

INTER-AMERICAN HUMAN RIGHTS
MOOT COURT COMPETITION

MARIA ELANA QUISPE AND MONICA QUISPE

Petitioner

v.

REPUBLIC OF NAIRA

Respondent

2018

IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

MEMORIAL FOR THE PETITIONER

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STATEMENT OF FACTS

The Republic of Naira (“the State” or “Naira”) is a monist state, meaning all duly ratified treaties are automatically incorporated into domestic law enjoying constitutional status.¹ It is an economically stable democratic country, which has been experiencing a political crisis for the past three generations.² Between 1970 and 1999 southern Naira was under threat from the Freedom Brigade (FB) an armed group with known ties to drug trafficking. The group resorted to terrorism in order to gain enough control of the area that they could act with impunity.³

In 1980 the State responded to this threat by establishing political and judicial command units in the provinces which were most affected; Sonocco, Killki and Warmi. The State also notified the other states party to the Inter-American Convention On Human Rights (‘American Convention’ or ‘Convention’) through the General Secretary of the Organization of American States (OAS) that it was declaring a State of Emergency in these provinces. Specifically, it derogated itself from Articles 7, 8 and 25 of the convention, suspending guarantees to the rights to Personal Liberty, a Fair Trial and the Right to Judicial Protection.⁴

Between 1990 and 1999 the State set up a Special Military Base (SMB) in the province of Warmi with the mandate to maintain control over the area and fight crime. During these years the SMB committed numerous acts of abuse against the local population including constant sexual violence against local women and girls.⁵ According to Monica Quispe in March 1992 both she and

¹ Hypothetical, p. 1, § 6

² Hypothetical, p. 1, § 1

³ Hypothetical, p. 2, § 8

⁴ Clarification Questions, no. 10.

⁵ Hypothetical, p. 5, § 27 and 28

her sister Maria Elena Quispe (who where a part of the countries native population) where held by the SMB for one month on the false accusation that there where accomplices to the Freedom Brigade and that they provided the group with information about the military base⁶. At the time María Elena was only 12 years old, while her sister Mónica was 15.⁷

The ladies contend that they personally witnessed women being forced to strip naked in front of soldiers who would beat and grope them⁸. While there, they were forced to wash, cook and clean every day and were repeatedly raped by the soldiers.⁹ During this time these crimes where kept hidden; the women involved did not report the abuses committed against them because they received death threats and threats of retaliation from the military (a military which exercised political and judicial control over the Province).¹⁰

In 1999 the armed groups surrendered and the State deemed the situation to be under control. The SMB was deactivated and the State of Emergency was called off. The acts of sexual violence were never reported by the victims and the State made no attempt to launch an investigation on its own initiative.¹¹

In the years that followed Naira continued to display a culture of gender discrimination and gender-based violence.¹² Statistics from the National Statistics institute asserts that for a country with a population of just 20 million people.¹³ Naira has twenty femicides per month and every two hours a woman is the victim of sexual assault. The recent uptick in violence against the LGBTI

⁶ Clarification Questions, no. 42.

⁷ Clarification Questions, no. 69.

⁸ Hypothetical, p. 5, § 29

⁹ Hypothetical, p. 5, § 28

¹⁰ Clarification Questions, no. 43.

¹¹ Hypothetical, p. 5, § 30

¹² Hypothetical, p. 2, § 11

¹³ Hypothetical, p. 1, § 1

community shows that the trend of violence is not abating. This while women in the society earn significantly less than men and spend 50% of their labour effort on unpaid work.¹⁴

Naira has consistently shown that it lacks the legislative will to make the legal changes necessary to abate this problem. Its Criminal Code recognizes the crimes of Femicide and Rape only and does not define any other kind of sexual violence as a crime.¹⁵ The country's current President Mr. Gonzalo Benovente has been in power for over three years and has been unable to get most of his promised reforms through the legislature.¹⁶ He faces significant opposition from the "Respect my Children Party" which has consistently resisted any attempt by the State at regulatory reform including the State's recent attempts to include a gender Based perspective in the national education curriculum.

Since it was founded in 1980 The Non-Governmental Organization known as Killapura has consistently maintained that the State of Naira has neglected the victims of gender-based violence¹⁷. The recent cases of Zuleimy Pareja and Analia Sarmentio illustrate this point.

Zuleimy Pareja is a transgender woman who on numerous occasions reported that her partner Angelino Mendoza was being violent toward her, but these reports had very little effect. In 2010 Pareja was murdered by Mendoza but instead of being sentenced to 40 years in prison for Femicide he received only 15 years in prison on a lesser charge. The Court's reasoning was based on the fact that the victim Ms. Pareja (who had undergone gender reassignment surgery) had a national ID card which still said she was male and thus the case did not qualify as a femicide. The

¹⁴ Hypothetical, p. 2, § 13

¹⁵ Hypothetical, p. 2, § 14

¹⁶ Hypothetical, p. 1, § 2

¹⁷ Hypothetical, p. 3, § 15

court characterized the death as a crime of passion. The case went through the full appellate process with the conviction and sentencing being upheld.

Ms. Analia Sarmentio was a 19 year-old student whose lifeless body was found in a garbage dumpster. She had been abducted raped and killed by Guillermo Alcazar, a man who had attempted to force himself on her at the club. Investigations would later show that Alcazar had been twice charged and once convicted of rape and was out on probation.¹⁸

Killapura used both these cases to shine a light on the culture of violence in Naira and the lack of adequate State response to the problem. In 2015 the State finally responded by implementing measures to address the problem of gender-based violence. Collectively these became known as the Zero Tolerance Policy on Gender-Based Violence (ZTPGBV). These measures included:

- **The creation of a Gender Based Unit-** To be based in the Public Prosecutors office and the judicial branch with a mandate to:¹⁹
 - ✓ Develop specific measures to assist female victims
 - ✓ Provide mandatory training for judges prosecutors and other public servants
 - ✓ Penalize public officials who commit acts of gender based violence and discrimination
- **Create an Administrative program on reparations and gender-** This will provide economic and symbolic measures to address education, housing, employment, and the

¹⁸ Hypothetical, p. 3, § 18

¹⁹ Hypothetical, p. 3, § 20

physical /mental health of victims. It must be noted that the program will not allow for the litigation of cases.²⁰

Since then a third case of gender-based violence has attracted the public's interest. Maria Elena Quispe one of the victims of the events of Warimi was once again the victim of gender-based violence. In January 2015 she filed a report with the police that her husband Jorge Perez had attacked and disfigured her with a broken bottle.²¹ She was unable to undergo a medical examination because the only medical examiner was on vacation.²² Despite Naira's law 25253 requiring the police to take urgent action for the protection of victims the State failed to do so because the Ms. Quispe did not have a medical certificate. There was no police report and the office of public prosecutions was unable to arrest Mr. Perez.

Four months later he intercepted Mrs. Quispe and assaulted her on a public street. This drew media attention and Mr. Perez was arrested, he received a one year suspended sentence and was released. Three months later Mrs. Quispe was attacked again. This time the injuries caused by Mr. Perez left her permanently disabled and unable to care for her child.²³ To date Mr. Perez is still not in police custody.²⁴

This case gained much notoriety in Naira. In a TV interview with GTV (the nation's most important news outlet) it brought to light that Mrs. Quispe along with her sister was a victim of gender-based violence from her childhood in Warimi.²⁵ Killapura then conducted a detailed investigation of the forced the detention and abuse the Quispe sisters endured as children at the

²⁰ Hypothetical, p. 4, § 22

²¹ Hypothetical, p. 4, § 23

²² Clarification Questions, no. 22.

²³ Hypothetical, p. 4, § 24 and 25

²⁴ Clarification Questions, no. 71.

²⁵ Hypothetical, p. 5, § 27

hand of the SMB. They file criminal complaints on behalf of the women but the State contended that the statute of limitation for the crimes committed in Warimi had expired and they were time barred from proceeding. Killapura then asked the government to step in and provide justice for these women and the other victims of the SMB with a view to guaranteeing their rights and possibly providing reparations.²⁶ The State refused saying that it was not within their purview to interfere in a court case. However, Naira did agree to:

- The Creation of a High-level committee to examine the possibility of reopening criminal cases of gender based violence.
- The creation of a truth commission, which will investigate the events that took place in Warimi while under SMB control.²⁷

Being dissatisfied with the States response, on May 10th 2016 Killapura filed a petition with the Inter-American Commission on Human Rights contending that the State of Naira was in violation of Articles 4 (Right to life), 5 (Right to humane treatment), 6 (Freedom from slavery), 7 (Right to personal liberty), 8 (Right to a fair trial), and 25 (Right to judicial protection) of the American Convention on Human Rights.²⁸ The petition also alleged that the State of Naira was in violation of its obligations contained in Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (‘Convention of Belem do Pará’). The petition was admitted on June 15th 2016 according to the rules of procedure and the pertinent parts forwarded to the State of Naira.

²⁶ Hypothetical, p. 5, § 33

²⁷ Clarification Questions, no. 1.

²⁸ Hypothetical, p. 6, § 38

On August 10th 2016 the State of Naira responded denying responsibility for any human rights violations and stating that it was willing to defend itself before the Inter-American Court of Human Rights (“the Court”). The Commission adopted a report declaring that the case was admissible and given that a friendly settlement could not be reached the case was submitted to the jurisdiction of the Inter-American Court of Human Rights for them to rule on the violations alleged by Killapura.²⁹

²⁹ Hypothetical, p. 7, § 42

LEGAL ANALYSIS

I. ADMISSIBILITY

Statement of Jurisdiction

The Republic of Naira is a monist State, with Article 22 of its constitution that provides for all treaties duly ratified by Naira are automatically incorporated in the law of the state. Hence making them directly enforceable by its courts and with standing, which supersedes national law. In 1979 Naira ratified the American Convention of Human Rights.³⁰ Naira also accepted the contentious jurisdiction of the Inter-American Court of Human Rights in the same year³¹. The facts before the Court state that the alleged violations of the American Convention occurred after 1992³². Thus, pursuant to Article 62(3) of the Convention this court has jurisdiction in respect of matters in the present case regarding violations of the Convention.³³

The State also ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women on June 4, 1996³⁴. The State may point out that Article 12 of the Convention of Belém do Pará expressly mentions the Inter-American Commission and not the Inter-American Court as the entity responsible for the protection of the rights laid out in Article 7 of that Convention. However, in *González et al. ("Cotton Field") v. Mexico*, as well as in *Véliz Franco v. Guatemala*, the Inter-American Court has ruled that it has jurisdiction to rule on the said Article 7 of that Convention³⁵. The ratio behind

³⁰ Hypothetical, p. 1, § 7

³¹ Clarification Questions, no. 5

³² Hypothetical, p. 5, § 28

³³ American Convention, art. 62(3).

³⁴ Hypothetical, p. 1, § 7

³⁵ I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205,

this is due largely in part to Article 12 of the Convention of Belém do Pará describing the process for enforcing Article 7 as “procedures of the system of individual petitions established in the American Convention.” This has been interpreted to include the eventual processing of the case before this Court. Thus, pursuant to Article 12 of the Convention of Belém do Pará this Court may exercise jurisdiction on this matter regarding violations of the Convention of Belem do Pará.

On August 10, 2016, the State of Naira filed a preliminary objection alleging the Court’s lack of jurisdiction *ratione temporis*. It is a fact that the acts of violence committed against Elana and Monica Quispe (“the Petitioners”) during their detention at the Special Military Base occurred prior to Naira ratifying the Convention of Belem do Para in 1996. Article 28 of the 1969 Vienna Convention on the Law of Treaties states that the “provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”

³⁶Therefore, the Court may examine acts or facts that have taken place following the date of ratification, as well as any continuing or permanent facts that persist after that date. The human rights violations in this case, occurred during the period 1990 to 1999. It commenced before the date of ratification, and persisted thereafter. The State of Naira can be held accountable for those continued heinous acts committed against and to the detriment of the Petitioners. They also have a responsibility pursuant to Articles 8 and 25 of the American Convention to investigate those acts, which would constitute human rights violations as laid out in the Convention of Belém do Pará even if they occurred prior to ratification. The Court

³⁶ 1969 Vienna Convention on the Law of Treaties, Article 28

made this very determination in the cases of the *Miguel Castro Prison v. Peru*³⁷, where it ruled that it had jurisdiction regarding the denial of justice for human rights violations, which occurred before the Convention was ratified. As soon as the State signed the convention it assumed a responsibility to investigate outstanding matters of human rights violations and to date no substantial effort has been made to do so.

It is the Petitioners' submission that all the cited violations of the articles of the American Convention on Human Rights transpired subsequent to the ratification date in 1979. These incidents, which are in grievous violation of Articles 4, 5, 6, 7, 8, and 25, occurred in 1992 and in subsequent years. The State also failed to fulfill its obligations regarding in violations of Article 7 of the Convention of Belem do Pará. This with regard to acts with occurred after the 1996 date of ratification of that treaty, acts which occurred before the treaties ratification and persisted afterward, and the State's failure to sufficiently investigate acts which occurred before ratification.

Based on the foregoing, pursuant to Article 62(3) of the Convention, the Court has jurisdiction *ratione temporis* insofar as the State's obligation to respect and guarantee the rights protected by the American Convention, which was in force at the time the violations occurred. This is particularly relevant to Naira's failure to investigate and bring justice the acts of false imprisonment rape and slavery which occurred to the applicant in 1992. A leading case is *Juan Humberto Sánchez v. Honduras* in which the person on whose behalf the petition was filed had been kidnapped and killed by agents of the State, which had ratified the convention and accepted the jurisdiction of the court before the contended violations.³⁸

³⁷ *Miguel Castro Prison v. Peru*, Case 11.015, Inter-Am. C.H.R., Report No. 43/01, OEA/Ser.L/V/II.111, doc. 20, rev.(2000)

³⁸ *Case of Juan Humberto Sánchez v. Honduras*, 2003 Inter-Am. Ct. H. R. (ser. C) No. 99, at 121 (June 7).

Exhaustion of Domestic Remedies

Article 46(1)(a) of the Convention requires the Petitioners to exhaust all domestic remedies prior to filing a petition with the Court.³⁹ However, the available domestic remedies must not only exist they must be sufficient to redress the human rights violations and provide the victim with the result that those remedies were designed to yield.⁴⁰ Domestic remedies are considered ineffective if they are: discretionary in nature,⁴¹ procedurally restrictive,⁴² or if found to be “illusory” in nature.⁴³

The Court has have stated on numerous occasions “that a criminal legal proceeding is the suitable process for establishing the facts, trying the perpetrators, and determining the appropriate penalties in cases involving alleged threats to life and personal integrity, in addition to making pecuniary reparations possible.”⁴⁴ The Petitioners’ submit that the available domestic remedies were procedurally designed to limit, justice, as they are illusory and discretionary. In other words, the domestic laws are ineffective and did not provide the requisite medium to obtain justice, which is the State’s obligation under the Convention of Belem do Pará.

The State may contend that the Quispe sisters did not initiate a criminal investigation relevant to the heinous acts false imprisonment, rape and human rights abuse by its agents. The State may further contend that because the Quispe sisters did not initiate proceedings the State was deprived of the opportunity to investigate the issues and bring

³⁹ American Convention on Human Rights OAS, 18 July 1978, 1144 U.N.T.S. 123, art. 46(1)(a) [hereinafter “American Convention”].

⁴⁰ *Case of Godínez Cruz v. Honduras*, 1989 Inter-Am. Ct. H.R. (ser. C) No. 5, at 67, 69 (Jan. 20).

⁴¹ IACHR, Report No. 26/2008, *Cesar Alberto Mendoza et al.* (Argentina), at 269 (Mar. 14).

⁴² IACHR, Report No. 55/1997, *Juan Carlos Abella* (Argentina), at 269 (Nov. 18).

⁴³ *Case of Juan Humberto Sánchez v. Honduras*, 2003 Inter-Am. Ct. H. R. (ser. C) No. 99, at 121 (June 7); *Case of Las Palmeras v. Colombia*, 2001 Inter-Am. Ct. H. R. (ser. C) No. 90, at 58 (Dec. 6).

⁴⁴ IACHR, Report No. 13/16, Petition 942-07. Admissibility. Diego Armando Plazas Gómez and Family. Colombia. April 14, 2016, para 34

the perpetrators to due punishment. In addition, The State also contends that the acts were committed over twenty years prior to this petition and so, should be barred by the passage of time.

In response, the Petitioners note that the Court has previously stated in such cases as *Juan Humberto Sánchez v. Honduras* and *Godínez Cruz v. Honduras* that a State's remedies can be made ineffective by the general condition of the country. The facts of the present case clearly show that despite the State's numerous attempts at investigating much publicized reports of human rights violations the State failed to provide the victims with effective judicial remedies. The investigations seemed to have fallen by the wayside over the ensuing years. Additionally, the facts also highlight that in spite of the implementation of supposed measures for the benefit of victims and women in general, to date no prosecution has resulted from these measures, and the wanton attacks on the lives of women have continued unabated. By the State's own reports, every two hours a woman is a victim of sexual assault, seventy percent of women ranging in ages from 15 to 35 are victims of daily sexual harassment. However, these atrocious acts are not reflected in similar statistics on prosecutions and convictions. It is therefore obvious that the laws are illusory and ineffective.

On March 10, 2015 Killapura filed criminal complaints on behalf of the women regarding the acts of sexual violence to which these sisters were subjected in Warimi. The State has ignored those complaints contending that the acts are time-barred by a fifteen-year statute of limitations⁴⁵. Given the scale, proportion and heinous nature of the incidents in which these violations occurred, as well as the fact that the victims were member of a

⁴⁵ Hypothetical, p. 5, § 33

vulnerable group in the society (the victims are women and also members of indigenous people), the Petitioners submit that it is the responsibility of the State, under the Convention, to make special provisions to ensure that justice is served.⁴⁶

The invocation of statutes of limitations to prevent remedy and reparation for serious violations of human rights law goes against international norms. In a series of cases starting with *Barrios-Alto v Peru* in 2001⁴⁷, the Court has repeatedly held that a statute of limitations cannot be invoked “to prevent the investigation and punishment of those responsible for serious human rights violations”. In *Barrios-Alto v Peru* members of the Peruvian army were originally given amnesty for crimes committed between 1980 and 1985. The State would later argue that it was time-barred from pursuing a criminal case by a statute of limitations. The Court ruled that the time bar was not applicable to such human rights violations. This principle may also be said to be a part of Customary International Law as evidenced by Section 6 of UN General Assembly Resolution 60/147 which states that statutes of limitations shall not apply to gross violations of human rights law. The Petitioners therefore submit that Naira has no grounds to deny justice for these women on the basis of a statute of limitations.

The Petitioners also contend that none of the Naira’s other actions would not constitute a true domestic remedy and the Quispe sisters had no choice but to bring their human rights violations before the Court. The Court has clearly stated, in its previous decisions that the special jurisdiction of the military does not provide an appropriate venue to investigate and prosecute human rights violations, such as those committed to the

⁴⁶ Ian Brownlie. *Brownlie's Principles of Public International Law*. (Oxford, Oxford University Press, 2012)

⁴⁷ IACHR, Chumbipuma Aguirre et al, Comm. 11528, "Barrios Altos v. Perú (fondo)" 14 March 2001

detriment of the Petitioners.⁴⁸ The State, by its own admission during the period when the human rights violations were committed, permitted the military who were the perpetrators to not only have military command authority, but also political and judicial authority. An adjudication process on that basis is procedurally restrictive. It goes against the very principle of natural justice, *nemo judex in causa sua*, no one can judge a case in which they have an interest.

The State may contend that as a remedy for the atrocities meted out by its agents, it has created a High-Level Committee and a Truth Commission to “explore the potential reopening of the criminal cases.” By its own utterances, the State has shown its lack of commitment to fulfilling its obligation under Article 7 of Convention of Belem do Pará, as it will only be exploring and not ensuring the stringent prosecutions of the identified perpetrators. More importantly, the Truth Commission was created in 2015, and its report is not due until 2019, which is a four-year period, during which time the Petitioners continue face the detriment of the lack of judicial recourse.

In accordance with Article 63(2) of the American Convention, the Court may order provisional remedies in cases of “extreme gravity and urgency, and when it becomes necessary to avoid irreparable damage to persons.”⁴⁹ The Petitioners will prove the gravity, urgency, and the likelihood of irreparable damage to them and others residing in Warmi will continue and that they will continue to be subjected to sexual violence. Additionally based on the inadequate treatment meted out to them, the Court should consider the granting of any provisional remedies.

⁴⁸IACHR, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and Family. Colombia. March 18, 2017., para 6

⁴⁹ American Convention at art. 63(2).

The Petitioners submit that they have faced discrimination because they are members of an indigenous group. The United Nations Declaration for the Rights of Indigenous Peoples (DRIPS) adopted in 2006, contains provisions similar to those of the Convention, providing specific protection to indigenous peoples. DRIPS provides that indigenous peoples have the right as a community and individually to enjoy all human rights and freedoms and a free and equal to all other peoples and should be free from discrimination based on the indigenous identity. Article 7 of DRIPS provides the same right to personal liberty provisions to indigenous people as the general provisions in Article 7 of the American Convention.

The Quispe sisters and other members of the indigenous community in Warmi have been living in fear all their lives: this has been a result of the ineffectiveness of the legislative and administrative measures implemented by the State, especially as it pertains to protecting their community. By the actions of the military it is evident that the indigenous people domiciled within Warmi are facing discrimination. Of the 3 providences were there were armed terrorists group, there have only been reports of human rights atrocities against the people of Warmi. The Court has previously found the existence of urgency in threatening situations that “require and merit immediate actions and response.”⁵⁰ Further, urgency “implies that the risk or threat must be imminent, which also presupposes that the response to remedy it must be immediate.”⁵¹

The continued violence against women, particularly violence committed against the indigenous community of which the Petitioners are members, highlights the threat, which

⁵⁰*Matter of Alvarado Reyes et al.* at 16.

⁵¹*Matter of Monagas Judicial Confinement Center* at 2.

continues unabated in the nation State of Naira. This is to the detriment of the Petitioners and victims of human rights violations and requires provisional measures pursuant to Article 63 (2) of the American Convention. Moreover, there is the imminent risk of health and mental well-being further deteriorating, demonstrated by the continued violence against women in the country, thereby necessitating the imposition of provisional remedies.

Irreparable damage can result in multiple ways including physical injury or loss of function, infringement upon the right to privacy, or emotional or psychological harm.⁵² Article 1 of Convention of Belem do Pará, states that “violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”⁵³ There is no question that Maria Elena Quispe has been made permanently partially disabled, after reports were made to the police. This after the domestic judicial process released the perpetrator who became a spurge on the society. The acts of rape and sexual assault committed against the Petitioners, by this Court own ruling, have cause irreparable psychological harm.

Most importantly, Naira has included matters relevant to the Quispe sisters under the purview of the results of the Truth Commission relevant to the potential payment of reparations. The report from the Truth Commission has been a protracted process and does not provide definitive likelihood of criminal proceedings being brought against the perpetrators.

⁵²Burgorgue-Larsen et al., *The Inter-American Court of Human Rights: Case Law and Commentary* at 200-209.

⁵³ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)

Based on the foregoing, it is the Petitioners' view that this matter fulfills the requirements for the imposition of provisional remedies. The Petitioners also submit that by the evidence provided the State's domestic laws fail to provide appropriate and effective mechanisms through which to be able to legally obtain suitable remedies. Additionally, because of those inefficiencies it was "impossible to obtain an impartial and exhaustive judicial investigation into the very serious human rights violations that have occurred in the past."⁵⁴ Consequently, the Petitioners submission falls squarely within the exemption of Article 46(2)(a).

II. PROCEDURAL ARGUMENTS

Facts will demonstrate that Naira has Breached its Duties under the American Convention

The provision of the American Convention imposes a duty on Naira to protect the Quispe sisters from the harms they suffered. Petitioners submit that the incidents relevant to Warmi and harms suffered violated numerous rights under the American Convention. The States parties as per Article 1(1) of the American Convention commits to respect the rights and freedoms contained in its provisions. The States parties also commit to ensure that its citizens can freely exercise those rights and freedoms "without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."⁵⁵ Whilst no provision of the Convention imposes an affirmative duty on Naira to actually prevent the commission

⁵⁴ IACHR. Report No. 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, and 10.375, Uruguay, October 2, 1992.

⁵⁵ Ibid

of individual crimes by private parties, case law of the Court and of the Inter-American Commission on Human Rights, can be interpreted to impose such a affirmative obligation upon the Naira to have implemented the requisite measures to mitigate against these harms.

The Convention imposes legal obligations on those States, which have chosen to ratify or accede to it. The Petitioners affirm that the violations of Article 4, 5, 6, 7, 8 and 25 were to their detriment. These provisions impose an affirmative duty upon States to mitigate against crimes by private parties that might undermine an individual's enjoyment of these rights.

The State has shown a kneejerk response to the implementation of law necessary to prevent the violations being contended by the Petitioners, this as laws were only implemented after significant public outcry. In addition the accompanying policies have procedurally blocked the effect of laws implemented. This is evident by the fact that a report of domestic abuse made to the police was not appropriately investigated and ultimately prosecuted because of the vacating of the medical examiner, who was needed to complete the requisite medical report. Article 1(1) describes an obligation to respect the rights protected by the Convention and to ensure their enjoyment without discrimination. States Parties have implicitly accepted an obligation to militate against and punish criminal conduct by private or non-State actors Naira has also ratified the International Covenant on Civil and Political Rights (ICCPR). Article 2(1) of the ICCPR contains a similar language regarding a State Party's obligation to respect and to ensure the protected rights, and, like the American Convention. The article imposes an obligation to provide the Petitioners with the requisite means to seek remedies arising from all criminal conduct, including those by private or non-State actors. Therefore in the instant case Naira has an

obligation under the ICCPR to ensure that the Petitioners were provided with the requisite mechanism to seek judicial remedies for the criminal conduct and human rights abuses committed by the military and those committed by Jorge Pérez.

The State of Emergency and Suspension of Guarantees

Many of the human rights violations central to the Petitioners' case were committed between 1980 and 1999, while Naira had a State of Emergency in place. Article 27 (1) of the Convention does allow Naira to suspend certain guaranteed rights while the country is under threat. It essentially states that where public danger that threatens the security of a State exists, that State may take measures derogating from some of its obligations under the Inter-American Convention on Human Rights, but only to the extent and for the period of time strictly required to remedy the situation. The State of Naira may seek to legitimize or excuse the acts of its agents by stating that they occurred while those Province where under a State of Emergency with certain rights being suspended.

Significantly, Article 27 (2) clearly stipulates that certain rights shall not be affected by the declaration of a State of Emergency. Of these rights the ones of issue to this case are Article 4 (The Right to Life), Article 5 (The right to Humane Treatment), Article 6 (The Right to Freedom from Slavery), and the judicial guarantees essential for the protection of such rights. These rights remained in full effect while Naira had its State of Emergency in place.

Article 29(c) of the Convention points out that no provision of this treaty can be interpreted in the sense of "precluding other rights or guarantees that are inherent in the

human personality or derived from representative democracy as a form of government.”⁵⁶ More importantly, the convention by Article 27 (2) as well as this Court has established that by international human rights law that torture and cruel, inhuman or degrading treatment or punishments, and the right of Freedom from slavery is strictly prohibited. These rights are absolute and non-derogable, “even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, State of Siege or Emergency, internal conflict or unrest, suspension of constitutional guarantees, internal political instability or other public disasters or emergencies.”⁵⁷ A point emphasized by Father Jaime Oraa Oraa in his book *Human Rights in States of Emergency in International Law*.⁵⁸ The European Court of Human rights took a similar position in the *Lawless Case*, when it held that the Irish government was justified in its response to terrorist activities, by calling a public State of Emergency, this as safeguards to prevent abuse were implemented.⁵⁹ It should be noted that there is no evidence that any such safeguards were put in place by the State of Naira in the case at hand.

Of the rights which Naira is accused of violating those affected by the government of Naira calling a State of Emergency were the right to Right to Personal Liberty, a Fair Trial and the Right to Judicial Protection (Article 7, 8 and 25 of the American Convention). As this court ruled in *Gonzales v Peru*, the suspension of guarantees should constitute an exceptional situation. The Turku/Abo Declaration of minimum humanitarian standards,

⁵⁶ AMERICAN CONVENTION ON HUMAN RIGHTS

⁵⁷ Case of Mendoza Et Al. v. Argentina, 2013 Inter-Am. Ct. H.R. (ser. C) No. 260, at 173 (May 14)

⁵⁸ Jaime Oraa, *Human Rights In States Of Emergency In International Law* 7 (1992); Nigel S. Rodley, Book Review, 42 INT'L & Comp. L.Q. 732, 732-33 (1993)

⁵⁹ The *Lawless Case* 1 Eur. Ct. H.R. (ser. A) (1960)

which ought to guide States as to the International custom during States of Emergency. It states that:

- All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.
- All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.
- The right to an effective remedy, including habeas corpus, shall be guaranteed as a means to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty.
- Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.
- All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

The Petitioners contend that the detention of the Quispe sisters falls short of all these minimum standards. Notwithstanding the State of Emergency being in place the detention may be considered a violation of the minimum standards relating to the right to Personal Liberty, a Fair Trial and Judicial Protection.

Violations of the Right to Life (Article 4 of the Convention)

The Petitioners submit that the State of Naira is in violation of Article 4 of the Inter-American Convention of Human Rights to the detriment of Ms Elena and Monica Quispe. The State failed to provide an environment where a women's right to life is respected and protected. The State's failure to take adequate action has allowed widespread discrimination to take root in the society. The Petitioners therefore submit that the State of Naira must be held responsible for its failure to fulfil its obligations under the Inter-American convention.

Article 4(1) of the American Convention provides that "every person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life." The observance of Article 4, in relation to Article 1(1) of the American Convention, presupposes not only that no person may be deprived of his life arbitrarily (a negative obligation), but also requires the States to adopt all appropriate measures to protect and preserve the right to life (a positive obligation), pursuant to the obligation to ensure to all persons subject to its jurisdiction the full and free exercise of their rights. This is not the case in the State of Naira. The Petitioners live in a society where the lives of women are not value or protected by the State as evidenced the State failure to enact the necessary legislative framework fulfill its obligations under the convention to protect the women of its society.

In the *Case of González et al. ("Cotton Field") v. Mexico* this court held that the right to life plays a fundamental role in the American Convention, as it is the condition on which all other rights are dependent. The inter-American human rights system has affirmed

the States' obligation to act with due diligence in response to human rights violations.⁶⁰ This duty involves four obligations: the obligation to prevent, the obligation to investigate, the obligation to punish and the obligation to make reparations for human rights violations. The Court has held that protection of the right to life is a critical component of a State's due diligence obligation to protect women from acts of violence. This legal obligation pertains to the entire State institution, and includes as well any obligations the State has to prevent and respond to actions of non-State actors and private parties. Thus, the inter-American human rights system has asserted that the State's obligation to act with due diligence in cases of human rights violations also applies, under certain circumstances, to the actions of non-State actors, third parties or private parties.

In order to determine whether the acts of third parties can be deemed violations for which the State bears international responsibility, the Court has cited the jurisprudence of the European Court, which suggests that a State can be held internationally responsible for violations committed by third parties when it is shown that the State knew of a real and immediate risk and failed to take reasonable measures to prevent it.

In the case at hand the appellant Ms María Elena Quispe has been a victims of gender-based violence for much of her life. First, as children where they suffered false detention, forced labour and numerous instances of sexual abuse the Special Military Base (SMB). Then later as an adult where she despite numerous reports she was repeatedly attacked by her ex-husband. The Petitioners submit that these incidents form a part of a continuing trend showing that the State of Naira have failed to protect these women's right to life. Already the women quality of life has been severely affected by the States inaction

⁶⁰ See I/A Court H.R., Case Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4, paragraph 172.

and urgent pro-active action is needed before the next incident occurs, an incident, which the women may not survive.

This trend has been highlighted by the Non-Governmental Organization Killapura which maintains that the State of Naira has consistently neglected its duty to adequately respond to instances of Gender based violence. It points to two recent cases involving the woman of Naira, namely the cases of Zuleimy Pareja and Analía Sarmiento. In both cases the State failed to protect the women's right to life, showing a pattern of ineffective protection of women by the State. Truly effective active protection of the right to life by the State involves not just lawmakers, but the entire apparatus of the State and those responsible for protecting safety and security, whether they are police or military.⁶¹ States have an obligation to take the measures necessary not just to punish, but to make attempts to prevent violations of the right to life.

In the case of *María Da Penha v. Brazil*, the Court found that the State violated its obligation to act with due diligence to prevent, punish and eradicate the violence perpetrated against the victim, by not prosecuting, convicting and punishing the perpetrator for five years, despite the complaints lodged. The Court concluded that the violation was part of a “a general pattern of negligence and lack of effective action by the State” and hence constituted not only a failure to fulfil the obligation with respect to prosecution and conviction, but also the obligation to prevent these degrading practices.

The Petitioners request that the court orders the State of Naira take immediate action to enact the necessary legislative and administrative framework to ensure that such

⁶¹ Maria da Penha v. Brazil, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000)

violations never happens again. The State is also obligated under international law to provide reparations to those who suffered at hands of the State agents.⁶²

Violations of the Right to Humane Treatment (Article 5 of the Inter-American Convention On Human Rights)

The Petitioners submit that the State of Naira is in violation of Article 5 of the Inter-American Convention of Human Rights to the detriment of the Ms Elena and Monica Quispe. This with respect the cruel and inhumane treatment they received while in the custody of the military at the SMB in 1992. The women were repeatedly raped by agents of the State actions for which the State clearly bears ultimate responsibility. Article 5 of the Convention provides that “[e]very person has the right to have his physical, mental, and moral integrity respected. No one shall be subjected to torture or to cruel, inhumane, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. Punishment shall not be extended to any person other than the criminal.”

Paragraphs 28 & 29 of the Hypothetical indicate that the Petitioners and many other young women, were subjected to humiliation by being stripped naked, groped and beaten. In addition, these women were subjected to repeated rape committed by agents of the State at a military base, during their prolonged period of false imprisonment. It should be obvious that anyone who is forced to endure such conditions has suffered cruel and inhumane conditions. In *Yazgül Yılmaz v. Turkey*⁶³ the applicant complained that, at the age of 16, she was sexually harassed while in police detention. In this case the European Court of

⁶²Factory at Chorzów (Germany v. Poland) (1928) P.C.I.J., Ser. A, No. 17

⁶³ *Yazgül Yılmaz v. Turkey*, No. 36369/06, 1 February 2011.

Human Rights held that that there had been a violation of Article 3 (prohibition of inhuman treatment) of the European Convention.

What the Quispe sisters faced while in the custody of the SMB was even worse and Represents a clear violation of their rights under The Inter-American Convention. The State of Naira is obligated under treaty to launch an effective criminal investigation of the events in Warmi with a view to ensure that justice is served. The State is also obligated reparations to to the Quispe sisters for the pain and suffering they endured at the hands of the State.

Violations of the Right to Freedom from Slavery (Article 6 of the Convention)

The Petitioners submit that the State of Naira is violation of Article 6 of the Inter-American Convention of Human Rights to the detriment of the Ms Elena and Monica Quispe; this with respect their right to their freedom from slavery being violated in the custody of the military at the SMB in 1992.

The facts of the case also indicate that these women where they were forced to wash, cook, and clean every day. Article 6 of the Convention provides that “No one should become subject to involuntary servitude” and “no one should be required to perform forced or compulsory labor” where that person has not been convicted and sentenced for a crime. These young ladies never stood trial. They were never convicted of a crime and they were not sentenced to hard labour. The SMB had no right to force these ladies to work for them against their will, and them doing so constitutes involuntary servitude.

This is again a violation of these ladies’ rights, the right for protection from slavery and as these acts where perpetuated by State actors. The State should be held

responsible and asked to make the necessary reparations to compensate the victims for the harm inflicted upon them.

Violations of the Right to Personal Liberty (Article 7 of the Convention)

The Petitioners submit that Naira has violated the right to personal liberty as guaranteed by Article 7, because they and other women were subjected to a prolonged period of imprisonment and not afforded the mechanisms of due process. Many of these women, who were young girls, were also subjected to humiliation by being stripped naked, groped and beaten. Article 7 of the Convention provides that “[e]very person has the right to personal liberty and security.” It further provides that where an individual is detained they should be brought before a judge or other such judicial official within a reasonable to answer to the charges, or be released without prejudice.⁶⁴

The Hypothetical states in paragraph 9 that Naira, as a countermeasure to criminal acts being conducted by an armed drug trafficking group, declared a state of emergency and also suspended guarantees. Naira gave notice to the General Secretary of the Organization of American States (OAS) of its intention to derogate certain guarantees of the Convention. However, whilst the giving of notice fulfilled the requirement of Article 27 (3) of the OAS Charter, there are clear indications that the activities of the agents of Naira during this period of suspension of guarantee, does not meet the requirements of Article 27(1). That provision of the Convention states that suspension of guarantees may be permitted where there is war, danger to the public “or other emergency that threatens the independence or security of a State Party.” The provision stipulates that the measures

⁶⁴ American Convention on Human Rights

implemented should not conflict with other State “obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.”⁶⁵ Naira, by the actions of its military, breached this obligation, by the false imprisonment of the Petitioners and other victims, as well as the discriminatory atrocities against them because they were women.

The Preamble of the Convention reaffirms the determination of the State Parties “to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man.”⁶⁶ Naira, by allowing its military during the State of Emergency to operate without due regard for the personal liberties of citizens within the affected provinces, violated its affirmation to safeguard and respect this right. Naira should therefore be required to compensate the Petitioners and other victims for the gross human rights violations.

Violations of the Right to a Fair Trial & Rights to Judicial Protection (Articles 8 & 25 of the Convention)

The Petitioners submit that Naira has violated articles 8 and 25 of the convention to their detriment, as it failed to implement the requisite laws, which would provide judicial remedies for acts criminal committed; as well as failing to ensure that its citizens were afforded due process under the law for abuses of their human rights.

Renown international law author Michael Akehurst has stated that the use of the word ‘pledge’ in Article 56 of the United Nations Charter implies a legal obligation on the

⁶⁵ Ibid

⁶⁶ Ibid

members States to the Charter to undertake the duties contain therein.⁶⁷ This obligation includes the duty to act with due diligence and entails enabling access to appropriate and effective remedies when human rights are violated.⁶⁸ Consequently, the duty of the State extends to more than providing judicial remedies as recognized in the constitution or the law, but “they must be suitable to rectify the human rights violations denounced.”⁶⁹ The State must therefore accept its breach of its legal obligation as per Article 25 based on the lack of due diligence relevant to the investigation conducted into the attack on Mrs. María Elena Quispe, particularly its failure to ensure performance of the requisite medical examination. The lack of due diligence was also manifested in its failure to take urgent action for the protection of Mrs. María Elena Quispe, as required by Law 25253 on violence against women and the family. This shows that there were serious shortcomings and weaknesses throughout the investigation and judicial process.

Further, though the law of Naira recognizes femicide and rape as criminal offences, there is no legal recognition of any other sexual or gender-based violence as a crime. According to the United Nations sexual violence is a type of gender-based violence which includes, *inter alia*, any actual or attempted sexual act and unwelcomed sexual remarks or advances, directed at a person based on their sexuality by another individual, “regardless of their relationship to the victim, in any setting.”⁷⁰ The Laws of Naira offers little protection to its women against sexual harassment and other sexual violence. By its own Ministry’s statistic indicates that seventy percentages of women between the ages of 15 to 35 is subjected to daily sexual harassment throughout their lives.⁷¹

⁶⁷ Akehurst M and Malanczuk P, *A Modern Introduction to International Law* (Routledge 1997), page 212

⁶⁸ IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007.

⁶⁹ Case 12,578, Maria Isabel Veliz Franco Et A.l Merits, Guatemala, November 3, 2011, PARA 99

⁷⁰ http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagars/Sexual_and_gender-based_violence.pdf

⁷¹ Hypothetical, para. 12

The Hypothetical has shown that Naira has permitted wide-scaled gender-based discriminatory sexual violence to be perpetuated without proper investigation or prosecution, thereby providing the principal and secondary victims with the requisite justice. The cases of Zuleimy Pareja, a transgender woman and 19-year-old student Analía Sarmiento who disappeared, are demonstrative to this fact. Zuleimy Pareja died at the hands of her partner, who not sentenced for femicide but only received a sentence of 15 years sentence, because the victim was painted as a philandering lover. Analía Sarmiento was raped and murdered because she rebuffed her killer's sexual advances. The perpetrator was out on probation for a previous rape conviction. These two cases further highlight the Naira's breach of its obligation as guaranteed by Article 25, to the detriment of the Petitioner's. The punishments certainly did not fit the crime of murder.

This Court has held that the right to a judicial remedy "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention."⁷² Article 8 provides that "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal."⁷³ Further, Article 25 requires that states provide all citizens the right to a judicial remedy.⁷⁴ It is justifiable that there may be some restrictions on a person's procedural rights to ensure the person's own protection, the protection of others, or the proper administration of justice, the limitations cannot be unduly restrictive.⁷⁵ Therefore, the Petitioners submit that it is the State's legal obligation to ensure that there are legal remedies to both an accused persons and the victim. This Court has also held that

⁷² *Case of Loayza-Tamayo v. Peru* at 169.

⁷³ *Id.* At art. 8

⁷⁴ American Convention at art. 25.

⁷⁵ *See Salontaji-Drobnjak v. Serbia* at 144.

anyone whose human rights were violated has a right to get information clarifying the events which led to the violation, “from the competent organs of the State...established by means of the investigation and prosecution provided for in articles 8 and 25 of the Convention.”⁷⁶ Also, this Court has observed that access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin to have everything possible done to know the truth of what happened and the responsible parties punished.⁷⁷ The Petitioners and other victims of the human rights abuses committed during the state of emergency have yet to be provided with the requisite explanation into the actions of the state agents, neither have they been afforded the requisite means by which to obtain justice.

The afore-mentioned details are demonstrative of Naira violation of its legal obligations under Articles 8 and 25 to the detriment of the Petitioners, for which reparation in the form of compensation should be awarded as per Article 63 of the convention.

Violations of the right laid out in Article 7 of the Convention of Belém do Pará

The Petitioners submit that Naira has beach its obligations under Article 7 (b) of the Convention of Belém do Pará as it failed to appropriately and promptly implement measure, legislation and policies for the prevention and protection against violence and discrimination of women, this to the detriment of the Petitioners.

⁷⁶I/A Court H.R., Case of Barrios Altos, Judgment of March 14, 2001, Series C No. 75, paragraph 48.

⁷⁷See I/A Court H.R., Case of the Miguel Castro Castro Prison, Judgment of November 25, 2006. Series C No. 160, paragraph 382, citing Case of Vargas Areco; I/A Court H.R., Case of the Ituango Massacres. Judgment of July 1, 2006. Series C No. 148, paragraph 289; and Case of the Pueblo Bello Massacre, Judgment of January 31, 2006. Series C No. 140, paragraph 171.

The preamble to the Convention of Belem do Para includes, inter alia, the following affirmations by the States parties “that violence against women constitutes a violation of their human rights and fundamental freedom.”⁷⁸ The States parties thereafter agree, as per Article 1 of the Convention of Belem do Para, that “violence against women shall be understood as any act or conduct, based on gender, which caused death or physical, sexual or psychological harm or suffering to women, whether in public or in private sphere.”⁷⁹ Article 2 of the Convention of Belem do Para further defined violence against women to include “physical, sexual and psychological violence” whether in a family or domestic relationship, as well as that which is “perpetuated or condoned by the State or its agents, regardless of where it occurs.”⁸⁰ By its ratification of the Convention of Belem do Para, Naira has agreed to the definition of violence against women and has accepted the affirmation of and obligation thereunder.

The Hypothetical clearly shows that the State is in gross breach of its duty to the detriment of the women in the society, as the State has assumed the responsibility under Article 7(c) to enact domestic legislation to protect these women. It appears that the State has allowed influential groups such as the “Respect my Children Party” to block the regulatory reforms that would be necessary to fulfill its obligations. While some of the changes that the government is proposing now is a step in the right direction.

The Petitioners posit that:

⁷⁸<https://www.oas.org/en/CIM/docs/Belem-do-Para%5BEN%5D.pdf>

⁷⁹ Convention of Belém do Pará, Article 1

⁸⁰ Convention of Belém do Pará, Article 2

- These reforms are some twenty years too late. Article 7 of the Convention of Belem do Para speaks to the state implementing changes “by all appreciate means and without delay”. The ZTPGBV was not implemented until 2016 and the fact that it has taken so many years and the death of so many women for the State to start to fulfill its obligations is an indictment on the State.
- Given to country’s political state, with a history of lack of respect for women’s rights, it is likely that without this Court’s intervention many of these proposals being put forward by the State will never be implemented. Recent evidence of this was seen when groups within Congress managed to prevent the inclusion of a gender-based perspective in schools. The State’s offer to review the legislation on femicide violence, discrimination and issues of gender identity must be taken in context. The fact that the State will be seeking a “national consensus” on what will be a divisive issue only alludes to long delays and even a false hope
- The reforms that have been proposed do not go far enough to fulfill the states obligation. Nothing under the ZTPGBV or any of the State’s other reforms address the issue of providing justice for all those victims who have suffered while the State neglected its obligations. The only thing that has been mention in that respect is the high-level commission to explore the potential reopening of cases, an illusionary remedy at best.

Violations of Article 7 of the Convention of Belem do Para cannot be adjudicated without reference to Articles 8 and 9. As the States parties agree as per Article 8 to implement measures and programs geared towards promoting “awareness and observance of the rights of women to be free from violence”.⁸¹ Further, by adopting the Convention of Belem do Para, the States parties

⁸¹ Convention of Belém do Pará, Article 8

agreed, per Article 9, to take “special account of the vulnerability of cowmen to violence.”⁸² The Petitioners submit that the facts presented have demonstrated that Naira has violated is Article 7, and necessitates reparations.

The provisions the Convention of Belém do Pará and the CEDAW imposes a legal obligation on Naira to act without delay in the implementation of legislative and other measures to prevent and eradicate violence and discrimination against women, as well as to investigate and punish those who perpetrate such heinous acts.

Article 2 (b) of CEDAW, to which Naira is a State Party, condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake... “[t]o adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.” Killapura the local Non-Governmental Organizations has publicized for many years the widespread gender-based discrimination against women and have decried the State’s lack of response to the needs of women. Law 19198 against street harassment and Law 25253 entered into force July and January 2014, respectively. Of factual note is that both Laws took legal effect within the same year of the attack on Maria in the street; 19198 seven months after and 25253 in the eighteen days prior, eighteen years after the ratification of the Convention of Belém do Pará.

The State’s delay in implementing the requisite laws since its ratification of the Convention of Belém do Pará is evidence of its breach of duty to the detriment of the Petitioners, this in gross violation of its obligation under Article 7. The Petitioners request that Naira be requested to

⁸² Convention of Belém do Pará, Article 9

implement the requisite legislation and policies to safeguard against any such future violations. Naira should also be required to make reparations in the form of compensation to the Petitioners and other victims.

III. CONCLUSION

Petition Should Be Determined to be Admissible and the Request for Relief Should be granted

The Petitioners have demonstrated that its' claims of human rights violations against Naira are supported by the evidentiary record. The facts as outlined above, demonstrates that Naira and its agents acted unjustly and the standard due diligence process was ineffective. For the reasons set forth above, the petition itself is admissible based on the State's breach of duty under the American Convention.

In her book Remedies in International Human Rights Law, Dinah Shelton summarized the principles governing compensation of victims of gross violations of international human rights as:

- a) Allowing equal and effective access to an effective judicial remedy;
- b) Ordering Adequate, effective, and prompt reparation for harm suffered proportional to the gravity of the violations; and
- c) Access to relevant information concerning violations.⁸³

IV. PRAYER FOR RELIEF

⁸³ Shelton D, *Remedies in International Human Rights Law*. 3rd Rev. Ed (Oxford University Press 2015)

Accordingly, based on the foregoing submissions, the Representatives of the Victims respectfully request that this Court:

- a. Declare that The State of Naira has violated the rights enshrined in Articles 4, 5, 6, 7, 8 and 25 of the *American Convention*, all in conjunction with Articles 1(1) and 2 to the detriment of Ms. Maria Elena Quispe and Monica Quispe;
- b. Declare that State of Naira has violated the rights enshrined in Articles 7 of the *Convention of Belem do Para* all in conjunction with Articles 1(1) and 2 o the detriment of Ms. Maria Elena Quispe and Monica Quispe;
- c. Order the State to publicly acknowledge international responsibility regarding the facts of the case, making reference to the human rights violations considered in this judgment;
- d. Order the State to conduct an efficient criminal investigation of the SMB's operations in Warmi with a view to prosecuting those reasonable for torture and Rape of these and other women;
- e. Order that the State institute with all urgency the legislation necessary to bring the State of Naira with its international obligations under the American Convention and the Convention of Belem do Para;
- f. Order that the State of Naira pays reparations to Ms. Maria Elana Quispe and Ms. Monica Quispe, as well as any other victim of the SMB that emerge from the criminal investigation; and
- g. Order that the State of Naira covers all costs associated with bringing this case before the Inter-American Commission and this Court.