala." [32] They also said that an order should be issued for the purchase of quality generic antiretroviral drugs for mass treatment and not selective treatment as has been provided to the 27 persons receiving treatment from the State.[33]

77. On August 1, 2002, then President of the Republic Alfonso Portillo, submitted a written brief of appearance to the Constitutional Court.[34] He contended that in the instant case, "there is no evidence of any link between the claimants and the charged offense (…) where it would seem that that a popular cause is being invoked, which in no way can be subject matter for examination in an *amparo* claim."[35]

78. On August 2, 2002, the Office of the Public Prosecutor filed a written submission with the Constitutional Court in which it claimed that the President of the Republic "has not fulfilled the obligation to resolve, within the statutory time period, the matter of the request filed by the claimants in their letter of May 27, 2002."[36] It contended that the President "has infringed the right of petition, as established in Article 28 of the Political Constitution of the Republic, which makes it feasible to grant this constitutional action."[37]

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[26] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[27] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[28] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[29] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[30] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[31] New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[32] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[33] Annex 4. New *Amparo* suit brought before the Constitutional Court dated July 26, 2002. Annex to petitioners' communication of August 26, 2003.

[34] Annex 5. Written submission of Alfonso Portillo, dated August 1, 2002. Annex to petitioners' communication of August 26, 2003.

[35] Annex 5. Written submission of Alfonso Portillo, dated August 1, 2002. Annex to petitioners' communication of August 26, 2003.

[36] Annex 6. Written submission of the Office of the Public Prosecutor dated August 2, 2002. Annex to petitioners' communication of August 26, 2003.

[37] Annex 6. Written submission of the Office of the Public Prosecutor dated August 2, 2002. Annex to petitioners' communication of August 26, 2003.

79. On October 10, 2002, the General Directorate of Health Regulation, Surveillance and Control sent a communication to the Constitutional Court in which it reported that on August 20, 2002, the President of the Republic met with the Minister of Health and the President of the Sector Coordinating Association for the Fight against AIDS, and representatives of persons living with HIV/AIDS.[38] It claimed that at that meeting the President authorized a special budget outlay of 500,000 quetzals "to meet the requirements of persons with HIV/AIDS."[39]

80. For their part, the claimants informed the Constitutional Court that said amount would be enough to treat the persons with HIV/AIDS "at least for the last half of the year."[40] They further contended that notwithstanding, "the reasons prompting the filing of the *amparo* suit subsist because even though it is true the money is deposited, for one reason or another the antiretroviral treatments for the persons living with HIV/AIDS have not been able to begin."[41]

81. On October 18, 2002, the Constitutional Court issued a ruling wherein it held that, because the evidentiary period had concluded, a hearing was convened.[42]

82. On October 30, 2002, the Ministry of Public Health filed a written submission with the Constitutional Court.[43] It contended that there is no evidence of any infringement in this matter inasmuch as "there is no resolution or decision of this Ministry in which there is any indication or evidence of the violation of a right or refusal to provide services to persons afflicted (…) AIDS."[44] It also claimed that "no omission has been committed inasmuch as the State has conducted several activities in benefit of persons living with (…) HIV or who develop (…) AIDS."[45] It further alleged that "medical care has always been provided to persons living with (…) HIV or who develop (…) AIDS."[46]

83. The Health Ministry claimed that with regard to economic, social and cultural rights, the State "is obligated to the extent possible."[47] It contended that with respect to persons living with HIV/AIDS, "it has acted to the extent possible."[48] It moved for the *amparo* claim to be dismissed.[49]

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[38] Annex 7. Written submission of the General Directorate of Regulation, Surveillance and Control of Health, dated October 10, 2002. Annex to petitioners' communication of August 26, 2003.

[39] Annex 7. Written submission of the General Directorate of Regulation, Surveillance and Control of Health, dated October 10, 2002. Annex to petitioners' communication of August 26, 2003.

[40] Annex 8. Written submission of Luis Cuscul et al, dated October 29, 2002. Annex to petitioners' communication of August 26, 2003.

[41] Annex 8. Written submission of Luis Cuscul et al, dated October 29, 2002. Annex to petitioners' communication of August 26, 2003.

[42] Annex 9. Ruling of the Constitutional Court dated October 18, 2002. Annex to petitioners' communication of August 26, 2003.

[43] Annex 10. Written submission of the Ministry of Public Health dated October 30, 2002. Annex to petitioners' communication of August 26, 2003.

[44] Annex 10. Written submission of the Ministry of Public Health dated October 30, 2002. Annex to petitioners' communication of August 26, 2003.

[45] Annex 10. Written submission of the Ministry of Public Health dated October 30, 2002. Annex to petitioners' communication of August 26, 2003.

[46] Annex 10. Written submission of the Ministry of Public Health dated October 30, 2002. Annex to petitioners' communication of August 26, 2003.

[47] Annex 10. Written submission of the Ministry of Public Health dated October 30, 2002. Annex to petitioners' communication of August 26, 2003.

[48] Annex 10. Written submission of the Ministry of Public Health dated October 30, 2002. Annex to petitioners' communication of August 26, 2003.

84. On January 29, 2003, the Constitutional Court issued a judgment dismissing the *amparo* suit.[50] The Court found that "the offense that is claimed–negative and omissive conduct of the President of the Republic to heed the request of the claimants– ceased [due to the agreements reached at the meeting of October 30, 2002]."[51] Consequently, it held that the appeal is without merit though it did not order the claimants to pay costs.[52] The Commission posits that in its judgment, the Constitutional Court did not consider at all how the funds that were ordered in the special outlay were used. Nor did it rule on the prospects of permanent budget outlays in order to comply in the medium and long term with the law and the regulation on the subject matter.

85. The petitioners argued that none of the alleged victims was benefited by the antiretroviral medicine granted through the transfer of funds in May 2003.[53] They claimed that it was only enough to cover the antiretroviral medication of approximately eighty persons living with HIV/AIDS.[54] Said information was not refuted by the State.

3.3 Actions subsequent to the decision of the Constitutional Court from 2003 to 2005

86. Both parties reported that after the decision of the Constitutional Court, a meeting was held between the President, the Ministry of Public Health and Social Assistance, as well as the petitioners.[55] At said meeting, the Executive Director of the Foundation for the Prevention of AIDS and the Director of the Association for Integrated Health (ASI for its Spanish initials) sent a communication to then President Oscar Berger on behalf of the alleged victims.[56]

87. In said communication, they requested for him, among other things, i) to introduce and promote before the Congress of the Republic the legislative bill "The State Policy to universally ensure integrated HIV/AIDS treatment;" and ii) to ensure an annual budget outlay for the strengthening and functioning of the National AIDS Program in keeping with actual needs in the country.[57] They claimed that at said meeting the government pledged to develop a program to make it possible to ensure antiretroviral treatment universally.[58]

88. The petitioners reported that at said meeting the President at the time made a commitment to take different measures, including repeal of Decree 9-2003, which prohibited that sale of generic medicines.[59] They contended that despite having done so, the President withdrew the legislative bill that

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[49] Annex 10. Written submission of the Ministry of Public Health dated October 30, 2002. Annex to petitioners' communication of August 26, 2003.

[50] Annex 11. Judgment of the Constitutional Court dated January 29, 2003. Annex to petitioners' communication of August 26, 2003.

[51] Annex 11. Judgment of the Constitutional Court dated January 29, 2003. Annex to petitioners' communication of August 26, 2003.

[52] Annex 11. Judgment of the Constitutional Court dated January 29, 2003. Annex to petitioners' communication of August 26, 2003.

[53] Annex 12. Petitioners' communication of April 2, 2004.

[54] Annex 12. Petitioners' communication of April 2, 2004.

[55] Annex 13. Petitioners' communication of August 16, 2004. Annex 14. State's written submission of June 18, 2004.

[56] Annex 14. State's written submission of June 18, 2004.

[57] Annex 14. State's written submission of June 18, 2004.

[58] Annex 15. Petitioners' communication of May 13, 2005.

[59] Annex 13. Petitioners' communication of August 16, 2004.

would repeal said decree on July 8, 2004.[60] On December 21, 2004, Decree No. 34-2004 was enacted, which repealed Decree 9-2003. Then on March 7, 2005, Decree 30-2005 was enacted, which repealed the latter decree and amended Article 177. The petitioners claimed that this decree is not applicable to cases of HIV/AIDS, inasmuch as the disease has been declared a national emergency by the President of the Republic.[61] They further argued that because of this status, the distribution of generic drugs is banned for the treatment of persons living with HIV/AIDS.

4. Available information on HIV/AIDS treatment in Guatemala subsequent to 2006

89. The petitioners noted that in October 2006, the alleged victims started to receive antiretroviral treatment from private entities and not from the State.[62]

90. In a communication of September 30, 2008, the State attached communications from the NGO the Marco Antonio Foundation, in which it was noted that 23 of the alleged victims were receiving treatment and are in good health.[63]

91. In June 2008, Mr. Félix Cabrera, one of the alleged victims stated:

> (…) as a person living with HIV, the short supply greatly affects me, I was going through difficult times in my personal, emotional, economic and psychological life, which led me to take the antiretroviral therapy though none was in stock in any case and when there was access to it the side effects were unbearable (…) After a year of going through very difficult health situations and despite the fear of starting the antiretroviral therapy back up again, in January 2008, I restarted the antiretroviral drugs [treatment] but I have growing anxiety that the IGSS once again stops purchasing ARV.[64]

92. In a press release of 2008, the Marco Antonio Foundation charged that "the publication and sanctioning of Decree No. 70-2007 of the Congress of the Republic, published on December 18, 2007 for the 2008 General Budget of the Nation, (…) violates the right to health and life, in removing (…) from the budget [the funding] to provide integrated care to 1050 persons affected by the HIV epidemic."[65] It further contended that:

> (…) people are very aware of the many problems faced by the nation's hospitals, and the previous disruptions of treatments that they have had last year, additionally they do not have the capacity to cope with treating these patients. Denying this chance to ensure these services would only have the effect of increasing and saturating the services, as well low quality services.

93. From September 9 to 16, 2008, different hospitals (Centro de Salud de Amatitlán, Hospital Nacional de San Marcos, Hospital Nacional de Retalhuleu, Hospital Nacional de Jutiapa, Centro de Salud de

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[60] Annex 13. Petitioners' communication of August 16, 2004.

[61] Annex 15. Petitioners' communication of August 30, 2007.

[62] Annex 15. Petitioners' communication of August 30, 2007.

[63] Annex 16. Communications of the Marco Antonio Foundation dated January 29 and February 5, 2008. Annex to State's submission of September 30, 2008.

[64] Annex 17. Written Submission of Félix Cabrera Morales of June 2008. Annex to petitioners' submission of June 27, 2008.

[65] Annex 18. Petitioners' communication of September 20, 2008.

Totonicapán, Centro de Salud de Campur y Centro de Salud de San Pedro Carcháno) submitted official letters indicating that they had antiretroviral medicines available for the prevention and treatment of HIV/AIDS.[66]

94. In its latest communication on the merits, the State made reference to different general measures that it took with regard to persons with HIV/AIDS, such as i) the National Strategic Plan for the Prevention, Treatment and Control of Sexually Transmitted Diseases, HIV and AIDS 2011-2015; ii) the issuing of Ministerial Decision No. 472-2012 of August 13, 2012 wherein the supply of the medication Lopinavir/Ritonavir would be ensured for patients in the National Program of Prevention and Control of Sexually Transmitted Diseases, HIV and AIDS (National Program); and iii) the issuing of Ministerial Decision No. 871-2012 of September 26, 2012, whereby the framework of cooperation between countries was approved for supply of and access to antiretroviral drugs that are used by the National Program.[67]

95. In December 2010, Johana Castillo, the head of the HIV Unit of the Office of the Ombudsman for Human Rights stated that during that year, 82 complaints were received by persons with HIV/AIDS for lack of medications.[68] She noted that at that same time, local organizations that protect the rights of these persons received 209 complaints with the same allegations.[69]

96. Based on information of public knowledge, on October 15, 2012, the Office of the Ombudsman for Human Rights denounced "the violation of the human right to health, on the grounds of a lack of integrated care and access to medicine that patients living with HIV/AIDS are subjected to nationwide."[70] It also charged that that violation is being committed by the Ministry of Health, "in not coordinating actions to provide integrated treatment and distribute medicine to patients with sexually transmitted infections."

97. Additionally, the Human Rights Ombudsman at the time, Sergio Morales, claimed that there were expired medications at different public hospitals.[71] He contended that "plasma viral load and T lymphocyte CD4 cell count testing, which is essential for using the medication" was not being performed. [72] He also recognized that in 2010, there has been short supply of retroviral drugs.[73]

B. Law

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[66] Annex 19. Written submissions dated September 9, 11 and 16, 2008. Annex to petitioners' communication of September 20, 2008.

[67] Annex 20. State's submission of November 26, 2012.

[68] Press article "Acceso a medicamentos es un derecho violentado" ['Access to medicine is an infringed right'], published in Prensa Libre on December 8, 2012. Available at: http://www.prensalibre.com/noticias/Acceso-medicamentos-derecho-violentado_0_386361385.html

[69] Press article "Acceso a medicamentos es un derecho violentado" ['Access to medicine is an infringed right'], published in Prensa Libre on December 8, 2012. Available at: http://www.prensalibre.com/noticias/Acceso-medicamentos-derecho-violentado_0_386361385.html

[70] Press article "Acceso a medicamentos es un derecho violentado" ['Access to medicine is an infringed right'], published in Prensa Libre on December 8, 2012. Available at: http://www.prensalibre.com/noticias/Acceso-medicamentos-derecho-violentado_0_386361385.html

[71] Press article "PHD denuncia escasez de retrovirales" ['PHD denounces scarcity of retrivirals'], published in Prensa Libre on October 25, 2012. Available at: http://www.prensalibre.com/noticias/PDH-denuncia-escasez-retrovirales_0_359964030.html

[72] Press article "PHD denuncia escasez de retrovirales" ['PHD denounces scarcity of retrivirals'], published in Prensa Libre on October 25, 2012. Available at: http://www.prensalibre.com/noticias/PDH-denuncia-escasez-retrovirales_0_359964030.html

[73] Press article "PHD denuncia escasez de retrovirales" ['PHD denounces scarcity of retrivirals'], published in Prensa Libre on October 25, 2012. Available at: http://www.prensalibre.com/noticias/PDH-denuncia-escasez-retrovirales_0_359964030.html

1. Right to life and humane treatment (Article 4 and 5[74] of the American Convention)

98. The right to life, as established in Article 4.1 of the American Convention, provides that:

> 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

99. Additionally, the right to humane treatment, included in Article 5.1 of the American Convention, establishes that:

> 1. Every person has the right to have his physical, mental, and moral integrity respected.

100. Hereunder, the Commission will summarize some general considerations regarding the right to life and humane treatment in connection with the right to health, as well as relevant international standards on the subject of HIV/AIDS. Following the summary, the Commission will examine the specific case before it.

1.1 General considerations on the right to live and humane treatment in connection with the right to health

101. The Inter-American Commission and the Court have held that the right to life is fundamental inasmuch as it is essential for the exercise of all other human rights.[75] Because of this nature, States have the obligation to ensure the creation of the conditions required for the full and free enjoyment thereof.[76] Additionally, they have established that compliance with Article 4, in connection with Article 1.1 of the American Convention, not only presupposes that no one can be deprived arbitrarily of his or her life (negative obligation), but also requires that States take the appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free enjoyment of the rights of all persons under their jurisdiction.[77] This specifically includes States' duty to adopt the necessary measures to establish an adequate legal framework to deter any threat to the right to life.[78]

102. Furthermore, the Inter-American Court has addressed the concept of dignified life, among the obligations imposed under Article 4 of the American Convention. Thus, in the *Case of the "Street Children" (Villagrán Morales et* al) v. *Guatemala,* the Court established that "the fundamental right to life includes (…) also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence."[79] This interpretation was revisited in three cases of indigenous communities against Paraguay, for

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[74] On the basis of the principle *iura novit curia,* the Commission shall take into consideration the alleged violation of Article 5 of the American Convention. The Commission stresses that the facts supporting this position are an integral and inseparable part of the case and, in addition, emerge from the information and documents provided by the parties in the course of the proceedings of the present case.

[75] IA Court of HR, *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala.* Merits. Judgment of November 19, 1999. Series C No. 63, par. 144; *Case of Zambrano Vélez et al v. Ecuador.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 78.

[76] IA Court of HR, *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala.* Merits. Judgment of November 19, 1999. Series C No. 63, par. 144.

[77] IA Court of HR. Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of September 4, 2012. Series C No. 196, par. 74.

[78] IA Court of HR. Case of Gonzales Lluy et al v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 01, 2015. Series C No. 298. Par. 169.

[79] IA Court of HR, *Case of the "Street Children" (Villagrán Morales et al) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, par. 144 and 191.

whom the State did not take the necessary measures to provide them with a dignified life as to the provision of health services, among other things.[80]

103. As for the right to humane treatment, the Court has established that States have the duty to adopt the necessary measures with a mind to address threats to the physical integrity of persons.[81]

104. Both the IACHR and the Court have ruled on the existing relationship between the right to life and to humane treatment and the right to health.[82] In this regard, both bodies of the Inter-American system have taken into account for purposes of interpretation of the right to life and humane treatment in connection with the right to health, the content of the American Declaration on the Rights and Duties of Man[83] and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).[84] Also, the right to health has also been collected in instruments of universal human rights system and other regional systems.[85]

105. The Inter-American Court has consistently interpreted that the right to life and humane treatment are directly and immediately linked to human health care[86] and that "inadequate medical care" may entail the violation thereof.[87] The Commission finds that this intrinsic relationship constitutes a manifestation of an existing interdependence and indivisibility between civil and political rights and

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[80] IA Court of HR, *Case of the Yakye Axa Indigenous Community v. Paraguay*. Interpretation of the Judgment on the Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 142, par. 161; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146; and *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010 Series C No. 214, pars. 194 to 217.

[81] IA Court of HR, *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, par. 128.

[82] IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, November 5, 2013. IACHR. Report: Access to maternal health services from a human rights perspective. June 7, 2010. Section II.

[83] Article XI of the American Declaration on the Rights and Duties of Man establishes: Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

[84] Ratified by the State of Guatemala on October 5, 2010. Article 10 of the Protocol of San Salvador establishes that:

> 1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
>
> 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
>
> a. Primary health care, that is, essential health care made available to all individuals and families in the community;
>
> b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
>
> c. Universal immunization against the principal infectious diseases;
>
> d. Prevention and treatment of endemic, occupational and other diseases;
>
> e. Education of the population on the prevention and treatment of health problems, and
>
> f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

[85] The Universal Declaration of Human Rights, article 25; International Covenant on Economic, Social and Cultural Rights, article 12; The European Social Charter, article 11; and African Charter on Human and Peoples' Rights, article 16.

[86] IA Court of HR, *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment May 21, 2013. Series C No. 261, par. 130; and *Case of Vera Vera et al v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of May 19, 2011. Series C No. 226, par. 43.

[87] IA Court of HR, *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment May 21, 2013. Series C No. 261, par. 130; *Case of Tibi v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, par. 157; and *Case of Vera Vera et al v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of May 19, 2011. Series C No. 226, par. 44.

economic, social and cultural rights. In the words of the Court, both groups of rights must be "fully understood as human rights, without any rank and enforceable in all the cases before the competent authorities."[88]

106. In order to prevent violations of the right to life and humane treatment as a consequence of provision of inadequate health care services, such services must fulfill the requirements of the principles of availability, accessibility, acceptability and quality of the medical benefits, and it has been noted that those obligations must be "oriented" toward the satisfaction of such principles,[89] which were interpreted by the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 as "interrelated and essential elements," in the following terms:

a) *Availability.* Functioning public health and health-care facilities, goods and services, as well as programs, have to be available in sufficient quantity within the State party. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Program on Essential Drugs.

b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

   i)Non discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

   ii)Physical accessibility: health facilities goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. [...]

   iii) Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or public provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

   iv) Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health treated with confidentiality.

c) *Acceptability.* All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

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[88] IA Court of HR, *Case of Acevedo Buendía et al ("Discharged and Retired Employees of the Comptroller") v. Peru.* Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, par. 101. Also see: UN. Committee on Economic, Social and Cultural Rights. General Comment No. 9, par. 10.

[89] IA Court of HR, *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment May 21, 2013. Series C No. 261,

d) *Quality*. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.[90]

107. In keeping with said principles, the Commission and the Court have held that States are responsible for regulating on an ongoing basis the provision of services and execution of national programs pertaining to the achievement of quality health care services, in such a way that any threat to the lives or physical integrity of persons undergoing health treatment is averted.[91] The Court has established that the State has the duty to regulate, supervise and monitor the provision of health care, ensuring, among other aspects, compliance with the principles of availability, accessibility, acceptability and quality of the aforementioned medical benefits, both in the public and private arenas.[92]

1.2 General considerations regarding the obligations of the State vis-à-vis persons with HIV/AIDS

108. According to the World Health Organization, the human immunodeficiency virus (HIV) is a disease that infects the cells of a person's immune system, destroying or impairing its function.[93] It causes progressive weakening of the immune system.[94] Acquired immunodeficiency syndrome (AIDS) is a term used to refer to the most advanced stages of HIV infection and is marked by the presence of some of the HIV-related opportunistic diseases.[95]

109. The Commission accepts the premise that infection with the HIV virus presents an obvious adverse effect on the health of an individual, which in turn has an impact on personal integrity and may also generate a serious risk to life.[96] For its part, the Court has established that the harm to health caused by HIV/AIDS, as a consequence of the severity of the illness involved and the risks that the person may face at different points in his or her life, constitutes a violation of the right to life, in view of the danger of death that the victim has faced and may face in the future, owing to the illness.[97] The Commission has stressed that the suspension of treatment would give rise to a resurgence of the symptoms and to a premature death.[98]

110. The IACHR has held that persons living with HIV/AIDS have historically been subjected to discrimination inasmuch as "HIV/AIDS-related stigma is rampant in the Americas, which not only hinders an

[90] United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights. General Comment Number 14, E/C.12/2000/4, August 11, 2000, par. 12.

[91] IA Court of HR, *Case of Ximenes Lopes v. Brazil*. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, par. 99. Also, see: IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, November 5, 2013.

[92] IA Court of HR, *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment May 21, 2013. Series C No. 261, par. 152.

[93]WHO, Health topics, HIV/AIDS. Available at: http://www.who.int/topics/hiv_aids/es/

[94] WHO, Health topics, HIV/AIDS. Available at: http://www.who.int/topics/hiv_aids/es/

[95] WHO, Health topics, HIV/AIDS. Available at: http://www.who.int/topics/hiv_aids/es/

[96] IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, November 5, 2013, par. 168. It should be mentioned that the Commission recalls that it has granted precautionary measures to persons with HIV/AIDS, whose rights to life and to health were seriously in jeopardy due to a lack of basic care from institutions of the State to provide access to necessary medicine for their treatment. The Commission requested the States to adopt emergency measures in order to provide access to the essential medications for their survival, as well as to medical examinations that make it possible to conduct regular evaluation of their health status. See. IACHR, Precautionary Measures on behalf of Jorge Odir Miranda et al, El Salvador, 2000; and Precautionary Measures on behalf of Juan Pablo Améstica Cáceres, Manuel Orlando Farías and Náyade Orieta Rojas Vera, Chile, 2001.

[97] IA Court of HR. *Case of Gonzales Lluy et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 01, 2015. Series C No. 298. Par. 190.

[98] IACHR, Report No. 63/08, Case 12.534, Andrea Mortlock, United States, July 25, 2008, par. 90.

effective response to the epidemic but also negatively impacts on the exercise and enjoyment of human rights."[99]

111. In light of that situation, the IACHR has noted that States must maximize efforts so that all persons living with HIV/AIDS have access to the care they require,[100] including universal access to prevention and treatment services.[101]

112. On the subject of treatment for persons with HIV/AIDS, the Inter-American Court established recently in the case of *Gonzáles Lluy et al v. Ecuador*, involving events beginning in 1998, that "the International Guidelines on HIV/AIDS and Human Rights of the Office of the United Nations High Commissioner for Human Rights (…) and the Joint United Nations Program on HIV/AIDS (…) constitute an authoritative reference to clarify some international obligations of the State on this subject matter."[102]

113. In this same case, the Inter-American Court highlighted Guideline 6 and the interpretation thereof as follows:

> Guideline 6, as revised in 2002, reads that:
>
> > States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price. States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions. […][103]
>
> This Guideline 6 has been interpreted by the OUNHCHR and UNAIDS to mean that an effective response to HIV requires a comprehensive approach that includes a continuum of prevention, treatment, care and support:
>
> > Prevention, treatment, care and support are mutually reinforcing elements and a continuum of an effective response to HIV. They must be integrated into a comprehensive approach, and a multifaceted response is needed. Comprehensive treatment, care and support include antiretroviral and other medicines, diagnostics and related technologies for the care of HIV and AIDS, related opportunistic infections and other conditions, good nutrition, and social, spiritual and psychological support, as well as family, community and home-based care. HIV-

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[99] Press Release 147/12, The IACHR, the CIM, UNAIDS and PAHO call on OAS Member States to eradicate stigma and discrimination surrounding HIV in the Americas, December 17, 2012. Available at: http://www.oas.org/es/cidh/prensa/comunicados/2012/147.asp

[100] Press Release 95/12, Organizations join efforts to fight discrimination and stigma related to HIV, July 25, 2012. Available at: http://www.oas.org/es/cidh/prensa/comunicados/2012/095.asp

[101] Press Release 147/12, The IACHR, the CIM, UNAIDS and PAHO call on OAS Member States to eradicate stigma and discrimination surrounding HIV in the Americas, December 17, 2012. Available at: http://www.oas.org/es/cidh/prensa/comunicados/2012/147.asp

[102] IA Court of HR. *Case of Gonzales Lluy et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 01, 2015. Series C No. 298. Par. 194.

[103] IA Court of HR. *Case of Gonzales Lluy et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 01, 2015. Series C No. 298. Par. 195. Quoting: Office of the United Nations High Commissioner for Human Rights (UNHCHR) and the Joint United Nations Program on HIV/AIDS (UNAIDS), *International Guidelines on HIV/AIDs and Human Rights.* Consolidated Version of 2006, Guideline 6. Available at: http://data.unaids.org/pub/Report/2006/jc1252-internationalguidelines_es.pdf.

prevention technologies include condoms, lubricants, sterile injection equipment, antiretroviral medicines (e.g. to prevent mother-to-child transmission or as post-exposure prophylaxis) and, once developed, safe and effective microbicides and vaccines. Based on human rights principles, universal access requires that these goods, services and information not only be available, acceptable and of good quality, but also within physical reach and affordable for all.[104]

114. The Inter-American Commission notes that HIV/AIDS can be effectively and indefinitely treated via administration of antiretroviral drugs,[105] which improve and enhance the quality of life of persons infected with HIV.[106] Said treatment is delicate, and both its initiation and follow-up must be carried out by suitably qualified staff, bearing in mind the circumstances of the person infected with HIV.[107] Stopping the treatment would lead to a revival of the symptoms and an earlier death.[108] The Pan American Health Organization has provided particular parameters that should be followed prior to initiating antiretroviral treatment.[109]

115. Notwithstanding, according to the Guideline 6 suitable HIV/AIDS treatment requires not only access to antiretroviral medicine on a permanent basis, but also consistent periodical follow-up that not only includes medical aspects, but also adequate nutrition, psychological support for the day-to-day and social activities of life.[110]

116. Along the same lines and taking into account the variety of sources, the Inter-American Court recently held that:

> Access to antiretroviral drugs is only one of the elements of an effective response to persons living with HIV. In this regard, persons living with HIV require a comprehensive approach that includes a continuum of prevention, treatment, care and support. A limited response to access to antiretroviral drugs and other medicines does not fulfill the obligations of prevention, treatment, care and support emanating from the right to the highest possible level of health.[111]

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[104] IA Court of HR. *Case of Gonzales Lluy et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 01, 2015. Series C No. 298. Par. 196. Quoting: OUNHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights.* Consolidated Version of 2006, comment on Guideline 6, par. 26. Available at: http://data.unaids.org/pub/Report/2006/jc1252-internationalguidelines_es.pdf.

[105] IACHR, Report No. 63/08, Case 12.534, Admissibility and Merits, Andrea Mortlock, United States, July 25, 2008, par. 90.

[106] IACHR, Report No. 27/09, Case 12.249, Jorge Odir Miranda Cortez et al, El Salvador, March 20, 2009, par. 104.

[107] IACHR, Report No. 27/09, Case 12.249, Jorge Odir Miranda Cortez et al, El Salvador, March 20, 2009, par. 104.

[108] IACHR, Report No. 63/08, Case 12.534, Admissibility and Merits, Andrea Mortlock, United States, July 25, 2008, par. 90.

[109] Prior to beginning antiretroviral therapy, the clinician must make sure that the following has been done: - Clinical history and physical exploration.. – Confirmation of diagnosis of HIV infection (according to local protocols). Whenever possible, it is best for this to be done with two Elisa tests using two different techniques in two different samples and with confirmation of test result in one of the samples. – Comprehensive blood work. – Biochemical blood profile, including glucose, bilirubin, transaminase, amylase (when using DDI), creatinine or BUN, cholesterol, triglycerides and partial urine test. – CD4 cell count, using flow cytometry or another equivalent reliable method. – When available, viral load when the CD4 cell count is lower than 350 cells/mm3. – Nutritional situation and eating habits. – Evaluation of mental, psychological, emotional, family, work and social factors of the patient, which may positively or negatively affect future adherence, to care services and to any potential treatment that he or she may receive, especially antiretroviral treatment." PAHO, "HIV/AIDS: PAHO prepares a guide to increase use of antiretroviral drugs in Latin America and the Caribbean," Press Release January 10, 2003.

[110] Office of the United Nations High Commissioner for Human Rights (UNHCHR) and the Joint United Nations Program on HIV/AIDS (UNAIDS), *International Guidelines on HIV/AIDs and Human Rights.* Consolidated Version of 2006, Guideline 6. Available at: http://data.unaids.org/pub/Report/2006/jc1252-internationalguidelines_es.pdf.

[111] IA Court of HR. *Case of Gonzales Lluy et al v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 01, 2015. Series C No. 298. Par. 197. Also quoting: The Guidelines also establish that "States should also ensure access to adequate treatment and drugs, within the overall context of their public health policies, so that people living with HIV can live as long and

1.3 Analysis of the Case

117. The Commission notes that the petitioners have claimed and the State has not refuted that the alleged victims were diagnosed with HIV/AIDS from 1992 to 2003. The dispute is centered on the alleged international responsibility of the State for partially or totally failing to provide health care to said persons in light of their health status. In light of the timeline of events described in the proven facts section, which indicate at least two different periods of time for HIV/AIDs treatment availability in Guatemala, the Commission will begin its examination of the case with the period prior to 2006-2007. Next, it will cover the deaths of the eight alleged victims and whether their deaths can be attributed to the State. And lastly, the Commission will address the situation after 2006-2007.

1.3.1 Situation of the alleged victims up until 2006-2007

118. The petitioners contended that, after being diagnosed with HIV/AIDS and up until 2006-2007, the alleged victims only received health care, in particular provision of medicine, from non-profit international organizations. They further argued that at this time, the State did not provide any medical care, nor did it conduct the required examinations or provide antiretroviral medicines to the alleged victims.

119. The State recognized that during that time, "a small number of persons with HIV/AIDS in Guatemala received public medical care" and that "many low income persons with HIV/AIDS were precluded from having access to health treatments." This was confirmed by the Minister of Health at the time, who recognized that this situation was a consequence of the lack of State resources. The Commission notes that the State did not submit any information to prove that the alleged victims received public health care services during this time. The State also recognized that "most of the treatment in the country was assumed by Doctors Without Borders."

120. The Commission established above in the instant report that the State was obligated to take the necessary steps to provide comprehensive health care to persons living with HIV/AIDS under its jurisdiction, including conducting diagnostic examinations and follow-up, providing antiretroviral medicine and the necessary physical and psychological follow-up. Based on the foregoing, there is no dispute as to the absolute lack of care provided by the State to the alleged victims in the instant case, despite the fact that a constitutional and legislative framework was in place establishing the mandatory nature of providing said care.

121. The Commission emphasizes the importance of international cooperation in order to contribute to the protection of human rights. Nonetheless, it does not relieve the State of its obligation to provide the comprehensive treatment described above, with assurances of the permanence thereof and in keeping with the principles of availability, in health care service to the alleged victims with HIV/AIDS.[112] Even though this case does not deal with persons deprived of liberty, it does deal with persons in a situation

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as successfully as possible. People living with HIV should also have access to clinical trials and should be free to choose amongst all available drugs and therapies, including alternative therapies." OUNHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights.* 2006 Consolidated Version. par. 145. Available at: http://data.unaids.org/pub/Report/2006/jc1252-internationalguidelines_es.pdf Additionally, on the topic of the right to protection of the right to health of persons with HIV/AIDS, the Constitutional Court of Colombia has held that "in order for there to be effective equality and human dignity for those persons, the protection that must be provided by the State in the area of health, must be comprehensive given the high costs that that disease demands and in order to not generate discriminatory treatment." This Court has also established that "this constitutional duty [of protection] ensures that a person inflicted with AIDs receives comprehensive care, free of charge from the State, in order to keep the absence of economic means from impeding treatment of the disease and alleviating the suffering, and exposing him or her to discrimination." See: Judgment T-843 of the Constitutional Court of Colombia of September 2, 2004. Also see, Expert witness report of Paul Hunt March 6, 2015 (Case file of evidentiary exhibits, pages 3706 to 3734).

[112] IA Court of HR. *Case of Vera Vera et al v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 19, 2011. Series C no. 226, par. 42; *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, pars. 85 and 87; and *Case of Boyce et al v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169, par. 88.

of multiple vulnerability, because of the scarce financial resources available to them and because persons living with HIV/AIDS are involved, which places their lives and personal integrity at serious risk.

122. Additionally, the IACHR takes note that, as per the petitioners' claims, the care provided by Doctors Without Borders was off-and-on and, in some instances, precarious. The Commission underscores that the lack of stability in medical care seriously affected the alleged victims. In addition to that, the IACHR notes that the decision of said non-profit agency to treat any persons with HIV/AIDS was voluntary and was not associated with any obligation, such as the obligation that the State did have.

123. The Commission finds that the State has not only breached its obligation to protect the victims' right to personal integrity, but also their right to life, from two points of view stemming from the case law of both bodies of the Inter-American system described earlier in this merits report. On the one hand, with relation to the risk of loss of life to which the victims were exposed in not having the treatment that the State should have offered. On the other hand, with relation to the right to lead a dignified life. The Commission also notes that the European Court has examined cases of persons with HIV/AIDS in light of the right to life, including in circumstances when the person has not died.[113]

124. Consequently, the Commission finds that the total lack of State-provided medical care to the 49 victims (see *supra* paragraph 61) by virtue of their condition of persons living with HIV/AIDS and also their situation of poverty, had a serious impact on their health situation. Accordingly, the IACHR concludes that the State is responsible for the violation of the rights to life and personal integrity, as established in Articles 4.1 and 5.1 of the American Convention, in connection with Article 1.1 of this same instrument.

1.3.2 Situation of the eight persons who died from 2011 to 2011

125. Additionally, the petitioners alleged that the eight victims, Alberto Quiché Cuxeva, Reina López Mujica, Ismar Ramírez Chajón, Rita Bubón Orozco, Facundo Gómez Reyes, José Rubén Delgado, Luis Edwin Cruz Gramau, and María Vail, died from opportunistic illnesses as a consequence of the lack of comprehensive care for the HIV/AIDS afflicting them. These illnesses included tuberculosis, pneumonia, fungal and other infections. The Commission notes that the only argument put forward by the State was that no major link exists between the deaths of the eight persons and the alleged lack of comprehensive treatment.

126. As for this lack of a connection argued by the State, the Commission notes that the Joint United Nations Program on HIV/AIDS – UNAIDS has established that persons living with advanced HIV infection may contract opportunistic infections in the lungs, brain, eyes and other organs.[114] These common opportunistic diseases in persons diagnosed with AIDS include precisely several diseases described by the petitioners as having taken the lives of these eight persons. The diseases mentioned in the above cited Joint Program include pneumocystis pneumonia; cryptosporidiosis; histoplasmosis; bacterial infections; other parasitic, viral and mycotic infections; and some types of cancer.[115] It is also noted that tuberculosis is the main opportunistic infection associated with HIV in low and medium income countries, as well as the main cause of death worldwide among persons living with HIV.[116]

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[113] ECHR, Oyal vs. Turkey. Application No. 4864/05. Judgment of June 23, 2010, par. 55.

[114] UNAIDS, UNAIDS Terminology Guidelines, October 2011. Available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118_terminology-guidelines_es.pdf

[115] UNAIDS, UNAIDS Terminology Guidelines, October 2011. Available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118_terminology-guidelines_es.pdf

[116] UNAIDS noted that tuberculosis accounted for 320,000 HIV/AIDS-related deaths in 2012, and most of the countries (more than 80%) are still not providing TB prevention drug therapy to those that need it. Available at: http://www.unaids.org/es/resources/presscentre/featurestories/2014/july/20140720tb/. Additionally, see: UNAIDS, UNAIDS Terminology Guidelines, October 2011. Available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118_terminology-guidelines_es.pdf

127. According to information provided by the petitioners, which was not refuted by the State in any documentary evidence reflecting dates of death, the Commission notes that Alberto Quiché Cuxeva, Facundo Gómez Reyes, Reina López Mujica, Ismar Ramírez Chajón, Petrona López González and Rita Dubón Orozco, died prior to the time the State began the transfer of their cases to the public health system. Accordingly, in view of the State's general recognition that the victims in the instant case failed to receive medical care prior to 2006 and 2007, as well as the absence of documentary evidence to indicate that these persons received the comprehensive care described above prior to their deaths, the Commission finds that these persons died from diseases known to be opportunistic, within the timeframe that the care they required from the State was not received. Consequently, the Commission regards these deaths to be attributable to the Guatemalan State.

128. As for the two persons who died within the timeframe that some type of treatment was given by the State, namely, Luis Edwin Cruz in 2008 and María Vail in 2011, the Commission notes that the petitioners claimed that the care received prior to their deaths was inadequate. Specifically, in the case of Luis Edwin Cruz, they contended that no genotypic or phenotypic testing was performed on him. As for María Vail, they argued that CD4 cell count and viral load testing were not regularly conducted on her, which led to her contracting opportunistic diseases such as otitis and histoplasmosis. As it did with the great majority of the victims in the case, the State just reported that these persons would attend their medical appointments regularly and were in good health. The State did not provide any response to the failures of treatment alleged by the petitioners with regard to these two persons and, therefore, the Commission finds that the available information enables it to conclude that these deaths are also attributable to the State of Guatemala.

129. It should also be noted that, in its written submissions, the State claimed that it would conduct an investigation to determine the cause of death of the deceased victims. Nonetheless, the State has not submitted any information regarding conducting any investigation into this or regarding the outcome thereof. The Commission notes that because the cases mostly involve omissions or negative facts, in other words, the failure to act, there is no evidence available to the victims to prove the facts are true,[117] while the State could have proven it provided comprehensive treatment to the victims, though it did not in the instant case, as can be surmised from the descriptions given in the proven facts section.

130. Based on the preceding considerations, the Commission concludes that the State violated the right to life, as established in Article 4.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of the eight deceased victims.[118] Additionally, the Commission finds that it can be inferred that these persons endured physical and mental suffering prior to their death and, therefore, their right to humane treatment was also violated, as established in Article 5.1 of the Convention in connection with Article 1.1 of the same instrument.

1.3.3 Situation of the alleged victims subsequent to 2006 and 2007

131. The Commission notes that both parties acknowledged that beginning in 2006-2007, the alleged victims were transferred to public health services. The dispute lies in whether the publicly provided health care was comprehensive, as the petitioners argued it was, or whether it was adequate, as contended by the State and, therefore, served to overcome the lack of protection prior to 2006-2007.

132. The IACHR reiterates, firstly, that as was explained in the previous section, the State's international responsibility came into effect precisely when the victims did not have any type of access to health treatment, including antiretroviral medicine, diagnostic examinations and periodic monitoring, and other components of comprehensive treatment for persons with HIV/AIDS, infringing their right to life and

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[117] See, *mutatis mutandis.* IA Court of HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Par. 73.

[118] Alberto Quiché Cuxeva, Reina López Mujica, Ismar Ramírez Chajón, Rita Bubón Orozco, Facundo Gómez Reyes, José Rubén Delgado, Luis Edwin Cruz Gramau and María Vail.

humane treatment. The Commission will examine the situation subsequent to 2006-2007 hereunder, in order to adjudge whether the violations of the rights to life and humane treatment ceased after these two years.

133. The Commission has highlighted States' heightened obligation when victims are vulnerable on multiple fronts, such as their condition as very low-income persons living with HIV/AIDS.[119] In the section on general standards of the instant report, the Commission described the various requirements of medical care for persons with HIV/AIDS that must be met so it can be regarded as adequate and comprehensive.

134. In the instant case, the IACHR notes that in different communications submitted by the petitioners, they provided information on the deterioration of the health status of the victims as well as the different gaps in public health care service.

135. Firstly, petitioners introduced information on the periods of short supply of antiretroviral medicine at some of the public hospitals where the victims were receiving care. In this regard, the IACHR takes note that in 2008, several public hospitals, some of which treated the victims, reported that they did not have antiretroviral medicine for the treatment of persons with HIV/AIDS.

136. Secondly, the petitioners raised issues of accessibility faced by many victims in order to obtain health treatment, as a consequence of the low number of public health care facilities providing services to persons with HIV/AIDS. The Commission notes that, based on the proven facts, the victims are economically disadvantaged persons and many of them do not live in the capital city of Guatemala, but in other areas far removed from it, which prevented them from receiving health treatment. The State recognized on its own that after the transfer of the patients in 2006-2007, "the persons had to go to Guatemala City to receive their treatment" and eventually units were created in other areas of the country to provide treatment.

137. Thirdly, the petitioners alleged that the public health care facilities were not sufficiently staffed. They also claimed that the necessary diagnostic examinations and periodic monitoring required for proper management of the disease were not conducted, and this made conditions ripe for the appearance of opportunistic diseases, which were not properly treated either.

138. The IACHR notes that the State failed to refute the alleged information. The Commission notices that the information on treatment subsequent to 2006-2007 is confined to indicating that the victims would show up for their appointments and that they were in good health, while not refuting the specific gaps charged by the petitioners and described in the preceding paragraphs. In fact, the State failed to provide any information at all about some of the victims. The IACHR further notes that there is no evidence in the case file to indicate that the competent health officials conducted any monitoring of the supervision or oversight of treatment for persons with HIV/AIDS in the public sector in general, and for the victims in particular.

139. On the contrary, the State acknowledged that there were periods of short supply. Additionally, the Ombudsman for Human Rights denounced in 2010 the "lack of comprehensive care and access to medicine that the patients living with HIV/AIDS were subjected to nationwide." Said official also denounced the same situation in 2012.

140. Fourthly, the Commission takes note that the alleged victims include women of reproductive age. The IACHR stresses that these women must receive different treatment than the others, which is tailor to their particular condition.[120] The Commission notes that in the instant case, the State did not provided any information pertaining to the specific services provided for said persons.

141. Based on the information available to it, the Commission finds that while the State did begin to implement some treatment for persons living with HIV/AIDS in the public sector after 2006-2007, said

[119] IACHR, Report No. 102/13, Case 12.723, Merits, TGGL, Ecuador, November 5, 2013, par. 192.

[120] IACHR. Report: Access to maternal health services from a human rights perspective. June 7, 2010, par. 38.

treatment has not successfully met the minimum standards to be deemed comprehensive and adequate, in light of authoritative sources on the subject matter quoted in this report and used by the Inter-American bodies to interpret the obligations of the State as for the right to health of persons living with said disease.

142. This general situation is consistent with the accounts of the petitioners regarding the concrete gaps in treatment of the surviving victims in the instant case. The Commission notes that because the cases mostly involve omissions or negative facts, that is the failure to act, the victims have no available means of proving the facts to be true,[121] while the State could have indeed proven that it provided comprehensive treatment to the victims, though it did not do so in the instant case, as can be surmised from the descriptions given in the proven facts section.

143. Based on all of the foregoing, the Commission finds that the State of Guatemala continued to violate the right to life and the right to humane treatment as they pertain to the right to health, as established in Articles 4.1 and 5.1 of the American Convention, in connection with Article 1.1 of the same instrument to the detriment of the surviving victims of the instant case (see *supra* par. 68). The violation of the right to life of the surviving victims is based on the same reasoning set forth in section 1.3.1 of the instant merits report.

2. Right to judicial protection (Article 25 of the American Convention on Human Rights in connection with Article 1.1 of the same instrument)

144. Article 25.1 of the American Convention establishes that:

> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

145. The Commission and the Court have reiterated that this right is one of the basic pillars, not only of the American Convention but of the rule of law itself in a democratic society, because everyone has the right to a simple and prompt recourse or any other recourse to a competent judge or tribunal for protection against acts that violate his fundamental rights, as provided by Article 25 of the American Convention.[122]

146. The IACHR has held that for the State to fulfill the provisions of the Article cited above, it is not sufficient that a remedy be formally recognized, but it must be truly effective.[123] The Court also issued the following holding:

> (…) A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective. That could be the case, for example, when practice has shown its ineffectiveness; when the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgments; or in any other situation that constitutes a denial of justice, as when there is an unjustified delay in

[121] See, *mutatis mutandis.* IA Court of HR. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Par. 73.

[122] IACHR, Application to the Court, María Reverón Trujillo, Venezuela, November 9, 2007, par. 55. Also, see: IA Court of HR, *Case of Ivcher Bronstein v. Peru.* Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, par. 135; *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, par. 90; and *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, par. 191.

[123] IACHR, Application to the Court, María Reverón Trujillo, Venezuela, November 9, 2007, par. 56.

the decision; or when, for any reason, the alleged victim is denied access to a judicial remedy.[124]

147. Additionally, with regard to the *amparo* proceeding, the Court has held that Article 25.1 of the American Convention reflects said "procedural institution (…) known as 'amparo,' which is a simple and prompt remedy designed for the protection of all of the rights recognized by the constitutions and laws of the States Parties and by the Convention."[125] The Court also established that the guarantee applies "not only to the rights contained in the Convention, but also to those recognized by the Constitution or laws."[126] The IACHR has also held that an *amparo* appeal can constitute an adequate remedy for purposes of requesting medical care for persons with HIV/AIDS.[127]

148. In the matter before us, the Commission notes that on July 26, 2002, an *amparo* claim was brought with the Constitutional Court for the State to provide health care treatment to persons with HIV/AIDS in Guatemala. Preliminarily, the IACHR remarks that said claim was filed by thirteen of the victims in the instant case, as well as by different organizations, including some of the petitioners. The Commission also notes that said claim sought for the decision of the Constitutional Court to have an *erga omnes* effect to make it extensive to all persons living with HIV/AIDS in Guatemala. In this regard, the IACHR finds that because of the way in which the *amparo* claim was brought, a ruling in the claimants' favor could have effects on all persons with HIV/AIDS in Guatemala. Accordingly, the filing and outcome of this *amparo* suit not only affected the thirteen victims who signed it but also all of the victims of the instant case, except for de Alberto Quiché Cuvexa, who passed away in 2001, that is, prior to the filing of the claim.

149. As for the guarantees that the State must take into account when remedies are pursued involving persons with HIV, the Commission has established that judicial authorities must act with special diligence in processing and ruling on any claims that are filed.[128] Additionally, the European Court has emphasized the importance of processing on an expedited basis this type of case because of the nature of the disease.[129] A delay in the process can become illusory the purpose of the remedy[130]. The European Court has also stressed the special diligence that must be followed by judicial officials,[131] even in cases with a certain level of complexity.[132]

150. In the instant case, the Commission notes firstly that the *amparo* claim was filed in July 2002 and was resolved in January 2003. The Commission finds that in the circumstances of the instant case, where it is obvious that there has been a total lack of enforcement of the General Law to Combat HIV and AIDS, the State has not provided an explanation for the delay of six months to rule on a remedy, which because of its very nature must be expeditious and, because of the issue involved, must be processed and resolved with exceptional diligence.

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[124] IA Court of HR, *Judicial Guarantees in States of Emergency* (Articles 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 24

[125] IA Court of HR, *Habeas Corpus in Emergency Situations* (Articles 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, par. 32.

[126] IA Court of HR, *Judicial Guarantees in States of Emergency* (Articles 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 23.

[127] IACHR, Report No. 27/09, Case 12.249, Jorge Odir Miranda Cortez et al, El Salvador, March 20, 2009, par. 42.

[128] ECHR, Case of X. vs. France. Application 18020/91. Judgment of March 31, 1992, par. 47.

[129] ECHR. Case of X. vs. France. Application 18020/91. Judgment of March 31, 1992, par. 47.

[130] ECHR. Case of X. vs. France. Application 18020/91. Judgment of March 31, 1992, par. 47.

[131] ECHR. Case of X. vs. France. Application 18020/91. Judgment of March 31, 1992, par. 47.

[132] ECHR. Case of F.E. vs. France. Application 60/1998/963/1178. Judgment of October 30, 1998.

151. Secondly, with regard to the outcome of the *amparo* proceeding, the Commission notes that on January 23, 2003, the Constitutional Court denied the claim for relief on the grounds that the offense charged therein had ceased because of the agreements that were reached at a meeting on October 30, 2002 between the President of the Republic at the time and some of the claimant organizations. The IACHR notes that at said meeting, it was agreed to authorize a special budget outlay of five hundred thousand quetzals, which based on the claims of the petitioners and the State, was used to temporarily cover the antiretroviral medicine of eighty persons with HIV/AIDS, and did not include the victims in the instant case.

152. The Commission finds that the victims resorted to the Constitutional Court to seek effective judicial protection of their right to life, humane treatment and health, recognized in international instruments as well as in the domestic laws of Guatemala. The IACHR regards the substantive content of the Constitutional Court's ruling to be inconsistent with standards on the right to judicial protection, because the Constitutional Court failed to rule on the merits of the matter and justified its denial of the *amparo* claim, based on a measure adopted by the Government that was of a temporary and special nature and did not focus on the general situation, which was the subject of the claim. The Commission also notes that the Ombudsman for Human Rights requested the Constitutional Court to address the claim as soon as possible inasmuch as "the lives of each of the persons living with HIV/AIDS depends on it."

153. The Commission emphasizes that the foregoing considerations do not constitute a mere abstraction. On the contrary, a prompt and effective resolution of the *amparo* suit in favor of persons living with HIV/AIDS in Guatemala could have concrete effects on the victims in the case. At least three of the deceased victims died not long before the filing and ruling on said remedy, as pointed out earlier in this report, without having received any comprehensive treatment from the State.[133]

154. Based on the foregoing considerations, the Commission concludes that the State of Guatemala violated the right to judicial protection recognized in Article 25.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of the victims of the instant case, except for Alberto Quiché Cuvexa, who passed away prior to the filing and resolution of the *amparo* claim.

3. Right to humane treatment with regard to the next-of-kin of the deceased and surviving victims (Article 5 of the American Convention)

155. The right to humane treatment, enshrined in Article 5.1 of the American Convention, establishes that "Every person has the right to have his physical, mental, and moral integrity respected."

156. Under the legal precedents of the Inter-American Court, the next of kin of the victims may, in turn, be affected by the violation of their right to mental and moral integrity.[134] Accordingly, the Inter-American Court has considered the right to mental and moral integrity of the victims' next of kin violated based on the additional suffering they have undergone as a consequence of the specific circumstances of the violations committed against their loved ones[135] and based on the subsequent actions or omissions of state authorities regarding these facts.[136]

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[133] Facundo Gómez Reyes, Alberto Quiché Cuxeva and Rita Dubón Orozco.

[134] IA Court of HR. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, par. 101; *Case of the Massacre of las Dos Erres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, par. 206 and *Case Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, par. 163.

[135] IA Court of HR. *Case of Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, par. 335; *Case of Vargas Areco v. Paraguay.* Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155. par. 96; and *Case of Goiburú et al v. Paraguay*. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, par. 96.

[136] IA Court of HR. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213, par. 195.

157. In the instant case, the Commission established that the eight victims died as a consequence of the failure of the State to provide comprehensive medical treatment. Additionally, the Commission determined that the remaining victims, who were economically disadvantaged, were exposed for protracted periods of time to absolutely no State-provided medical care and, consequently, their survival became dependent on non-profit organizations. The Commission also concluded that since the time they were transferred to the care of the public sector after 2006-2007, the surviving victims have been affected by different gaps in care in State-provided health services. Given the nature of the disease that the deceased victims lived with and the surviving victims are living with, in the view of the Commission it is obvious that the absolute lack of care at one time and the subsequent inadequacy of care at another time, not only affected the victims directly as set forth in the instant report, but that said infringements extended as well to their next of kin and/or closest circle of support.

158. The Commission takes note of the fact that some of the persons mentioned by the petitioners either are not the closest direct family members or do not have any blood tie with the victims in the case. Notwithstanding, the Commission finds reasonable the line of argument put forward by the petitioners to the effect that because of the stigma that is usually associated with HIV/AIDS, the closest circle of support of some persons living with this disease, is not necessarily their nuclear family.

159. Based on the foregoing considerations, the Commission finds that the mental and moral integrity of the group of persons individually identified by the petitioners as next of kin and/or the closest support circle of the victims (see Single Annex to merits report), was adversely affected as a consequence of the facts of the instant case, in violation of Article 5.1 of the American Convention, in connection with Article 1.1 of the same instrument.

V. CONCLUSIONS

160. Based on the considerations of fact and law set forth throughout the instant report, the Inter-American Commission concludes that the State of Guatemala is responsible for the violation of the right to life, humane treatment and judicial protection, as recognized in Articles 4.1, 5.1 and 25.1 of the American Convention, in connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of the victims and next of kin, as established throughout the instant report.

VI. RECOMMENDATIONS

161. Based on the preceding conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE STATE OF GUATEMALA TO:

1. Make full reparation to the surviving victims and to the next of kin and loved ones of all the victims for the violations of the human rights declared in the instant report, of both a material and moral nature.

2. Immediately adopt the necessary measures to ensure that all the surviving victims of the instant case receive comprehensive medical treatment, in keeping with international standards, including, among other requirements: i) conducting of thorough diagnostic and periodic follow-up testing; ii) providing permanent and uninterrupted antiretroviral medicine required by the women victims in this case, with special consideration of their reproductive capacity. The State must ensure that the victims do not endure obstacles to accessibility or of any other nature, in order to obtain comprehensive treatment as provided for in this recommendation.

3. Provide for mechanisms of non-repetition to include, among other things, i) provision of free, comprehensive and uninterrupted treatment and health care to persons with HIV/AIDS that are unable to afford it; ii) implementing serious and effective mechanisms of supervision and periodic monitoring of public hospitals in order to ensure that comprehensive health care is being provided to persons with

HIV/AIDS, who cannot afford it; and iii) implementing public hospital staff training programs in order to ensure that their duties are performed in a way that is consistent with internationally recognized standards and those described in the instant report.