
MARÍA ELENA QUISPE AND MÓNICA QUISPE

v.

REPUBLIC OF NAIRA

MEMORIAL FOR THE VICTIMS

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STATEMENT OF FACTS

I. **Plight of Women in the Republic of Naira**

The Republic of Naira (“the State”) is comprised of twenty million inhabitants, of which María Elena and Mónica Quispe, two sisters, both derive as natives from the indigenous Warmi province.¹ The State is a founding member of the Organization of American States (OAS) and has ratified all of the international treaties.² Additionally, the State has bound itself to the following international treaties: the Convention on the Elimination of All Forms of Discrimination Against Women, (hereinafter “CEDAW”), ratified in 1981; the American Convention on Human Rights, (hereinafter “the Convention”), ratified in 1979, the Inter-American Convention to Prevent and Punish Torture (hereinafter “IACPPT”), ratified in 1992; and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, commonly referred to as the Convention of Belem do Pará, (hereinafter “Belem do Pará”), ratified in 1996.³ However, despite making these international pledges to protect the human rights of *all* citizens, including women, the State has continuously failed to comply.

II. **In 1992, the State Illegally Detained, Enslaved, Tortured and Sexually Abused 12-year-old María Elena and 15-year-old Mónica at the State Military Base**

In the same year the State undertook an obligation to protect and punish torture, and though there was no civil war in the region, the State declared a state of emergency and operated a Special Military Base (“SMB”) in the indigenous region of Warmi from 1990 to 1999 to “maintain control over the area and fight crime.”⁴ Because of a perceived threat from a regional

¹ Hypothetical ¶ 1, Hypothetical Clarification Questions (hereinafter “HCQ”) ¶ 27.

² Hypothetical ¶ 7.

³ Hypothetical ¶ 7.

⁴ Hypothetical ¶¶ 7, 27.

armed group, the State suspended the rights of its citizens and empowered SMB officials with complete political, judicial and military authority over the entire Warmi population.⁵ For nine years, State officials from the SMB abused that authority and perpetrated abuses against the Warmi population.⁶ SMB officials raped local women and young girls.⁷ SMB officials forced Warmi women to strip naked before beating and groping them in the cells.⁸ Because the perpetrators were State officials, the perpetrators themselves enjoyed complete military, political and judicial control over the entire Province of Warmi. As a result, SMB soldiers subjected the indigenous Warmi population to complete subordination.⁹

As part of the abuse against the Warmi population, State officials victimized two young, indigenous sisters, María Elena and Mónica Quispe.¹⁰ SMB soldiers falsely accused, arrested and incarcerated 12-year-old María Elena and 15-year-old Mónica for being “accomplices to the armed group.”¹¹¹² SMB soldiers imprisoned the girls for over a month and forced the girls to wash, cook, and clean after the soldiers each day.¹³ SMB soldiers abused their authority and repeatedly raped – “many times gang-raped” – the two young girls.¹⁴ During her incarceration, Mónica witnessed other women “forced to strip naked in front of the soldiers, who beat and

⁵ HCQ ¶¶ 10, 12 (The State derogated from Articles 7, 8 and 25 of the ACHR during the state of emergency).

⁶ Hypothetical ¶ 27.

⁷ Hypothetical ¶ 28.

⁸ Hypothetical ¶ 29.

⁹ HCQ ¶ 12.

¹⁰ Hypothetical ¶ 28.

¹¹ HCQ ¶ 69.

¹² HCQ ¶ 42.

¹³ Hypothetical ¶ 28, HCQ 50.

¹⁴ Hypothetical ¶ 28.

groped them.”¹⁵ One month later, SMB officials released the Quispe sisters without any explanation and “without the intervention of any State authority.”¹⁶

In addition to abusing young girls, SMB officials abused men, women and other children. Victims suffered forced disappearances and extrajudicial executions.¹⁷ SMB officials demanded that all female victims of forced labor wash laundry and serve the soldiers.¹⁸ SMB officials forced women and girls to endure “forced undressing, inappropriate touching, attempted rape, and rape.”¹⁹

Because the perpetrators exercised complete military, political, and judicial control in Warmi, “crimes of sexual violence were kept hidden during the time of the internal conflict.”²⁰ Threats of death and retaliation from the military silenced the victims and left them with no recourse for the abuses they endured.²¹ The women who did have the bravery to complain about what happened “did not receive support”²² because in order to file a complaint against the military actors, women were forced to confront and file it with the duty officer in charge of the SMB’s criminal division.²³

In 1999, the State brought the area “under control” and finally deactivated the SMB.²⁴ The State neglected to investigate any crimes of sexual violence “on its own initiative.”²⁵ Though the President, as the highest-ranking leader of the armed forces and police was “able to

¹⁵ Hypothetical ¶ 29.

¹⁶ HCQ ¶ 14.

¹⁷ HCQ ¶ 50.

¹⁸ HCQ ¶ 50.

¹⁹ HCQ ¶ 50.

²⁰ HCQ ¶ 43.

²¹ HCQ ¶ 43.

²² HCQ ¶ 43.

²³ HCQ ¶ 5.

²⁴ Hypothetical ¶ 30.

²⁵ Hypothetical ¶ 30.

learn of the events” at SMB and the Ministry of Justice and Defense had the “opportunity to learn of and investigate the acts of violence” that occurred at SMB,²⁶ the State instead claimed it was ignorant of the SMB abuses until Mónica’s interview aired on DTV in December 2014.²⁷ The townspeople also did not offer support because soon after the DTV interview, Warmi authorities publicly denied the reports of the abuse and the vast majority of the town’s residents supported the statement of the authorities.²⁸ Though the State signed the Convention of Belem do Pará in 1996 and closed the SMB in 1999, the Quispe sisters and all women in the State faced continuous acts of sexual violence and gender-based abused and discrimination.

Represented by NGO Killapura, the sisters filed criminal complaints alleging acts of sexual violence at SMB, but they were time-barred by the expiration of the 15-year statute of limitations. Then, Killapura called on the State to open a general and contextual investigation to guarantee the rights of other victims, in addition to the sisters. Instead of opening an investigation for all the victims, the President stated it was “not within its purview to interfere in the court case” but that it would include the sisters in its recent measures called the Zero Tolerance Policy on Gender-Based Violence (ZTPGBV), by making “necessary adaptations” to guarantee their rights. The President created a Truth Commission (“TC”) to “urgently” undertake to investigate facts²⁹ but the TC’s report is not slated to be released until 2019.³⁰

On May 10, 2016, Killapura filed a petition before the Commission, alleging violations of Articles 4, 5, 6, 7, 8, and 25 of the Convention, all in relation to Article 1(1), to the detriment of

²⁶ HCQ ¶ 36.

²⁷ Hypothetical ¶ 27; HCQ ¶ 8.

²⁸ Hypothetical ¶ 32.

²⁹ Hypothetical ¶ 34.

³⁰ HCQ ¶ 15.

María Elena and Mónica Quispe.³¹ The petition further alleged violation of the State’s obligation regarding violence against women in Article 7 of the Convention of Belem do Pará.³² On June 15, 2016, the Commission admitted the case based on the demonstration of the violation of the rights alleged.³³

III. Despite the Terrors that Occurred Under the SMB’s Control in Warmi, the Cultural Climate in Naira Continuously Fails to Support and Protect *All* Women

Although President Gonzalo Benavente promised to tackle issues faced by “vulnerable groups,” the State’s legislature and political groups have met such promises with increased opposition.³⁴ The State fails to educate its population as to the rights of women, and thus fosters an increasingly discriminatory environment, leading President Benavente to consider “making some concessions to ensure governability.”³⁵

Women and girls in Naira face *daily* gender-based violence and discrimination that is constantly reported in the media by civil society organizations.³⁶ Women in the State are unpaid for upwards of fifty percent of their labor efforts.³⁷ However, when they are compensated, the wage gap between men and women is sixteen percent in the public sector and twenty-nine percent in the private sector.³⁸ The State’s Public Ministry states that ten femicides or attempted femicides occur each month.³⁹ In fact, every two hours a woman is likely to fall victim to sexual

³¹ Hypothetical ¶ 38.

³² *Id.*

³³ HCQ ¶ 38.

³⁴ Hypothetical ¶ 3.

³⁵ Hypothetical ¶ 5.

³⁶ Hypothetical ¶ 11.

³⁷ Hypothetical ¶ 13.

³⁸ *Id.*

³⁹ Hypothetical ¶ 12.

violence, and a partner or ex-partner will assault three out of five girls at any given time.⁴⁰ With Benavente’s concession on the horizon, young women and girls are an increasingly in fear of their lives, integrity, and well-being. The State’s laws do not “adequately respond to the needs of victims of gender-based violence,” allowing widespread discrimination to spread.⁴¹ Transgender women are discriminated against because the State does not allow its citizens to change their name on their national identity card to reflect their change in gender.⁴² Zuleimy Pareja, a transgender woman, was killed by her partner after years of violence, but the State gave the abuser a lesser sentence because the name on Pareja’s ID card did not reflect her gender.⁴³ There has been an “uptick in hate crimes against the LFBTI population” in recent years.⁴⁴ In addition, the State does not recognize same-sex marriage or adoption by same-sex couples, and does not have a gender-identity law.⁴⁵

Instead, the State’s Administrative Program on Reparations and Gender requires victims of gender-based violence, such as María Elena and Mónica, to register with the Unified Registry of Victims of Violence, in order to even be given access to the program’s “symbolic measures.”⁴⁶ The State will not even investigate an assault against a woman if the victim does not have the required medical certificate, even if the only medical examiner in town is on vacation.⁴⁷

⁴⁰ *Id.*

⁴¹ Hypothetical ¶ 15.

⁴² HCQ ¶ 68.

⁴³ Hypothetical ¶ 16-17.

⁴⁴ Hypothetical ¶ 14.

⁴⁵ *Id.*

⁴⁶ Hypothetical ¶ 22.

⁴⁷ Hypothetical ¶ 23-24. HCQ ¶ 22.

LEGAL ANALYSIS

I. ADMISSIBILITY

A. Statement of Jurisdiction

The Inter-American Court of Human Rights (“Court”) has jurisdiction to hear this matter. The State is a founding member of the Organization of American States (“OAS”) and has ratified *all* of the organization’s human rights treaties. Thus, the State has accepted the Court’s binding jurisdiction. As such, pursuant to Articles 61 and 62 of the Convention, the Court has authority to adjudicate matters concerning the application and interpretation of that same instrument.⁴⁸

B. Exhaustion of Domestic Remedies

Under Articles 46.1 and 46.2 of the Convention, a petition is admissible if it is filed with the Inter-American Commission on Human Rights (“Commission”) within six months from the *final* domestic judgment in the State where the violation occurred.⁴⁹ However, under Article 32.2, if a petitioner alleges *no* final domestic judgment was reached or a denial of domestic justice occurred outright, the Commission may consider the petition if presented within a reasonable time.⁵⁰ Although a petitioner must exhaust domestic remedies before filing a petition with the Commission, the proposed remedies **must** be adequate and effective to qualify⁵¹ and cannot result in anything, “*manifestly absurd or unreasonable.*”⁵² Additionally, it is the State’s burden to prove adequate and effective remedies remain for the victim to exhaust.

⁴⁸ ACHR, Art. 61-62.

⁴⁹ ACHR, Art. 46.2 §§(a)(b); ACHR, Art. 41.1.

⁵⁰ ACHR, Art. 32.2. (emphasis added).

⁵¹ ACHR, Art. 46.1 §(a); *Godínez Cruz v. Honduras*, Merits, Inter-Am. Ct. H.R. (ser. C) No 5, ¶ 67 (Jan. 20, 1989).

⁵² *Id.*

Here, the State denied the victims access to adequate domestic legislation. The State had *zero* domestic remedies available to the Quispe sisters or *any* of the Warmi women. Rather, from 1970 through 1992, the State actively kept crimes of sexual violence hidden and deterred Warmi citizens from filing complaints or reporting abuses that occurred in the torture camp.⁵³ In fact, state military actors sent threats of death and retaliation to deter victims from reporting abuse.⁵⁴ The Quispe sisters' only form of remedial action was to report their grievances *directly to their perpetrators*, as the military exercised full military, political, and judicial control in Warmi.⁵⁵ Any victims who did speak out, did not receive support.⁵⁶ Thus, even if the sisters decided to report in the face of death threats, the domestic remedies allegedly available to them did not meet the standards of Article 46 because they were “manifestly absurd and unreasonable.”⁵⁷

Furthermore, even though the State *attempted* to open investigations following María Elena and Mónica's 2014 television interview, the State failed to do so in an adequate manner. Rather, it continued to oppress María Elena and Mónica by launching a subpar excuse of an investigation and *allegedly* found no evidence in support of their claims.⁵⁸ Therefore, the two sisters had nowhere else to turn, as the State's criminal justice system had no other remedies available for the sisters to appeal, after time-barring their complaints.⁵⁹

Although, the State alleges that this Court lacks jurisdiction *ratione temporis*, this Court must ignore such a contention, as the violations against the Quispe sisters are ongoing.⁶⁰ This

⁵³ HCQ ¶ 43.

⁵⁴ *Id.*

⁵⁵ HCQ ¶¶ 43, 12.

⁵⁶ *Id.*

⁵⁷ HCQ ¶¶ 12, 43 Hypothetical ¶ 15.

⁵⁸ HCQ ¶ 43.

⁵⁹ HCQ ¶¶ 57, 20.

⁶⁰ HCQ ¶ 7 (On August 10, 2016, the State of Naira filed a preliminary objection alleging the Court's lack of jurisdiction *ratione temporis*); *Vladimir Herzog et al. v. Brazil*, Report No. 80/12, Petition P-859-09, at ¶ 24 (Nov. 8,

Court has jurisdiction even where the events in question began before the State ratified the Belem do Pará.⁶¹ This court has held, “once a treaty has gone into force, those continuous or permanent acts that persist after that date, may generate international obligations for the State Party, without implying a violation to the principle of non-retroactively applying treaties.”⁶² For example, in the *Blake* matter, this Court found, although jurisdiction could not be established *per se*, the effects of the crimes “prolonged continuously or permanently,” resulting in a violation.⁶³ Similarly, both the U.N. Human Rights Committee and the European Human Rights Court have held that courts may hold jurisdiction over matters that constitute *continuing violations*.⁶⁴ Further, the Commission has found that a State’s failure to prosecute and convict perpetrators and take action is “*an indication that the State condones violence*.”⁶⁵

Here, although the State did not ratify Belem do Pará until after the violations began, the State is responsible not only for the sexual violence, but for its “failure to investigate this as an

2012); *See Radilla Pacheco v. Mexico*, Judgment, Preliminary Objections, Merits, Reparations and Costs, Series C No. 209, ¶ 22 (Nov. 23, 2009); *Also see Osorio Rivera and family members v. Peru*, Judgment, Preliminary Objections, Merits, Reparations and Costs, (ser. C) No. 274, ¶ 30 (Nov. 26, 2013); *Blake v. Guatemala*, Preliminary Objections, Inter-Am. Ct. H.R., (ser. C) No. 27, ¶¶ 33-39 (July 2, 1996).

⁶¹ *Id.*

⁶² *Radilla Pacheco v. Mexico*, Preliminary Objections ¶ 22; *See Espinoza Gonzáles v. Peru*, Preliminary Objections ¶¶ 24, 27-29; *Also See Maria da Penha Maia Fernandes v. Brazil*, Report No. 54/01, Case 12.051, ANNUAL REPORT OF THE IACHR 2008, OEA/Ser.L/V/II.111 Doc. 20 rev. at ¶ 26 (Apr. 16, 2001) (where the violations occurred prior to Brazil’s ratification of the Belem do Pará, the Commission applied the obligations of the Belem do Pará *retrospectively* because, “the lack of effective action and the tolerant attitude of the State continued.”); Paula Spieler, *The Maria da Penha Case and the Inter-American Commission on Human Rights: Contributions to the Debate on Domestic Violence Against Women in Brazil*, INDIANA JOURNAL OF GLOBAL LEGAL STUDIES, Vol. 18, Art. 6, (2011).

⁶³ *Blake v. Guatemala*, Preliminary Objections, ¶¶ 33-39; *Also See Osorio Rivera and family members v. Peru*, Preliminary objections, ¶ 30.

⁶⁴ “The United Nations Human Rights Committee will consider alleged violations which, although relating to events that took place before the entry into force, “continue, or have effects which themselves constitute violations, after that date” *Sandra Lovelace v. Canada*, 11 HRC, Comm. No. 24/1977 (30 July 1981), U.N. Doc. CCPR/C/OP/1 at 83 (1984); *Yagci and Sargin v. Turkey*, (1995) 20 Eur. H.R. Rep. 505, 319-A Eur. Ct. H.R. (ser. A) ¶¶ 37, 40. *See also Mansur v. Turkey*, 321 Eur. Ct. H.R. (ser. A) (1995); *DeBecker v. Belgium*, 4 Eur. Ct. H.R. (ser. A) (1962).

⁶⁴ *Maria da Penha Maria Fernandes v. Brazil*, Report No. 54/01, Case 12.051, ANNUAL REPORT OF THE IACHR 2008, OEA/Ser.L/V/II.111 Doc. 20 rev. at ¶ 26 (Apr. 16, 2001).

⁶⁵ *Maria da Penha Maria Fernandes v. Brazil*, Report No. 54/01, Case 12.051, ANNUAL REPORT OF THE IACHR 2008, OEA/Ser.L/V/II.111 Doc. 20 rev. at ¶ 26 (Apr. 16, 2001)

obligation of a continuing nature.”⁶⁶ Thus, similarly to this Court’s finding in *Espinoza Gonzales v. Peru*, the State’s continued failure to launch an adequate investigation has been a continued pattern both concurrently as well as *after its* 1992 ratification of the Belem do Pará. Therefore, the Court has authority to “analyze the arguments concerning the supposed denial of justice that occurred after that date.”⁶⁷ After the State shutdown the SMB, its failure to adopt the necessary legislation necessary to prevent, punish and eradicate violence against women, is in direct violation of Article 7 of Belem do Pará. The State’s failures have allowed it to remain stagnant and become a place that condones violence against women.⁶⁸

The State failed, time and time again, to learn from its past and take adequate legal measures to protect María Elena and Mónica from the violence they faced as women. Rather, in all aspects of the State’s economic, social, and cultural well-being, women and girls are treated as low-grade citizens.⁶⁹ The State has continuously failed to protect María Elena and Mónica, as well as all women and girls, despite its duty and obligation under the Belem do Pará to prosecute violence against women.

⁶⁶ *Espinoza González v. Peru*, Preliminary Objections, ¶ 25; See *Radilla Pacheco v. Mexico*. Preliminary Objections, ¶ 22.

⁶⁷ *Id.*

⁶⁸ Hypothetical ¶¶12-14; HCQ ¶¶ 23, 43.

⁶⁹ Hypothetical ¶ 13.

II. ARGUMENT ON THE MERITS

A. The State Failed to Protect María Elena and Mónica’s Fundamental Human Rights By Not Exercising Due Diligence in Violation of Article 1(1) of the Convention

The Universal Declaration of Human Rights emphasizes, “All human beings are born free and equal in dignity and rights.”⁷⁰ As such, the Convention requires states to respect and protect the fundamental human rights of its citizens.⁷¹ Specifically, under Article 1(1), States have a duty to ensure *all* individuals have the freedom to exercise basic human rights regardless of “race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or *any other social condition*.”⁷²

This Court has established, in following the lead of the European Court, that “human rights treaties are living instruments, whose interpretation must go hand in hand with evolving times and current living conditions.”⁷³ Thus, the Court has a responsibility to interpret “any other social condition,” in “the context of the most favorable option for the human being and in light of the evolution of fundamental rights in contemporary international law.”⁷⁴ In uniform fashion, the United Nations Declaration on Human Rights, Sexual Orientation, and Gender Identity has reaffirmed, “the principle of non-discrimination, which requires that human rights apply equally to every human being, regardless of sexual orientation or gender identity.”⁷⁵ Gender identity is

⁷⁰ Universal Declaration of Human Rights, Art.1 U.N. Doc. A/810 (Dec. 10, 1948).

⁷¹ ACHR, Art.1. § 1.

⁷² IACHR, Art.1. § 1 (emphasis added).

⁷³ *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 254, ¶ 83 (Feb. 24, 2012).

⁷⁴ *Id.* at ¶ 85.

⁷⁵ Declaration on Human Rights, Sexual Orientation and Gender Identity, United Nations General Assembly, A/63/635, December 22, 2008, ¶ 3; *Atala Riffo and Daughters v. Chile*, Merits, ¶ 90 (Feb. 24, 2012); See Joint Declaration on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and

recognized both in the Inter-American system as a prohibited ground of discrimination.⁷⁶ A failure to protect these rights is an *automatic* violation of a State's obligation pursuant to Article 1(1).⁷⁷

In *Atala Riffo and Daughters v. Chile*, this Court recognized that the specific criteria under which Article 1(1) prohibits discrimination is not exhaustive, rather an “illustrative list.”⁷⁸ In accordance with the Court's broad interpretation of Article 1(1), the Commission has repeatedly acknowledged that “any other social condition,” is a broad, “open provision,” encompassing sexual orientation and gender identity.⁷⁹ Further, CEDAW defines discrimination as “any distinction, exclusion, restriction, or preference based on certain motives, such as.... gender...”⁸⁰ Women are subjected to gender-based violence regularly, solely because of their gender identity.⁸¹ Therefore, the State is responsible for taking *all* appropriate measures, including “adopting anti-discrimination legislation, establishing legal protection for the women's rights, and modifying or abolishing discriminatory laws and practices.”⁸² Here, the State must be

Gender Identity, presented by Colombia in the 16th session of the United Nations Human Rights Council, (March 22, 2011).

⁷⁶ Discriminatory Laws and Practices and acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity on Human Rights, United Nations General Assembly, A/HRC/19/41, Nov. 17, 2011, ¶ 8.

⁷⁷ IACHR, Art.1. § 1; *Velasquez Rodriguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 160-67, 182. (July 29, 1988).

⁷⁸ *Atala Riffo and Daughters v. Chile*, Merits ¶ 90; Dra. Patricia A. Taus, *The Ecumenical Violence from a Gender Perspective*, Windmills International Editions, Inc. at 189-192 (2014).

⁷⁹ *See Atala Riffo and Daughters v. Chile*, Merits; *See Toonen v. Australia*, communication No. 488/1992 (CCPR/C/50/D/488/1992); *Also See* Inter-American Convention Against All Forms of Discrimination and Intolerance (A-69) (adopted 5 June 2013) (further emphasizes that discrimination as defined by Article 1(1) is inclusive of, “gender identity and expression”).

⁸⁰ Hypothetical ¶ 7; UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, Art. 1.

⁸¹ Discriminatory Laws and Practices and acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity on Human Rights, United Nations General Assembly, A/HRC/19/41, Nov. 17, 2011, ¶ 8.

⁸² International Justice Research Center, *supra* at 64; *See*, UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, Art. 2; African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, (July 11, 2003).

held responsible for violating Article 1(1) of the Convention due to its ongoing failure to protect María Elena and Mónica from the state actors who deprived them of their basic human rights, as violence against women is “rooted in inequalities and discrimination against women and its prevention and eradication must be grounded in achieving gender equality and female empowerment.”⁸³

B. The State Violated María Elena and Mónica’s Rights Protected in Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery) and Article 4 (Right to Life) in Conjunction with Article 1(1) of the Convention and Article 7 of Belem do Para

Article 1(2) of the Convention defines a “person” as “every human being.”⁸⁴ Accordingly, Articles 5, 6, and 4 expand upon the inherent rights afforded to individuals solely for being human. Here the State failed to fulfill its duty to observe the inherent human rights, by subjecting María Elena and Mónica, as well as *all* Warmi women to inhumane and degrading treatment. The State failed, and continues to fail, to treat women and girls like human beings, thus robbing them of the fundamental freedoms afforded to them under the Convention. As discussed below, the State violated María Elena and Mónica’s Right to Humane Treatment, Right to Freedom from Slavery, and fundamental Right to Life.

1. The State Failed to Protect María Elena and Mónica From Rape and Torture in Violation of Article 5

⁸³ Press Release, Inter-Am. Ct. H.R., Joint Call of the UN Rapporteur on Violence Against Women and All other Global and Regional Mechanisms to End Femicides and Gender Based Violence (Nov. 22, 2016) http://www.oas.org/en/iachr/media_center/preleases/2016/172.asp; Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women), UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 29 2000).

⁸⁴ IACHR Art. 1.

Article 5 of the Convention states that, “*all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*”⁸⁵ Specifically, Article 5(1) tells States every individual has a right to humane treatment; meaning every person has the right to have their “physical, mental, and moral integrity respected.”⁸⁶ Additionally, Article 5(2) establishes no human being “shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”⁸⁷ States have an obligation to refrain from committing violence acts against women, for example, “the State is responsible for ensuring that soldiers do not commit rape.”⁸⁸ Additionally, the IACPPT, to which the State is a party, provides “all acts of torture or any other cruel, inhumane, or degrading treatment or punishment constitute an offense against human dignity.”⁸⁹ Pursuant to this instrument, an act qualifies as torture if: 1) it is intentional, 2) it causes severe physical; and/or mental suffering, 3) and it is committed with that objective or purpose.⁹⁰

This Court has considered that torture is not defined by the accumulation of acts, rather the intention, severity, and purpose.⁹¹ This Court has defined torture broadly to include physical acts of violence as well as acts that lead to the acute mental and the victim’s moral suffering.⁹² In

⁸⁵ IACHR Art. 5(2), (emphasis added).

⁸⁶ IACHR Art. 5(1)

⁸⁷ IACHR Art. 5(2)

⁸⁸International Justice Research Center, *supra* at 64;

⁸⁹ See Inter-American Convention to Prevent and Punish Torture (IACPPT), Dep’t of Int’l L. (emphasis added).

⁹⁰ IACPPT Art. 2; *Bueno Alves v. Argentina*, Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 164, ¶ 79 (May 11, 2007); See *Rosendo Cantú v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 110 (Aug. 31, 2010).

⁹¹ *Rosendo Cantú v. Mexico*, Preliminary Objections, ¶ 118; Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgment, ¶ 597 (June 1, 2001), and CAT, Case V.L. v. Switzerland, Decision of January 22, 2007, U.N. Doc. CAT/C/37/D/262/2005, ¶ 8.10.

⁹² *Rosendo Cantú v. Mexico*, Preliminary Objections, ¶ 114; *Cantoral Benavides v. Peru*. Merits, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 69, ¶ 100 (Aug. 18, 2000); *Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 91 (Nov. 27, 2003).

fact, this Court has found that rape “pursues the objective of intimidating, degrading, humiliating, punishing or controlling the victim,” and has previously held that rape categorizes as a type of torture pursuant to the IACPPT.⁹³ This position is further memorialized in the Universal Declaration of Human Rights, American Declaration of the Rights and Duties of Man, and the OAS Charter of the United Nations.⁹⁴

Similarly, the Commission has concluded that rape committed by State military personnel, paired with lack of inquiry by State authorities, “constituted violations of the right to humane treatment.”⁹⁵ Unfortunately, sexual violence against woman is extremely prevalent in conflict zones.⁹⁶ Notably, such gender-based violence is often carried out as military tactics against vulnerable civilian populations.⁹⁷ This Court must consider, “various aspects of the treatment such as the duration, the method used or the way in which the suffering was inflicted, the potential physical and mental effects and also the status of the person who endured the suffering, including age, gender and health condition, among other personal circumstances.”⁹⁸

⁹³ *Rosendo Cantú v. Mexico*, Preliminary Objections, ¶ 118; *The Massacres of El Mozote & Nearby Places v. El Salvador*, Merits, Reparations and Costs, Inter. Am. Ct. H.R.(ser. C) No. 252, ¶ 148 (Oct. 25, 2012); *Aydin v. Turkey*, 57/1996/676/866, Council of Europe: European Court of Human Rights, 25 September 1997; *Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Inter. Am. Ct. H.R. (ser. C) No. 250 ¶ 132 (2012); ICTR, Prosecutor v. Jean-Paul Akayesu, ¶. 597, V.L. v. Switzerland, Decision of January 22, 2007, U.N. Doc. CAT/C/37/D/262/2005, ¶ 8.10. (ser. C) No. 250 ¶ 132 (2012).

⁹⁴ *Inter-American Convention to Prevent and Punish Torture* (IACPPT), Dep’t of Int’l L., <http://www.oas.org/juridico/english/treaties/a-51.html>.

⁹⁵ International Justice Research Center, *supra* at 64; ACHR, Report No. 53/01, Case 11.565, Ana, Beatriz & Celia González Pérez (Mexico), 4 April 2001; *see also* ACHR, Report No. 5/96, Case 10.970, Raquel Martin de Mejía (Peru), 1 March 1996; ACHR, Report No. 6/94, Case 10.772, María Dolores Rivas Quintanilla (El Salvador), 1 February 1994. *See Maslova and Nalbandov v. Russia*, (2008) (Application No. 839-02) I Eur. Ct. H.R. (Jan. 24, 2008) (finding the rape of a detainee by a State official to be considered “especially grave and abhorrent form of ill treatment given the ease with which the offender could exploit the vulnerability and weakened resistance of the victim); Also *See Aydin v. Turkey* (finding that the rape of a minor prisoner by a State agent constituted torture.

⁹⁶ International Justice Research Center, *supra* at 64.

⁹⁷ UN S.C. Res. 2106, S/RES/2106, 24 June 2013; <http://www.ijrcenter.org/thematic-research-guides/womens-human-rights/#GenderDiscrimination>; *See*, ACommHPR, *D.R. Congo v. Burundi, Rwanda, and Uganda*, Communication No. 313/05, 33rd Ordinary Session, May 2003.

⁹⁸ *Rosendo Cantú v. Mexico*, Preliminary Objections, Merits, Reparations and Costs,

Here the State has continuously violated both María Elena and Mónica's Article 5 Rights by failing to protect their dignity and subjecting them to continued rape and torture. The State failed to respect the sister's inherent dignity during their detention when State actors raped the girls and even gang-raped them.⁹⁹ Additionally, the State's actions amount to torture because the rapes by State actors were degrading, inhumane acts committed intentionally. In fact, the State committed "constant sexual violence" against the girls while it imprisoned them.¹⁰⁰ The State failed its obligation to prevent, investigate and remedy the gender-based crimes at the SMB. As a result, by raping the girls and failing to investigate, the State failed its duty to protect the girls' moral, mental and physical integrity, in violation of Article 5."¹⁰¹

The State violated not only the Quispe sisters' Article 5 rights, but the rights of *all* Warmi women. The State has continued to foster a society that fails to adequately monitor, respect, and protect the integrities of women.¹⁰² In a State where every two hours a woman is the victim of sexual violence, women are increasingly viewed as statistics, rather than as human beings.¹⁰³ In fact, the State has failed to respect the physical, mental, and moral integrity of its women by allowing a culture to thrive, a culture where seven out of ten women between the ages of fifteen

Inter-Am. Ct. H.R. (ser. C) No. 216 ¶ 112 (Aug. 31, 2010); *See* "Street Children" (Villagrán-Morales et al.) v. Guatemala. Merits. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 74 (Nov. 19, 1999); *Also See* Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment, Inter-Am. Ct. H.R. (ser. C) Series C No. 164, ¶ 79 (May 11, 2007).

⁹⁹ Hypothetical ¶ 28.

¹⁰⁰ Hypothetical ¶ 28.

¹⁰¹ Declaration on Human Rights, Sexual Orientation and Gender Identity, United Nations General Assembly, A/63/635, December 22, 2008, ¶ 3; *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 254, ¶ 90 (Feb. 24, 2012); *See* Joint Declaration on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity, presented by Colombia in the 16th session of the United Nations Human Rights Council, March 22, 2011.

¹⁰² ACHR Art 5; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para", art. (1994); *See* HC ¶¶ 11-14.

¹⁰³ Hypothetical ¶ 12

and thirty-five can look expect to become the subject of *daily* street harassment for their entire lives.¹⁰⁴

2. *The State Exploited María Elena and Mónica by Unreasonably Detaining Them and Forcing Them into Labor in Violation of Article 6*

States have a duty to exercise due diligence with regards to preventing, investigating, and responding to *any and all* types of *violence* against women.¹⁰⁵ In accordance with this duty, Article 6 prohibits the slave trade and trafficking of women, stating, “no one shall be subject to slavery or to involuntary servitude.”¹⁰⁶ The Commission has defined trafficking as taking on many forms and purposes including: “trafficking for the purposes of sexual exploitation and forced labor are the most common forms identified.”¹⁰⁷ OAS Member States “have the duty to prevent human trafficking, to implement measures to promote the identification of victims, particularly groups in a situation of vulnerability such as women, children... and to adopt the necessary measures to protect them.”¹⁰⁸ In affirming this duty, the Commission makes clear that States *must* act with due diligence in investigating the trafficking of individuals.¹⁰⁹ Thus, “states have an obligation to protect trafficked persons to ensure their physical safety.”¹¹⁰ Importantly, freedom from slavery means that no person “shall be required to perform forced or compulsory labor.”¹¹¹

¹⁰⁴ Hypothetical ¶ 12

¹⁰⁵ International Covenant on Civil and Political Rights, Art 7 (Mar. 23, 1976).

¹⁰⁶ ACHR, Art. 6

¹⁰⁷ Press Release, Inter-Am. Ct. H.R., In the World Day Against Trafficking in Persons, the IACHR Call on States to Adopt a Human Rights Approach in Response to the Diverse Forms of Human Trafficking (July 31, 2017) http://www.oas.org/en/iachr/media_center/PReleases/2017/110.asp.

¹⁰⁸ Press Release, Inter-Am. Ct. H.R., In the World Day Against Trafficking in Persons, *supra* at 94.

¹⁰⁹ Press Release, Inter-Am. Ct. H.R., In the World Day Against Trafficking in Persons, *supra* at 94.

¹¹⁰ Columbia Law School Human Rights Clinic & Sexuality & Gender Law Clinic, *Human Rights & Domestic Violence: An Advocacy Manual*, COLUMBIA LAW SCHOOL (Feb. 2010).

¹¹¹ ACHR, Art. 6.

In accordance with a 2016 United Nations Report on trafficking, women and young girls represented upwards of 71% of human trafficking victims worldwide.¹¹² With such statistics on the rise, this Court has required states to adopt comprehensive measures to combat violence against women, as part of its overall obligation in accordance with Article 1(1).¹¹³ This Court must follow suit with the European Court of Human Rights in requiring states, ‘to establish and apply effectively a criminal-law system punishing *all* forms of rape and sexual abuse.’¹¹⁴

All individuals are entitled to the *full* enjoyment of their human rights, which includes freedom from violence and fear of violence.¹¹⁵ Here, María Elena and Mónica, as well as all of the women prisoners of the SMB’s torture camp, were victims of trafficking. The State failed to exercise the required due diligence, as it knew or should have known about the trafficking and forced labor and *failed* to prosecute the private actors responsible for the human rights violation *for the last eighteen years*.

The forced work endured by the Quispe sisters was *not* related to their individual military service, civic obligations, or imprisonment.¹¹⁶ In fact, María Elena and Mónica were held on false allegations.¹¹⁷ In *Río Negro Massacres v. Guatemala*, this Court reasoned that by forcing victims to work in their captors homes, torturing them, and forcing them to perform manual labor, Guatemala had violated the minor victim’s rights to Freedom from Slavery.¹¹⁸ Similar to

¹¹² Press Release, Inter-Am. Ct. H.R., In the World Day Against Trafficking in Persons, *supra* at 94.

¹¹³ *Gonzalez v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 258 (Nov. 16, 2009); See *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 173 (July 29, 1988).

¹¹⁴ ECtHR, *M.C. v. Bulgaria*, no. 39272/98, ECHR 2003-XII, Judgment of 4 December 2003; See ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010 (extracts), Judgment of 7 January 2010.

¹¹⁵ International Justice Research Center, *supra* at 64; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para”, art. (1994).

¹¹⁶ ACHR, Art. 6

¹¹⁷ Hypothetical ¶ 28, HCQ ¶¶ 27, 42.

¹¹⁸ *Río Negro Massacres v. Guatemala*, Preliminary Objections, ¶ 150.

Guatemala's actions in the *Rio Negro Massacres* case, here, the State forced the girls to perform manual labor. Specifically, the State forced María Elena and Mónica to “wash, cook and clean every day” while in detention and tortured the girls by repeatedly raping them, forcing them to strip naked and groping them.

María Elena, Mónica, and the hundreds of other women unlawfully detained and abused in Warmi were victims of state-sanctioned actions; *state-sanctioned torture*. Thus, the State's failure to give these victim's justice by prosecuting the perpetrators and investigating their claims, is in direct violation of the IACPPT, which “calls on state parties to guarantee that they will investigate accusations of state torture and initiate criminal proceedings.”

3. *The State Denied María Elena and Mónica Access to Conditions that Guaranteed Them a Dignified Existence, Thus Violating Article 4 “Right to Life”*

Article 4 of the Convention guarantees that *every* person “has the right to have his life respected.”¹¹⁹ Article 4 requires that no human be deprived of their life arbitrarily. Additionally, Article 4 requires States adopt *all* appropriate measures to protect and preserve the right to life.¹²⁰ Many UN and international bodies have broadened the right to life to encompass not just the right to be safeguarded against killing but to protect “the enjoyment of *the entire range* of economic, social and cultural, as well as civil and political rights.”¹²¹

¹¹⁹ ACHR, Art. 4. (emphasis added).

¹²⁰ González et al. (“Cotton Field”) v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am Ct. H.R. (ser. C) No. 205, ¶ 245 (Nov. 16, 2009) (emphasis added).

¹²¹ ALICE EDWARDS, VIOLENCE AGAINST WOMEN UNDER INTERNATIONAL HUMAN RIGHTS LAW 273, 277 (2011); See Commission on Human Rights (CHR) res. 1982/7, ¶ A(1) 19 February 1982. See further, CHR res. 1983/43, 9 March 1983. (emphasis added).

The Commission on Human Rights stated that the “right to life encompasses existence in human dignity with the minimum necessities of life.”¹²² Further, the duty to protect the right to life “requires special measures of protection towards persons in situation(s) of vulnerability”¹²³ which can include indigenous individuals. The Human Rights Committee has considered that States have a heightened obligation to protect the “life of all detained individuals including providing them with the necessary medical care, regularly monitoring their health, and shielding them from inter-prisoner violence.” Furthermore, it has found that the “heightened duty to protect the right to life also applies to individuals quartered in ... military camps.”¹²⁴

Specifically, this Court has held that the right to life includes, “the right that [s]he will not be prevented from having access to the conditions that guarantee a dignified existence.”¹²⁵ This right is non-derogable, *even during a state of emergency*.¹²⁶ Furthermore, this Court has expanded the right to life to include basic rights including “access to healthcare, food and clean water.”¹²⁷ In *Yakye Axa Indigenous Community v. Paraguay*, where the indigenous victims were treated inhumanely while under the State’s care, the Court found the State failed its Article 4 duty to “care and prevent the breach of the right to life and humane treatment.”¹²⁸

¹²² Commission on Human Rights (CHR) res. 2005/16, Human Rights and Extreme Poverty, UN Doc. E/CN.4/2005/16, 14 April 2005, ¶ 1(b) (adopted without a vote).

¹²³ UN Human Rights Committee, Draft General Comment No. 36: Article 6 (Right to Life), UN Doc. CCPR/C/GC/R. 36, 1 April 2015.

¹²⁴ UN Human Rights Committee, Draft General Comment No. 36: Article 6 (Right to Life), UN Doc. CCPR/C/GC/R. 36, 1 April 2015.

¹²⁵ Villagrán Morales et al. v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144 (Nov. 19, 1999).

¹²⁶ ACHR, art. 27(2) (emphasis added).

¹²⁷ *Yakye Axa Indigenous Cmty. V. Paraguay*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 167, 176 (June 17, 2005).

¹²⁸ *Id.*

Here, like the indigenous victims in *Yakye Axa*, the young sisters were taken into the care of the State and the State failed to respect their lives by failing to provide them with the minimum conditions necessary for a dignified existence. The State ran a torture facility under the guise of the SMB in Warmi from 1990 to 1999.¹²⁹ Government agents from the SMB committed myriad abuses against the population, not limited to the false imprisonment and rape of local women and girls, including Mónica and María Elena.¹³⁰ State actors raped and gang-raped the sisters when they were only girls - actions that fall short of minimum conditions for a dignified existence.¹³¹

Additionally, the State forced the girls to work as slaves while imprisoned at SMB in violation of its Article 4 obligation to respect the María Elena and Mónica lives. The State falsely imprisoned the girls and subjected them to forced manual labor and inhumane abuses, such as repeated sexual violence, that violated the girls' security and integrity. The State's obligation applies to all persons, even regardless of the reason "for which the person is detained, including persons accused of political offenses or terrorist acts."¹³² However, its obligation to prevent torture or ill-treatment applies *especially* to "certain minority or marginalized individuals or populations especially at risk."¹³³ Here, the girls were members of the indigenous community living in Warmi.¹³⁴ At the defenseless ages of 12 and 15, they were members of a vulnerable ethnic and age minority. Though the State falsely accused and arrested the girls for abetting

¹²⁹ Hypothetical ¶ 27-29.

¹³⁰ Hypothetical ¶ 28.

¹³¹ Hypothetical ¶ 28.

¹³² *Id.*

¹³³ Committee Against Torture, General Comment No. 2, ¶ 20, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) [hereinafter CAT General Comment No. 2].

¹³⁴ HCQ ¶ 16.

terrorists, the State had a positive obligation to provide the girls in their care with a dignified existence and to protect the girls from torture and ill-treatment.

As a result, the State failed to uphold its Article 4 duty to protect and preserve the lives of the Quispe sisters. Furthermore, the State's failure to protect women and girls serves as de facto permission for future violence against women and girls.

C. The State Violated the Sister's Article 7 Rights to Personal Liberty in Conjunction with Article 1(1) of the Convention and Article 7 of Belem do Pará

Article 7 guarantees "no one shall be deprived of his physical liberty" except for reasons and conditions established beforehand by either the State's Constitution or law.¹³⁵ In *González et al. ("Cotton Field") v. Mexico*, this Court held States "must prevent the liberty of the individual [from] being violated by the actions of public officials and private third parties, and must investigate and punish acts that violate this right."¹³⁶

Though the State argues that it derogated from Articles 7, 8 and 25 during its declared state of emergency, the state of emergency did not meet the strict criteria of the Convention or of international standards. Thus, the State lacked a legal basis for the deprivation of María Elena and Mónica's personal liberty. Furthermore, by raping and enslaving its citizens, the State far exceeded the limits strictly required to deal with the emergency.

¹³⁵ ACHR, art. 7(2).

¹³⁶ *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, ¶ 247; *See Contreras et al. v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. of H.R. (ser. C) No. 232, ¶ 2 (August 31, 2011) (where children were abducted by the military, the Court held it impaired the victims liberty in the broadest sense of Article 7).

The State is bound to Article 7, which prevents the deprivation of a person’s physical liberty unless it falls under a “truly exceptional situation” where the State has “no other means to defend the independence and security of its domestic order.”¹³⁷ This Court has held “no right guaranteed in the Convention may be suspended unless very strict conditions – those laid down in Article 27(1) are met.”¹³⁸ Article 27(1) states that derogation may only take place “in time of war, public danger or other emergency that threatens the independence or security” of the State.¹³⁹

Here, the state of emergency was declared in response to the “Freedom Brigades” “terrorist action” in the State.¹⁴⁰ However, the *regional* threat did not take place within the context of a civil war.¹⁴¹ As such, the regional threat did not threaten the independence of the State and thus, does not meet the strict conditions for a state of emergency under Article 27(1). Thus, because there is no valid state of emergency, then the State cannot legally derogate from its obligations to the Convention under any Article. Therefore, the State’s declared “state of emergency” was unlawful.

However, even if the state of emergency was valid, the State’s monstrous actions exceeded the strict limits required in dealing with an emergency. This Court has held the power of the State is not unlimited and thus the State may not resort to any means to achieve its ends. Regardless of what threat the State is facing, “disrespect for human dignity cannot serve as the

¹³⁷ U.N. OFFICE OF THE HIGH COMM’R ON HUMAN RIGHTS [OHCHR], HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS AND LAWYERS, at 827, U.N. Doc. HR/P/PT/9, U.N. Sales No. E.02.XIV.3 (2003).

¹³⁸ *Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Advisory Opinion OC-8-87, Inter-American Ct of H.R. (ser. A) No. 8, ¶ 21 (Jan. 30, 1987).

¹³⁹ ACHR, art. 27(1).

¹⁴⁰ Hypothetical ¶ 8.

¹⁴¹ HCQ ¶ 95.

basis for any State action.”¹⁴² The suspension of guarantees may not “exceed the limits strictly required to deal with the emergency” and “any action on the part of public authorities that goes beyond these limits...would also be unlawful notwithstanding the existence of the emergency situation.”¹⁴³

In *Gómez-Paquiyaui Brothers v. Peru*, this Court found Peru unlawfully detained two minor siblings, during a state of emergency under the framework of an “anti-terrorist struggle,” because the boys were arbitrarily arrested and “not immediately brought before a judge.”¹⁴⁴ The Court stressed the “emergency cannot be considered a justification” for the acts committed by the State.¹⁴⁵ The Court found the detention took place “within the framework of a systematic practice of human rights violations” and was incompatible with basic rights “including the presumption of innocence, existence of a court order to conduct a detention, and the obligation to bring the detainees before a competent judicial authority.”¹⁴⁶

Similarly, here, the State declared a state of emergency in response to the “Freedom Brigades” carrying out “terrorist action.”¹⁴⁷ The State gave the military complete “military, political and judicial control over the Province of Warmi,”¹⁴⁸ allowing them to make arrests “without any proceedings.”¹⁴⁹ However, the State’s actions of raping and enslaving young girls went beyond the “limits strictly required dealing with the emergency” because raping children

¹⁴² *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶154 (July 29, 1988).

¹⁴³ *Habeas Corpus in Emergency Situations* (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8-87, Inter-American Ct of H.R. (ser. A) No. 8, ¶ 38 (Jan. 30, 1987).

¹⁴⁴ *Gómez-Paquiyaui Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 86 (July 8, 2004).

¹⁴⁵ *Id.* at ¶ 85.

¹⁴⁶ *Id.* at ¶ 88.

¹⁴⁷ Hypothetical ¶ 8.

¹⁴⁸ Hypothetical ¶ 43.

¹⁴⁹ Hypothetical ¶ 27.

cannot be necessary to deal with an emergency. Thus the State, by exceeding the necessary limits of the state of emergency, unlawfully detained the sisters and violated their Article 7, Right to Personal Liberty.

D. The State Violated María Elena and Mónica’s Rights to Judicial Protection in Violation of Article 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in Conjunction with Article 1(1) of the American Convention and Article 7 of Belem Do Pará

Articles 8 and 25 provide victims with a *guarantee* that crimes will be prosecuted and punished appropriately and timely.¹⁵⁰ Together, Articles 8 and 25 establish the due process rights of individuals who have been deprived of their personal liberty as well as the subsequent requirements for the state to provide adequate judicial remedies.¹⁵¹ Thus, Articles 8 and 25 protect individuals who have become victims of ineffective domestic remedies.¹⁵² This Court has held, “in cases of violence against women, the general obligations established in Articles 8 and 25 are complemented and enhanced by the obligations arising for State parties from the specific obligations of the Inter-American treaty, the Convention of Belem do Pará.”¹⁵³ Therefore, when an act of violence against women occurs, “it is particularly important the authorities in charge of an investigation carry it out in a determined and effective manner, taking into account society’s obligation to reject violence against women and the State’s obligation to eliminate it and to ensure that victims trust the State institutions therefore their protection.”¹⁵⁴

¹⁵⁰ ACHR, Art. 8 and 25; *See L.E. v. Greece* (no. 71545/12) for the European Human Right Courts similar provision.

¹⁵¹ *Espinoza González v. Peru*, Preliminary Objections, ¶ 185.

¹⁵² ACHR, Art. 25 and 8.

¹⁵³ *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, ¶ 177.

¹⁵⁴ *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, ¶ 216.

Here, the Quispe sisters were subjected to State-sponsored gender-based violence at the Warmi torture camp, were, and still are, unable to trust the State in its obligation to protect them.¹⁵⁵ As discussed below, the State violated the sisters' Article 8 and 25 rights by failing to adequately provide them with an opportunity to a fair trial, simple and prompt recourse, or any other effective recourse by a competent and impartial tribunal.¹⁵⁶

1. The State Continuously Failed Over the Last Eighteen Years to Provide the Quispe Sisters with Timely and Reasonable Access to Impartial Justice in Violation of Article 8

Article 8(1) of the American Convention establishes, “every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal for the determination of his rights.”¹⁵⁷ Additionally, under Article 8(1), a hearing must be held within a reasonable period of time.¹⁵⁸ These protections are inclusive of both a right to judicial remedies and a right to the procedural requirements necessary to bring about judicial guarantees.¹⁵⁹ Further, Article 8(1) states, “the power of access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin, that *everything possible be done to know the truth of what happened* and the responsible parties be punished.”¹⁶⁰

¹⁵⁵ *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, ¶ 216.

¹⁵⁶ ACHR, Art. 25; ACHR, Art. 8.

¹⁵⁷ ACHR, Art. 8.

¹⁵⁸ ACHR, Art. 8.

¹⁵⁹ ACHR, Art. 8.; *See Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 71 (Jan. 31, 2001).

¹⁶⁰ *Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 160, ¶ 382 (Nov. 25, 2006) (emphasis added).

This Court has reasoned, a period of five years exceeds such a standard and limit of reasonableness.¹⁶¹ For example, in *Miguel Castro-Castro Prison v. Peru*, this Court found a thirteen-year period between the start of an investigation, and the events themselves, represented an unreasonable amount of time to initiate a criminal investigation, in violation of the victim's right to access justice.¹⁶² Here, the State has adequately surpassed this thirteen-year gap, and has taken almost *twenty years*, to begin the commencement of *any* type of sufficient investigation into the sisters' claims, in breach of its duty to timely investigate all human rights violations.¹⁶³

Additionally, in *Rosendo Cantu v. Mexico*, this Court placed special importance on the vulnerable status of an indigenous minor who was the victim of sexual violence, rape, and torture at the hands of state-sponsored soldiers.¹⁶⁴ In *Rosendo*, this Court found Mexico failed to comply with its well-versed duty to act with due diligence to prevent, investigate and punish acts of violence against women.¹⁶⁵ The Court reasoned, "the rape of a person by military personnel bears no relation to military discipline or mission." Rather, it is "openly contrary to the obligations to respect and protect human rights."¹⁶⁶

Similar to the victims in *Rosendo Cantu*, here, the sisters were also indigenous minors and thus particularly vulnerable.¹⁶⁷ Also, the nine years of sexual abuse, torture, and violence the

¹⁶¹ *Genie Lacayo v. Nicaragua*, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 30 (Jan. 29, 1997).

¹⁶² *Miguel Castro Castro Prison v. Peru*, Merits, ¶ 160; See IACHR, Art. 8.; See *Las Palmeras v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 90 (Dec. 6, 2001); See also *Genie Lacayo v. Nicaragua*, Merits, ¶ 30.

¹⁶³ *Espinoza González v. Peru*, Preliminary Objections, ¶ 286.

¹⁶⁴ *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, ¶ 216.

¹⁶⁵ *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, ¶ 216.

¹⁶⁶ *Rosendo Cantú et al. v. Mexico*, Preliminary Objections, ¶ 261; See *Fernández Ortega et al. v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 215 (Aug. 30, 2010).

¹⁶⁷ International Justice Research Center, *supra* at 64 (Indigenous women are often the targets of multiple levels of discrimination due to their membership in various minority groups).

Quispe sisters and Warmi women were subjected to at the hands of state military personnel, bear no relation to military discipline or mission. The Quispe sisters and the women of Warmi did not bear the responsibility to report these crimes, rather, the State has failed to recognize its responsibility to move forward with the case upon becoming privy and bringing the situation “under control.” In *Raquel Martín de Mejía v. Peru*, victim Raquel feared bringing her rape case to the domestic courts in Peru in fear of it either never being investigated, or worse, well-rooted fear that reporting the rape would put her at risk of greater violence.¹⁶⁸ Traditionally, the victim had no access to a proper judicial investigation lead by independent/impartial judges, therefore the Commission reasoned it materially impossible for her to access compensation for her wrongs.¹⁶⁹

Similarly here, although the State may argue that Warmi residents themselves deny the sisters claims, this Court must draw a parallel to its reasoning in the *Raquel Martin* matter, and recognize the level of deterrence deliberately exercised by the State in attempting to scare victims into silence. The State has allowed a culture to fester that has repeatedly shown women are in constant danger, yet, the State wants this Court to believe that these victims should have felt comfortable reporting the crimes. In fact, had the Quispe sisters or Warmi victims come forward eighteen years ago, they would not have had access to an effective recourse that would have remedied these human rights violations, as the Warmi population was “completely subordinate” to the SMB and members of the military base also represented the political and judicial authority in Warmi.¹⁷⁰

¹⁶⁸ See *Raquel Martín de Mejía v. Perú*, Report No. 5/96, Case 10.970, ANNUAL REPORT OF THE IACHR 1995, OEA/Ser.L/V/II.91, doc. 7 rev., ¶ 157 (Feb. 28, 1996).

¹⁶⁹ *Id.*

¹⁷⁰ HC ¶ 12; ACHR Art. 8; ACHR Art. 25.

2. *Despite its Heightened Duty to Implement Judicial Recourse and Protection to Victims of Violence Against Women, The State Neglected to Establish Fair and Effective Legal Procedures for the Quispe Sisters to Utilize in Violation of Article 25*

In accordance with Article 8's requirement of the right to a fair trial, Article 25(1) focuses on the victim's right to judicial recourse and protection, requiring court procedures to be accessible and simple.¹⁷¹ This Court has emphasized, "State Parties are obliged to offer the victims of human rights violations effective judicial recourses (Article 25), that must be substantiated pursuant to the rules of the due process of law (Article 8)."¹⁷² Under Article 25(1), every individual has a right to "simple prompt recourse," (or any other effective recourse) in front of a competent court/tribunal for the protection against any acts that have violated the individual's fundamental rights.¹⁷³

Here, the State relentlessly failed to protect the Quispe sisters' rights to a fair trial and judicial protection by repeatedly failing to provide them with simple and prompt recourse, or any other effective recourse by a competent and impartial tribunal. Unfortunately, the State continued to fail the sisters by neglecting to implement adequate judicial recourse *and* judicial protection over this time period. Additionally, the State breached its heightened obligation under Article 7 of Belem do Pará to, "establish fair and effective legal procedures for women who have been subjected to violence." Article 7 of Belem do Pará requires States to take *all* appropriate

¹⁷¹ ACHR, Art. 25.

¹⁷² *Miguel Castro Castro Prison v. Peru*, Merits, ¶ 381.

¹⁷³ ACHR, Art. 25.

measures to amend existing laws which sustain the persistence of violence against women as well as “protective measures, a timely hearing, and effective access to such procedures.”¹⁷⁴ By failing to respond to the growing needs of victims of gender-based violence, including María Elena, the State is “allowing widespread discrimination to take root.”¹⁷⁵ The State did not provide protective measures, a timely hearing or effective access to such procedures, as required by Belem do Pará.¹⁷⁶

Here, the State never afforded the Quispe sisters their day in court. Rather, the only recourse offered to them was ineffective and insulting, as it required them to bring their intimate complaints directly to their perpetrators. Additionally, although the State implemented the Zero Tolerance Policy on Gender-Based Violence (ZTPGBV), the policy fails to address the concerns of María Elena and the various other women facing domestic violence issues.¹⁷⁷ Such “specific and immediate measures” function to train public servants, rather than educate the public and implement more accessible preventative measures.¹⁷⁸ Furthermore, the State has failed to adequately describe the “specific measures” it has implemented to assist female victims such as María Elena and Mónica. Thus, although the state has offered to review legislation on violence against women, its continued tolerance of such violence and failure to remedy the human rights violations suffered by the Quispe sisters, seems to show the contrary. In fact, the State’s Administrative Program on Reparations and Gender fails significantly, as it requires victims of gender-based violence, such as María Elena and Mónica to register with the Unified Registry of

¹⁷⁴ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para”, art. (1994).

¹⁷⁵ Hypothetical ¶ 15.

¹⁷⁶ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para”, art. (1994).

¹⁷⁷ Hypothetical ¶¶ 19-20.

¹⁷⁸ *Id.*

Victims of Violence, in order to even be given access to the programs “symbolic measures.”¹⁷⁹

By requiring victims of gender-based violence to exploit themselves and publicly claim “victim status,” the State is once again silencing victims and scaring them from reporting, just as it did to the Quispe sisters eighteen years ago.¹⁸⁰ Such legislation shows the State’s disregard for real, effective change, in direct violation of Article 7 of Belem do Pará.¹⁸¹

Further, although the State insultingly contends these “events,” are part of its past, unfortunately for victims of sexual violence and violence against women, such as the Quispe sisters, it is not so simple. Notably, under the State’s relaxed legislation, María Elena has again become the victim of repeated and brutal gender-based violence.¹⁸² The State’s failure to “condemn all forms of violence against women” and thoroughly investigate does not reach the heightened standards set out by Article 7 of Belem do Pará with regards to Articles 8 and 25.¹⁸³ Additionally, the State failed to learn and grow from the past, rather, the numerous cases of gender-based violence occurring *on a daily basis in the State*, shows a lack of recognition or movement forward.¹⁸⁴

The State continuously failed to provide María Elena and Mónica with any effective remedies. However, even if the State *had* provided the sisters with a remedy, providing remedies to victims of human rights violations *does not sufficiently comply with Article 25(1)’s requirement of right of recourse before a competent court.*¹⁸⁵ Rather, such remedies much be

¹⁷⁹ Hypothetical ¶22.

¹⁸⁰ *Id.*

¹⁸¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belem Do Para”, art. (1994).

¹⁸² Hypothetical ¶ 25.

¹⁸³ Hypothetical ¶¶ 9-10, 13.

¹⁸⁴ *Id.*

¹⁸⁵ *Rosendo Cantú v. Mexico*, Preliminary Objections, ¶ 160; *See Aydin v. Turkey*.

effective and *guarantee* due process.¹⁸⁶ Additionally, the State's ongoing failure to condemn violence against women, continues to affect the Quispe sisters, as well as *all* women citizens.

REQUEST FOR RELIEF

Based on the foregoing, María Elena and Mónica respectfully request the Honorable Court find the State has violated Articles 4, 5, 6, 7, 8 and 25 in conjunction with Article 1(1) of the Convention and Article 7 of Belem do Pará. In concluding the violation of the aforementioned articles, the Victims request that the Court order the State to:

- 1) Ensure that the rights of María Elena and Mónica under Articles 8 and 25 are respected and that they are given the opportunity to seek adequate recourse for violations of their human rights committed against them.
- 2) Pay the costs/expenses incurred by the victims in litigating this case.
- 3) Monetarily compensate María Elena and Mónica for these gross human rights violations.
- 4) Not require participants of the Administrative Program on Reparations and Gender to register with the Unified Registry of Victims of Violence in order to access the program.
- 5) Broaden the State's criminal code to eliminate the statute limitations on all cases involving sexual violence or violence against women.

Respectfully submitted,

Team Number: 104

¹⁸⁶ *Id.*