
IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

MARÍA ELENA QUISPE AND MÓNICA QUISPE, et. al

Petitioners

v.

THE REPUBLIC OF NAIRA

Respondent

MEMORIAL FOR THE STATE

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III. STATEMENT OF FACTS

The Political Climate in NAIRA

NAIRA is a democratically ran State with a population of 20 million people.¹ Like many democracies, it has gone through a period of time where the political climate has changed and has been suffering a crisis.² In April of 2014, Gonzalo Benavente was elected and now has three years remaining until the end of his term in office.³ Benavente is the leader of the Democratic Reform Party, which continues to promise and campaign for regulatory changes and government programs to promote inclusion for specifically vulnerable groups.⁴

Unfortunately, political groups throughout the Republic have been fighting back against these changes.⁵ One of the most influential groups that has supplied a great deal of pushback in Congress is the “Respect My Children” Party.⁶ This group believes that NAIRA is losing its core values and traditional meaning of family.⁷ With their influence, the group has been able to halt a great deal of the government’s push towards progression, including preventing the inclusion of a gender perspective in the national educational curriculum.⁸

President Benavente has worked hard to maintain a solid relationship between the executive and legislative branches, but the president’s cabinet is evaluating the possibility of making certain compromises.⁹ NAIRA is a monist State and the country’s constitution establishes that duly ratified treaties are directly enforceable by the courts and have

¹ Hypothetical, ¶1

² Hypothetical, ¶2

³ Hypothetical, ¶2

⁴ Hypothetical, ¶2

⁵ Hypothetical, ¶3

⁶ Hypothetical, ¶4

⁷ Hypothetical, ¶4

⁸ Hypothetical, ¶4

⁹ Hypothetical, ¶5

constitutional status, prevailing over domestic laws.¹⁰ NAIRA has ratified all of the international treaties, including, but not limited to, the American Convention on Human Right and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.¹¹

Present Day Laws

Long before Benavente had been elected and began pushing for more equality and progression, NAIRA faced numerous acts of violence, primarily in Soncco, Killki, and Warmi.¹² These areas in particular were the forefronts of these groups because of the armed group named “Freedom Brigade.”¹³ Freedom Brigade’s very goal was to force destruction in NAIRA without State intervention.¹⁴

NAIRA’s regulatory framework includes Law 25253 on violence against women and the family and Law 19198 against street harassment.¹⁵ This legislation was signed into law on January 2, 2014 and July 7, 2014, respectively.¹⁶ Despite these regulations and all of its efforts, NAIRA still faces issues.¹⁷ Women are often targeted and persecuted.¹⁸ According to the National Statistics Institute, 3 out of every 5 women were assaulted by their partners or ex-partners in 2016.¹⁹ Despite efforts toward equality, the Ministry of Labor reports that the wage gap between women and men is 16% in the public sector and 29% in the private sector.²⁰

¹⁰ Hypothetical, ¶6

¹¹ Hypothetical, ¶7

¹² Hypothetical, ¶8

¹³ Hypothetical, ¶8

¹⁴ Hypothetical, ¶8

¹⁵ Hypothetical, ¶14

¹⁶ Clarification, question 28

¹⁷ Hypothetical, ¶12

¹⁸ Hypothetical, ¶12

¹⁹ Hypothetical, ¶12

²⁰ Hypothetical, ¶13

As mentioned, NAIRA does have laws to try and combat the harm and inequality that exists.²¹ Laws like 25253 and 19198 are implemented in order to act as a deterrent, as well as retributive punishment, for those that seek to act in such horrific ways.²² The law punishes femicide and rape, with sentences ranging from 12 years to life to 25 years to life, depending on aggravating circumstances.²³ Despite many efforts and steps towards progression, NAIRA has not decriminalized the termination of pregnancy in rape cases.²⁴ The country still upholds some of their original traditional laws, such as not recognizing same-sex marriage or establishing a gender identity law.²⁵

Violence in NAIRA and Government Responses

In 2010, a transgender woman named Zuleimy Pareja was murdered by her partner, Angelino Mendoza.²⁶ Essentially, “femicide”, according to the Criminal Code of the State of NAIRA, is attributable to any person who murders a woman, because of her status as such, in a variety of situations or circumstances.²⁷ The First Criminal Court, and eventually the Supreme Court, did not find that the crime fell within femicide, however, because Pareja was transgender, and her identification card stated that she was male. This “disqualified” the case from being classified as femicide.²⁸ The court convicted Pareja’s partner of murder (ultimately, as a Crime of Passion because of infidelity that had occurred in the relationship) and he was sentenced to 15 years of prison.²⁹

²¹ Hypothetical, ¶14

²² Hypothetical, ¶14

²³ Hypothetical, ¶14

²⁴ Hypothetical, ¶14

²⁵ Hypothetical, ¶14

²⁶ Hypothetical, ¶16

²⁷ Clarification, question 4

²⁸ Hypothetical, ¶17

²⁹ Hypothetical, ¶17

The second case involved the detriment suffered by Analía Sarmiento.³⁰ Sarmiento attended a club on January 7, 2015 and disappeared that same night.³¹ During the course of the evening, Guillermo Alcazar had tried kissing her and she declined, pushed him, and ran off.³² Alcazar then followed Sarmiento, raped her, and proceeded to kill her afterwards.³³ It was later discovered that Alcazar had been previously charged and once convicted of rape, but was out on probation at the time.³⁴

NAIRA took significant and immediate action in response to this horrific situation by implementing a collective group of measures on February 1, 2015³⁵, known as the Zero Tolerance Policy on Gender-Based Violence (ZTPGBV). These measures were supported with a very significant budget in order to implement the goals effectively.³⁶ Through ZTPGBV, various programs were created.³⁷ The State created an Administrative Program on Reparations and Gender to implement reparations³⁸ measures for victims of any and all kinds of gender-based violence, prioritizing cases of femicide and rape.³⁹ In addition to this program, the State of NAIRA created a Gender-Based Violence Unit in the public prosecutor's office and judicial branch, in order to specifically aid female victims.⁴⁰ This unit also has the legal authority to assign penalties to public officials who commit acts of gender-based violence and

³⁰ Hypothetical, ¶18

³¹ Hypothetical, ¶18

³² Hypothetical, ¶18

³³ Hypothetical, ¶18

³⁴ Hypothetical, ¶18

³⁵ Clarifications, question 93

³⁶ Hypothetical, ¶19

³⁷ Hypothetical, ¶22

³⁸ See United Nations Guidelines on the Right to a Remedy and Reparation, Principle 9

³⁹ Hypothetical, ¶22

⁴⁰ Hypothetical, ¶20

discrimination.⁴¹ Further, this program included mandatory education and training for judges, prosecutors, and other public servants for this new program.⁴²

Lastly, the State set forth the ability to review legislation on violence, femicide, discrimination and issues of gender identity in accordance with a national consensus, so that the issues decidedly discriminatory, could be amended.⁴³

Current Situations in NAIRA

María Elena Quispe

The case of María Elena Quispe is one that NAIRA is currently dealing with.⁴⁴ María Elena Quispe was allegedly disfigured by her husband, Jorge Pérez.⁴⁵ Ms. Quispe reported the incident, but because the only medical examiner in town was not available, Ms. Quispe could not undergo the correct and necessary medical exam for evaluation.⁴⁶ A trickle-down effect occurred, where, because the medical examiner was out of town, and the exam could not be done, the police were unable to take immediate action against the alleged perpetrator.⁴⁷ The public prosecutor could not bring charges. This ultimately meant that the arrest could not be accomplished at the time.⁴⁸

Four months later, Pérez insulted and harassed Ms. Quispe; this time in public.⁴⁹ Unlike the last occurrence, Pérez was both arrested and prosecuted.⁵⁰ He was sentenced to a year of suspended jail time because of having no formal history of violence. Ultimately, the medical

⁴¹ Hypothetical, ¶20

⁴² Hypothetical, ¶20

⁴³ Hypothetical, ¶21

⁴⁴ Hypothetical, ¶23

⁴⁵ Hypothetical, ¶23

⁴⁶ Hypothetical, ¶23

⁴⁷ Hypothetical, ¶24

⁴⁸ Hypothetical, ¶24

⁴⁹ Hypothetical, ¶25

⁵⁰ Hypothetical, ¶25

examiner ruled that the victims' injuries were minor.⁵¹ This last time Pérez hurt Ms. Quispe, he was arrested by the state.⁵²

María Elena Quispe's sister, Mónica Quispe, filed a complaint at the time of the events with the court, and the case is still pending.⁵³ Custody over María Quispe and Pérez's son is a focal point of the case, and Pérez is continuing to seek psychological treatment so that he can have custody of his son when the case is over.⁵⁴ The family court judge initially ruled in favor of Pérez, stating that there was no reason to believe that a relationship between a father and son would be harmed because of Intimate Partner Violence.⁵⁵ At the present time, however, María Quispe has custody of María Elena and Pérez's son.⁵⁶

The Events That Took Place on the Special Military Base (SMB)

Mónica Quispe reported that both she and her sister, while they were young, were held on false accusations at a Special Military Base (SMB) in Warmi.⁵⁷ The SMB was established in Warmi in order to control and maintain the area from the years of 1990-1999.⁵⁸ At this time, NAIRA was in a State of emergency.⁵⁹ Because rights were suspended during the State of Emergency in NAIRA, the arrests were able to take place without any formal proceedings or steps.⁶⁰ During the State of emergency, the other States Party to Convention through the OAS General Secretary were put on notice about NAIRA's derogation of the rights to the inviolability of the home, freedom of movement, the right of assembly, and the right not to be arrested

⁵¹ Hypothetical, ¶25

⁵² Hypothetical, ¶25

⁵³ Hypothetical, ¶26

⁵⁴ Hypothetical, ¶26

⁵⁵ Hypothetical, ¶26

⁵⁶ Clarifications, question 18

⁵⁷ Hypothetical, ¶27

⁵⁸ Hypothetical, ¶27

⁵⁹ Clarification, question 10

⁶⁰ Clarification, question 27

without a probable cause warrant from a judge or by police authorities in *flagrante delicto*.⁶¹ Additionally, Mónica Quispe alleged that the sisters were forced to do tedious chores, such as cooking.⁶² Mónica Quispe also claimed that they were both raped several times by the soldiers⁶³, and that she saw other females who were forced to get naked in front of the soldiers, and were assaulted by them.⁶⁴

As soon as the State was able to gain control of the area with the surrender of the armed opposition, the SMB was deactivated.⁶⁵ The allegations of sexual violence and abuse was never reported by the victims.⁶⁶

Killapura's Claims Against the State

In response to news of this story, a non-profit organization, Killapura, took on the cases of the Quispe sisters.⁶⁷ Killapura filed criminal complaints, alleging sexual violence by those at the SMB, against both sisters in Warimi.⁶⁸ The claims, however, legally expired because of the 15-year statute of limitations.⁶⁹ Even when the initial news of the allegations reached Warimi, and public statements were released, a majority of Warimi's citizens agreed that something like this would have never occurred in their community.⁷⁰ In fact, NAIRA had never heard of the claims until the reports were aired on television in 2014.⁷¹ Killapura claimed that not only should the government take the necessary steps to make sure the cases of the Quispe sisters were

⁶¹ Clarification, question 10

⁶² Hypothetical, ¶28

⁶³ Hypothetical, ¶28

⁶⁴ Hypothetical, ¶29

⁶⁵ Hypothetical, ¶30

⁶⁶ Hypothetical, ¶30

⁶⁷ Hypothetical, ¶31

⁶⁸ Hypothetical, ¶33

⁶⁹ Hypothetical, ¶33

⁷⁰ Hypothetical, ¶32

⁷¹ Hypothetical, ¶32; Clarification 8

heard, but that an investigation at large should be opened about alleged rapes, and that reparations should be available for potential children born from those rapes.⁷²

NAIRA's executive branch responded to the complaints on March 15, 2015 in order to address the concerns and justice to the extent that it could.⁷³ The executive branch stated that while it did not have the power to interfere in the judicial realm, it would act within the power it had, such as creating a High-Level Committee that would look into reopening the criminal cases (including that of the Quispe sisters in the ZTPGBV), and establishing a Truth Commission.⁷⁴ The work of the High-Level Committee is currently ongoing, and, as such, has not issued a final evaluation yet.⁷⁵ A Special Fund would be also created for reparations from the findings of the Truth Commission.⁷⁶ The Truth Commission is currently conducting investigations, interviewing different individuals, and taking actual testimony from people in the affected areas of violence in NAIRA between 1970 and 1999.⁷⁷ The State also explained that in the cases of children born of rape and their status, it would provide for their immediate registration in the Public Registry of the ZTPGBV.⁷⁸ They also explained that they would be monitoring the case of attempted femicide with María Elena Quispe, as well as the custody with her son.⁷⁹ The State was transparent, and also asked for patience and understanding because of the great efforts it has made to fight discrimination at large in NAIRA.⁸⁰ President Benavente addressed the issues and solutions himself to the community at large.⁸¹

⁷² Hypothetical, ¶33

⁷³ Hypothetical, ¶34

⁷⁴ Hypothetical, ¶34

⁷⁵ Clarification, question 13

⁷⁶ Hypothetical, ¶34

⁷⁷ Clarification, question 15

⁷⁸ Hypothetical, ¶35

⁷⁹ Hypothetical, ¶35

⁸⁰ Hypothetical, ¶35

⁸¹ Hypothetical, ¶34

Killapura did not believe that NAIRA's efforts were enough because of the nature of the alleged crimes against the Quispe sisters.⁸² Killapura maintained that the extra attention and address needed to be done because it would have an impact on the culture in Warimi at large, as well as broader issues regarding sexual violence.⁸³ Killapura argued that, according to the Convention of Belém do Pará, NAIRA has an obligation to prosecute acts of violence against women, and also states that there is an urgent need for the inclusion of a gender-based approach curriculum in the education system.⁸⁴ Killapura further demands for legal reforms for female victims and their families.⁸⁵ Killapura has now decided to bring these concerns before the Inter-American Commission on Human Rights.⁸⁶

Inter-American System

Killapura filed a claim with the Inter-American Commission on Human Rights (IACHR) alleging that the State of NAIRA violated Article 4, 5, 6, 7, 8, and 25 of the American Convention of Human Rights due to the alleged inactions of NAIRA on behalf of María Elena and Mónica Quispe under Article 1(1).⁸⁷ Killapura also claims that NAIRA violated Article 7 of the Convention of Belem de Pará.⁸⁸ On June 15, 2016, the IACHR admitted the petition filed by Killapura for processing.⁸⁹ Additionally, the IACHR forwarded the pertinent parts to NAIRA, and informed NAIRA that it must submit its' reply according to the Rules of Procedure.⁹⁰

In accordance with the rules, NAIRA responded on August 10, 2016 and denied all allegations, making it clear that they would present the defense case to the Inter-American

⁸² Hypothetical, ¶36

⁸³ Hypothetical, ¶36

⁸⁴ Hypothetical, ¶36

⁸⁵ Hypothetical, ¶36

⁸⁶ Hypothetical, ¶37

⁸⁷ Hypothetical, ¶38

⁸⁸ Hypothetical, ¶38

⁸⁹ Hypothetical, ¶39

⁹⁰ Hypothetical, ¶39

Court.⁹¹ The IAHRC decided that the case was admissible for all of the claims brought by Killapura.⁹² Ultimately, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights on September 20, 2017 for all of the claims brought and cited in the IACHR's report on the merits.⁹³

⁹¹ Hypothetical, ¶40

⁹² Hypothetical, ¶41

⁹³ Hypothetical, ¶42

IV. LEGAL ANALYSIS

II. A. Admissibility

Statement of Jurisdiction

The Republic of NAIRA (hereinafter “The State” or “NAIRA”) ratified the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter “CEDAW”) in 1981, the American Convention on Human Rights (hereinafter “ACHR”) in 1979, the Inter-American Convention to Prevent and Punish Torture in 1992, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem do Pará) in 1996.⁹⁴ Following the report by the Inter-American Commission on Human Rights which declared the case admissible for violations of 4, 5, 6, 7, 8, and 25, all in relation to Article 1(1) of the ACHR, as well as Article 7 of the Convention of Belem do Pará (hereinafter “CBdP”), the case was submitted to the jurisdiction of the Inter-American Court of Human Rights on September 20, 2017.⁹⁵

The events in dispute occurred in 2014, well after the date of ratification of the American Convention on Human Rights (hereinafter “ACHR”) in 1979. Thus the Court has *ratione temporis* and has jurisdiction to hear the alleged violations of the ACHR of this case under Article 62(3) of the ACHR.⁹⁶

However, the alleged violations of Article 7 of the CBdP occurred in 1992, prior to the ratification of that Convention in 1996. Thus, under the same doctrine of *ratione temporis*, the Court does not have jurisdiction to hear the violations pertaining to CBdP which occurred during the period of 1992-1996. This excludes the alleged detainment of María Elena and Mónica

⁹⁴ Hypothetical, ¶7

⁹⁵ Hypothetical, ¶¶41, 42

⁹⁶ Jardon, Luis, *The Interpretation of Jurisdictional Clauses in Human Rights Treaties* (Anuario Mexicano de Derecho Internacional, Vol. 13, 2013), p. 111

Quispe, however includes the alleged attack by Jorge Pérez against María Elena Quispe, over which the Inter American Human Rights Court (hereinafter “IAcHR”) has jurisdiction pursuant to *ratione temporis*. Nonetheless, NAIRA is willing to have these allegations heard before the Court to prove its compliance therewith and offer proper redressability.

III. B. ARGUMENTS ON THE MERITS

Article 1(1) of the ACHR guarantees that States “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.”⁹⁷ State obligations consist of prevention, investigation, punishment and reparation.

1. Alleged Violation of Article 4(1) of the ACHR

Article 4(1) denotes the following: “every person has the right to have his life respected” and no person shall be arbitrarily deprived of his life.⁹⁸ The term “arbitrarily” sets out that this right is not absolute, but that certain situations exist in which it is permissible to deprive someone of the right to life without violating this provision.⁹⁹ Once more, under Article 1(1), states are obligated to “undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.”¹⁰⁰

To ensure the right to life, States are required to uphold a three part obligation: (1) the State must attempt to avoid the possibility of a violation of the right to life; (2) the State must take necessary measures to ensure that the violation does not go unpunished; and (3) the State

⁹⁷ ACHR, Article 1(1)

⁹⁸ ACHR, Article 4(1)

⁹⁹ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), p. 101

¹⁰⁰ ACHR, Article 1(1)

must redress the damages suffered by the victims.¹⁰¹ Courts generally consider and analyze whether there was a positive or negative obligation by the state, and the circumstances which evidence the State's level of awareness of imminent danger and the reasonable possibility of prevention. Further, the *Cotton Field Case* submitted that in a situation where the perpetrator is a private individual, the obligation of the State "is conditional on its awareness of a situation of real and imminent danger for a specific individual or group of individuals and the reasonable possibility of preventing or avoiding that danger."¹⁰² The ACHR and its interpretation as developed through relevant case law guides the determination of these obligations and factual circumstances.

Lastly, the right to life is not exhausted by the prevention, punishment, and subsequent attempts at prevention of actual death. Rather, Article 4 further encompasses the obligation on behalf of the State to maintain certain economic and social standards to prevent death by starvation, for example.¹⁰³ Even more so, this obligation includes being respectful to cultures existing within the State, which is unequivocally tied to the right to personal integrity guaranteed by Article 5 of the ACHR. The *Street Children Case* refused to restrict the definition of Article 4 and broadened it in practice, describing it as "the right that [persons] will not be prevented from having access to the conditions that guarantee a dignified existence."¹⁰⁴

a. María Elena Quispe v. Jorge Pérez

The Republic of NAIRA is not liable for the acts of violence allegedly committed by Jorge Pérez against María Elena Quispe. Petitioners contend that María Elena Quispe was arbitrarily deprived of the right to life in conjunction with 1(1) of the ACHR, and

¹⁰¹ *Case of the Ituango Massacre v. Colombia*, Pará. 131, quoting *Case of Baldeón García v. Peru*, Pará. 85; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Pará. 153

¹⁰² *Case of Gonzalez et al. (Cotton Field) v. Mexico*, Pará. 280

¹⁰³ HRC, General Comment No. 6 A/37/40 (1982) Annex V (pp. 93-94), Pará. 5.

¹⁰⁴ *Case of Villagrán Morales (the Street Children) v. Guatemala*, Pará. 144

determinatively attribute this violation to the State.¹⁰⁵ Petitioners attempt to do so by alleging that NAIRA has failed to prevent, investigate, enforce, and punish those responsible for crimes targeting women.¹⁰⁶

Article 4(1) provides that “every person has the right to have his life respected” and no person shall be arbitrarily deprived of his life.¹⁰⁷ In conjunction with Article 1(1), Article 4 requires States to attempt to avoid violations of the right to life, to accurately investigate and punish any violations, and to provide sufficient remedies to any and all victims. This duty extends to the failure to provide proper economic and social environments within a State to guarantee access to conditions which lead to a dignified existence.¹⁰⁸

In order to determine whether the wrongful conduct of an independent actor is attributable to the state, the Court turns toward the legal principles delineated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter “RSIWA”).¹⁰⁹ For a State to be charged with having committed an internationally wrongful act, the State must have been involved in conduct, by either an act or omission, which (a) is attributable to the State under international law¹¹⁰; and (b) constitutes a breach of an international obligation of the State. Neither of these two elements is satisfied in the case at hand in order to constitute a violation of Article 4 of ACHR.

A State cannot be responsible for every human rights violation committed between individuals within its jurisdiction. Rather, in international law the State “recognize[s] the autonomy of persons acting on their own account and not at the instigation of a public

¹⁰⁵ Hypothetical, ¶38

¹⁰⁶ *Case of the Ituango Massacre v. Colombia*, Pará. 131

¹⁰⁷ ACHR, Article 4(1)

¹⁰⁸ *Case of Villagrán Morales (the Street Children) v. Guatemala*, Pará. 14.

¹⁰⁹ RSIWA, Article 2

¹¹⁰ See “White Van” (Paniagua Morales et al.) v. Guatemala, Inter-American Human Rights Court, Loy. L.A. Int’l. & Comp. Rev. Vol. 36:2089 (1995), p. 2100-01.

authority.”¹¹¹ Only human rights actions endorsed by the State, or allowed in lieu of a State’s repeated and purposeful inaction, may lead to determinations of liability.¹¹² Additionally, more than mere negligence or a lack of appropriate means must be present in order to hold a State responsible for actions on behalf of individuals. Determinative of this standard is the influential *Tellini Case*, which denoted that conduct of private persons is not in and of itself attributable to the State.¹¹³

In the case at hand, María Elena Quispe reported her husband Jorge Pérez on January 20, 2014, for allegedly having disfigured her with a broken bottle.¹¹⁴ Due to the lack of evidence that Mr. Pérez was the perpetrator responsible for this abhorrent crime, the police were unable to arrest him without violating Article 7 of the ACHR which protects against arbitrary arrests.

First, it must be asserted that the unavailability of an individual private actor, in these circumstances the doctor which Ms. Quispe tried to visit for examination, is outside of the state’s control. It was not by NAIRA’s endorsement or advisement that the necessary medical aid was unavailable. This is perhaps one of the most troubling aspects of Ms. Quispe’s case: the inability to trace her injuries to the alleged perpetrator due to the lack of a medical official.

This specific instance invokes the ACHR, namely Article 7 titled the ‘Right to Personal Liberty’. This right promises that “every person has the right to personal liberty and security.”¹¹⁵ No restriction on human rights, the deprivation of liberty being a restriction, can be arbitrary.¹¹⁶ According to scholars, arbitrary arrests and arbitrary detention are generally treated in unison.¹¹⁷ Perhaps most importantly, the level of suspicion required to make an arrest has to be based on

¹¹¹ RSIWA, Commentary, Chapter II, ¶ 2, p. 38

¹¹² *United States of America (Tehran Hostages Case) v. Iran*, 1980

¹¹³ *Tellini Case*, League of Nations, *Official Journal*, 4th Year, No. 11 (November 1923), p. 1349.

¹¹⁴ Hypothetical, ¶23

¹¹⁵ ACHR, Article 7

¹¹⁶ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), p. 199.

¹¹⁷ *Id.*

actual facts, not “mere conjectures or abstract intuitions”.¹¹⁸ NAIRA’s executive arm could not arrest or detain Mr. Pérez without violating a different Article of the ACHR, because it had no actual facts to implicate his involvement in the misfortune Ms. Quispe suffered.

To everyone’s great despair, four months later, Mr. Pérez assaulted Ms. Quispe in public view.¹¹⁹ Following this incident, Mr. Pérez was taken into custody and prosecuted for the minor injuries inflicted upon Ms. Quispe in that instance.¹²⁰ It is undisputed that Mr. Pérez was acting solely out of his own volition, and in no way acting on behalf of the state, or that these alleged horrendous acts were in some regard endorsed by NAIRA. Rather, what is contended is that Ms. Quispe was arbitrarily deprived of her right to a dignified existence because of NAIRA’s alleged inaction and failure to prevent, investigate, prosecute, and remedy this crime.

However, NAIRA has been in full compliance with its obligations of prevention, prosecution, and remedial measure under Article 4 and 1(1) of the ACHR. NAIRA has been effectively executing the power of its judicial and executive branch to protect the right to life by engaging in immediate and ongoing efforts to confront and reduce the instances of violence toward women. This goes hand in hand with the second prong of analyzing whether a State has committed an internationally wrongful act, which requires that a State breached an international obligation. The international obligation in question here is Article 4 of ACHR in conjunction with 1(1).

It is helpful to begin by looking toward the history of NAIRA, and its legislative and judicial developments in the past 15 years. NAIRA is still in the process of rebuilding a war-torn region. Between 1970 and 1999, numerous acts of violence were executed by the armed group

¹¹⁸ *Case of Chaparro and Lapo v. Ecuador*, Pará. 93; *See Arguelles et al. v. Argentina*, Pará. 120.

¹¹⁹ Hypothetical, ¶24

¹²⁰ Hypothetical, ¶25

of the name “Freedom Brigades” in the provinces of Killki, Soncoo, and Warimi.¹²¹ A State of Emergency had to be declared, implementing military bases for the protection of innocent citizens.¹²² Since then, NAIRA has been putting forth its best efforts to restore peaceful civilization and harmonious social relationships.

To the State’s great dismay, prior to the accusations presented by Ms. Quispe in 2014, two other horrific incidents outside of the control of the State had occurred: the murders of both Zuleimy Pareja and Analía Sarmiento.¹²³ Following these tragic events, NAIRA acted quickly and exhaustively to effectuate not only the availability of reparations for the victims, but most importantly the tactical prevention for a violation of the right to life directed toward women to occur again in the future. These immediate measures collectively were called the “Zero Tolerance Policy on Gender-Based Violence” (hereinafter “ZTPGBV”), and included the following: (1) a Gender-Based Violence Unit in the public prosecutor’s office and in the judicial branch that specifically operates in assisting female victims and endorsing mandatory training and education for judges and prosecutors; (2) a state-wide review of the legislation on femicide, violence, discrimination, and issues of gender identity with the participation of the citizens; and (3) the Administrative Program on Reparations and Gender to strengthen the availability and implementation strategies for victims of gender-based violence, especially cases of femicide and rape.¹²⁴

Not only did NAIRA draft these new measures whilst continuing to work tirelessly on their effective state-wide implementation, but NAIRA already had laws implemented prior to these incidents which served to prevent, prosecute and remediate specifically gender based

¹²¹ Hypothetical, ¶8

¹²² Hypothetical, ¶9

¹²³ Hypothetical, ¶¶16, 18

¹²⁴ Hypothetical, ¶¶19, 20, 21, 22

violence. Law 23253 illegalizes specifically violence against women and the family, and Law 19198 protects against street harassment.¹²⁵ This is a heightened degree of preemptive preventative action than had even been taken in the *Cotton Filed Case*. In that case, the court did not go so far as to determine a violation of Article 4 of ACHR had occurred although Ciudad Juarez lacked preventive general policies focused on eliminating the violence affecting young, poor women.¹²⁶

Petitioners further contend that Ms. Quispe was part of group, along with women, children and indigenous people, who are in special need of protection, thus requiring more personalized protection of their right to life. However, as extrapolated upon above, NAIRA has extended itself to the utmost of its own capabilities as a State in protecting women from violence. In taking the collective measures encompassed by the ZTPGBV, the State exercised judicial and legislative measures focused on women to the extent possible in the current social and political climate. President Gonzalo Benavente, the leader of the Democratic Reform Party, has faced much opposition by opposing parties to reform which veer away from the traditional values of NAIRAn society, specifically from a gender perspective.¹²⁷ Thus, even with the pressure of this opposition, the executive arm of NAIRA has worked together with the legislative arm to build and develop greater protection for women, especially to protect their right to life as guaranteed by Article 4 and 1(1) of ACHR.

In conclusion, Mr. Pérez's alleged horrific crimes toward Ms. Quispe are not attributable to NAIRA. Mr. Pérez acted out of his own volition, and to the great dismay of the State, injured Ms. Quispe. NAIRA neither endorsed these crimes, nor failed to prevent them through purposeful inaction.

¹²⁵ Hypothetical, ¶14

¹²⁶ *Case of Gonzalez, et al. v. Mexico*, Pará. 282.

¹²⁷ Hypothetical, ¶¶2, 4

b. María Elena Quispe and Mónica Quispe v. Special Military Base

The holding and alleged abuse of María Elena Quispe and Mónica Quispe by officials of the Special Military Base in March of 1992 requires a slightly different analysis in determining the State's culpability. Once more, Article 4(1) guarantees that every person has the right to have his life respected and no person shall be arbitrarily deprived of his life.¹²⁸ Further, Article 4 has been broadened to encompass "the right that [persons] will not be prevented from having access to the conditions that guarantee a dignified existence."¹²⁹ However, the qualifier 'arbitrarily' determines that this right is not an absolute guarantee. Dire situations, especially those sufficient to create a State of emergency, permit the State to deprive someone of certain rights guaranteed by the ACHR without violating certain provisions.¹³⁰

In Article 27, the ACHR allows States to temporarily suspend certain human rights violations in the event of war, danger, or certain other classifiable dangers which threaten the State's independence or security.¹³¹ However, the rights which are excluded from being suspended emerge from Article 3, 4, 5, 6, 9, 12, 17, 18, 19, 20, and 23. Therefore, failures to guarantee the rights of Article 4 of the ACHR are still considered a violation.

Nonetheless, these tragic circumstances do not subject NAIRA to liability for a violation of Article 4(1). The actions by officials of the Special Military Base were not attributable to the State, neither is there evidence that it was the officials' intention to deprive the Quispe sisters of their lives (an element required for determining a violation of Article 4).¹³² Once more, only if the State endorses actions of private actors, or allows them to reoccur due to repeated and

¹²⁸ ACHR, Article 4(1)

¹²⁹ *Case of Villagrán Morales (the Street Children) v. Guatemala*, Pará. 144

¹³⁰ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), p. 101

¹³¹ IACHR, Doc. OEA/Ser.L/V/II.8, No. 6.

¹³² *La Rochela Massacre v. Colombia*, Inter-American Court of Human Rights, Colombia (2006), p. 1260.

purposeful inaction, may it be held liable.¹³³ This standard of inaction must amount to more than mere negligence or a lack of appropriate means to hold a State responsible for actions on behalf of individual actors.

NAIRA reacted to the hostile, uncontrollable political climate of its State by declaring a State of emergency. The President at the time, with the help of the executive arm, established Political and Judicial Command Units in three provinces, including Warmi.¹³⁴ The State was not responsible for these circumstances, and the purpose of the Special Military Base was to prevent crime and protect innocent citizens throughout war-torn regions. NAIRA was not contributing to a society which promoted or provided circumstances for gender-specific violence. Nowadays President Benavente has engaged in very progressive leadership of the State and has been challenging the traditional notions of gender specific norms. This has led to continued opposition by local political groups, such as the “Respect My Children” Party.¹³⁵

2. Alleged Violation of Article 5(1), 5(2) of ACHR and Article 7 of CBdP

Article 5(1), supported by Article 1(1) of the ACHR, provides that ‘every person has the right to have his physical, mental, and moral integrity respected.’¹³⁶ Article 5(2) further guarantees that no person shall be subjected to torture or cruel, inhumane, or degrading treatment, and that ‘all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.’¹³⁷ The Belém do Pará Convention (hereinafter “CBdP”) interacts directly with Article 5 of the ACHR. It was adopted as a direct reaction to many State’s negligence toward ensuring women’s rights in particular.¹³⁸ Nonetheless, CBdP does not serve to replace general treaties but complements them, its function being to further specify State

¹³³ *United States of America (Tehran Hostages Case) v. Iran*, 1980

¹³⁴ Hypothetical, ¶9

¹³⁵ Hypothetical, ¶¶4,5

¹³⁶ ACHR, Article 5(1)

¹³⁷ ACHR Article 5(2)

¹³⁸ Declaration on the Elimination of Violence against Women of the UN, Document A/RES/48/104, 1994.

obligations derived from Article 5 of the ACHR with the purpose of protecting the personal integrity of women.¹³⁹

The duties of the State set out by Article 7 of CBdP are the following: States must condemn “all forms of violence against women and agree to pursue ... policies to prevent, punish and eradicate’ violence against women.”¹⁴⁰ The further duties delineated focus around the adoption and incorporation of certain legal measures which impose punishment for and protect a woman against violence, threats, and intimidation.¹⁴¹

The analysis for Article 5 will yield significant similarities as that for Article 4 of the ACHR, and will reference the analysis from above when necessary. This is because Article 4 and 5 of the ACHR are often considered in unison: When someone is arbitrarily deprived of their life, similar violations of disregard toward those individuals’ right to physical and mental respect are likely to have occurred as well. It follows therefrom, that the analysis for Article 5 of ACHR and 7 of CBdP will yield significant similarities, and will reference the analysis from above when necessary.

a. María Elena Quispe v. Jorge Pérez

Article 5(1) recognizes every person’s right to personal integrity, however this right is not absolute. It has a facet very similar to that of Article 4(1) in being closely related to the autonomy of every individual person. Again, in order for the State to be held liable, the State must have been involved in conduct, by either an act or omission, which (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State. The standard for holding NAIRA liable for actions evidently committed by Mr. Pérez is more than mere negligence or a lack of appropriate means.

¹³⁹ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), p. 177.

¹⁴⁰ CBdP Article 7

¹⁴¹ Id.

Once more, the State puts forth that the acts of an individual are not attributable to the State. NAIRA was not in any way responsible for the private actions of Jorge Pérez, and did not violate any other obligations surrounding this incident. Mr. Pérez is a private actor and was acting solely out of his own volition. Finally, he was not endorsed by the State in his behavior.

NAIRA also did not fail to meet its obligations so as to amount to a violation of Article 5(2). The obligations to investigate, prosecute, and punish delineated in Article 5(2) are again similar to the obligations set forth by the right to life. As explained in detail above, NAIRA has been in full compliance with its obligations under Article 4 and 1(1). Thus, it is the State's conclusion that NAIRA similarly has been effectively executing the power of its judicial and executive branch to fulfill its obligations and protect the right to personal integrity.¹⁴²

Lastly, NAIRA did not violate Article 7 of CBdP. Article 7 holds that States must condemn "all forms of violence against women and agree to pursue ... policies to prevent, punish and eradicate' violence against women."¹⁴³ The *Cotton Field Case* has set a precedent for what the obligations of a State are under Article 7 of CBdP.¹⁴⁴ This case decided that if a State fails to protect a woman's fundamental human rights, fails to establish legislation that proportionately punishes perpetrators, or somehow endorses practices based on persistent socially-dominant stereotypes, a State is in violation of Article 7. Obligations may even go so far as to include the creation and enforcement of transformative reparations required to eliminate structural violence against women.¹⁴⁵

NAIRA has been in absolute compliance with the obligations and factors as presented by the *Cotton Fields Case*. As a reaction to the unfortunate crimes suffered by Ms. Quispe, in

¹⁴²See Hypothetical, ¶¶19-22

¹⁴³ CBdP Article 7

¹⁴⁴ *Gonzalez et al. ("Cotton Field") v. Mexico*, Inter-American Court of Human Rights, Mexico (2009).

¹⁴⁵ See *id.*

addition to violence suffered by other women or on the basis of gender, NAIRA enforced multiple programs to end the plague of violence. It did so through the development of a zero-tolerance approach toward gender based violence. Again, NAIRA has instigated a framework built on programs and legislation focusing on preventions, investigation, punishment, and reparations for victims of gender-based violence.¹⁴⁶ This regulatory framework includes enforceable local State laws (25253 and 19198) which recognizes offenses of femicide and rape, and illegalizes street harassment.¹⁴⁷ Further, the ZTPGBV developed educational units serving to prepare officials in the judicial branch for prosecution and prevention of these crimes,¹⁴⁸ and offered to review past legislation to include further issues of gender identity.¹⁴⁹ This drastically separated the actions of the State of NAIRA from those of Ciudad Juarez in the *Cotton Field Case*. Thus, NAIRA puts forth that it was in full compliance with the obligations of Article 7 of CBdP.

b. María Elena Quispe and Mónica Quispe v. Special Military Base

Under the circumstances of the 1992 detainment of the Quispe sisters, the Court must look toward the ACHR, but also may consider international humanitarian law on issues which are silent under the ACHR.¹⁵⁰

State obligations under Article 5 differ depending on the factual circumstances and conditions of the violation. It is considered by the court whether the actor is a State actor, or a private individual. In the case of the former, the State must act in its capacity to prevent the misuse of force of State officials. In that regard, force may only be used when it can be

¹⁴⁶ Hypothetical, ¶19

¹⁴⁷ Hypothetical, ¶14

¹⁴⁸ Hypothetical, ¶20

¹⁴⁹ Hypothetical, ¶21

¹⁵⁰ Fourth Geneva Convention Articles 41, 42, 43, 78, 124

retroactively deemed absolutely necessary and proportional.¹⁵¹ If the State officials acting on behalf of the State cannot justify a violation of the right to personal integrity, this may constitute a violation of Article 5.

As mentioned before, acts on behalf of private individuals are not automatically attributable to the state.¹⁵² Acts on behalf of individuals definable as State actors, require a differing analysis. The primary analysis often conducted in these scenarios is whether the disputed crime or mistreatment amounts to torture, or harsh treatment.¹⁵³ The alleged actions on behalf of the officials at the Special Military Base evidently amount to harsh treatment, and acts of rape have even been considered torture in the past. However, it is not until now that these horrific acts have been brought forward by victims of the SMB during the war-torn times in Warmi. Even more so, the State of Warmi has made official statements that this is not an accurate representation of the circumstances of the military rule.¹⁵⁴ Nonetheless, the State submits that it is willing and able to investigate, prosecute, remediate the victims and punish the crimes and those responsible regardless of the statute of limitation, since violations of absolute rights are not subject to a statute of limitations in times of war.

Lastly, the State is willing to briefly address the alleged violation of Article 7 in regard to the detainment of the Quispe sisters in 1992. The statute of limitations for these alleged crimes has run, and it occurred prior to NAIRA's ratification of CBdP. Nonetheless, the State once more enacted all necessary measures in this State of Emergency that it could. NAIRA is willing to investigate, punish, and remediate to its utmost abilities the potential damages incurred by victims of the Special Military Base which have been coming forward today. This willingness,

¹⁵¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth Congress of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) on August 27-September 7, 1990.

¹⁵² Jennings, Watts, Oppenheim's International Law, 9th Edition, Volume 1 Harlow (1996), p. 502

¹⁵³ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), p. 177.

¹⁵⁴ Hypothetical, ¶32

along with the establishment of specific task forces focused on gender-based violations is NAIRA's effort to stay true to any and all obligations of the CBdP.

3. Alleged Violation of Article 6 of ACHR

Article 6(1) of the ACHR, in conjunction with Article 1(1), holds that no person shall be subject to slavery or to involuntary servitude.¹⁵⁵ Article 6(2) denotes further, that no one shall be required to 'perform forced or compulsory labor.'¹⁵⁶ However, for the purposes of this Article, "service exacted in time of danger or calamity that threatens the existence or the well-being of the community" does not always constitute forced or compulsory labor."¹⁵⁷

a. María Elena Quispe and Mónica Quispe v. Special Military Base

The Quispe sisters were not subjected to slavery or involuntary servitude. The circumstances surrounding their detainment are still largely unknown. However, what is known, is that NAIRA, the region Warmi included, was declared a State of emergency. Although this does not allow for the suspension of certain human rights, Article 6 included, the facts do not indicate that the Quispe sisters were detained as slaves. Respondent will address the lack of forced labor first, followed by the alleged sexual violence suffered by the Quispe sisters.

The alleged labor that the Quispe sisters were forced to perform during their detainment is not out of the ordinary. During imprisonment, detainees are often made to do chores such as clean, cook, and wash. An example of forced labor is evidenced by *Ituango Massacres v. Colombia*, in which a Paramilitary group forced enslaved individuals to steal and care for livestock.¹⁵⁸ This was determined to be a violation of Article 6(2). The situation here is

¹⁵⁵ ACHR Article 6(1)

¹⁵⁶ ACHR Article 6(2)

¹⁵⁷ ACHR Article 6(3)

¹⁵⁸ *Case of Ituango Massacres v. Colombia*, Inter-American Court of Human Rights, Loyola L.A. Int'l. & Comp. L. Rev., Vol. 37:1021, p. 1035 (2006).

nowhere near as dire, and the Quispe sisters were in detainment at the time. The labor they were allegedly forced to engage in (cooking, cleaning, washing) is not close to this type of conduct.

The sexual violence allegedly suffered by the Quispe sisters is perhaps the most disturbing. NAIRA cannot repeat often enough, that it is willing to investigate these circumstances, punish to the best of its abilities, and it has set up appropriate task forces with sufficient funding to do so. Because these allegations have just now come to light, there is nothing that the State could have done prior.

4. Alleged Violation of Article 7(1), 7(2), and 7(3) of ACHR

Article 7 of the ACHR in combination with 1(1) provides that everyone shall have the right to personal liberty and security and be protected against arbitrary arrest and imprisonment.¹⁵⁹ In time of danger, emergency or other means which “threaten the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent ... strictly required by the exigencies of the situation.”¹⁶⁰ States value safeguarding internal security, particularly to fight opposition and terrorism, and therefore this liberty is often infringed upon for these justifications.¹⁶¹

a. María Elena Quispe and Mónica Quispe v. Special Military Base

The Court made a determination about the appropriate lengths for imprisonment during a State of Emergency in the *Case of Castillo Petruzzi*.¹⁶² Mr. Petruzzi, along with others, was arrested during a “great disturbance of the public peace”. At that time, Peru had a law which allowed for individuals of treason to be held for a renewable 15-day period upon the correct

¹⁵⁹ ACHR Article 7(1), (2)

¹⁶⁰ *American Convention on Human Rights*, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica (1969).

¹⁶¹ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), p. 177.

¹⁶² *Case of Catrillo Petruzzi et al.*, Inter-American Court of Human Rights, (1999).

grounds.¹⁶³ Although the court ultimately deemed these periods to have been excessive, the proper justification allows for Article 7 of the ACHR to be circumvented.

In these circumstances, Warimi was suffering a political crisis. The Special Military Base had been established to maintain control over the area and fight crime, specifically political opposition.¹⁶⁴ Generally, circumstances of heavy political opposition affect regular court proceedings, and fears of terrorism and attack justify the holding of potential criminals. NAIRA at this time still is uncertain about the alleged false accusations or circumstances which lead the Quispe sisters to end up in holding at the Special Military Base.

These allegations are none to take lightly, and NAIRA is heavily concerned. At this point, it is unknown whether these arrests truly were arbitrary as contended by Mónica Quispe. There simply are insufficient facts, as the investigation into this matter has yet to commence. NAIRA, as evidenced by President Benavente's recent announcement, is ready to reopen the criminal cases for which the statute of limitations has already run from the 1992-1999 period, and to find out the truth for any victims potentially affected.¹⁶⁵ NAIRA has taken necessary steps such as the establishment of a Truth Commission, the Zero Tolerance Against Gender-Based Violence legislations, and the willingness of the State to come together to promise truth and reparation to the victims. In no way is NAIRA denying its responsibility to address these horrific allegations, and rather, this State is ready, willing, and able to achieve justice.¹⁶⁶

5. Alleged Violations of Article 8 and Article 25 of ACHR

¹⁶³ *Case of Catrillo Petruzzi et al.*, Inter-American Court of Human Rights, (1999).

¹⁶⁴ Hypothetical, ¶27

¹⁶⁵ Hypothetical, ¶ 27, 34

¹⁶⁶ *Id.*

Articles 8 and 25 are most often associated and evaluated together. According to Article 8(1), every person is guaranteed the right to a hearing within a reasonable time by an independent, competent tribunal.¹⁶⁷ Additionally, when accused of a criminal offense, every person has the right to be presumed innocent.¹⁶⁸ The Article further lays out multiple minimum guarantees every person is entitled to during the course of those proceedings.¹⁶⁹

Those minimum guarantees include, but are not limited to: time for the accuse to prepare his or her defense, prior notification of the charges against the accused, and a confession only being valid when it is not made under coercion.¹⁷⁰ Article 25 of the ACHR provides that every person has the right to a competent court or tribunal for protection against acts ‘that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention.’¹⁷¹ Under Articles 8 and 25, the Court guarantees access to justice.¹⁷²

In addressing Article 8, the Commission and the Court do not look at the trial court’s decision in determining if a defendant did, or did not, commit a crime.¹⁷³ Rather, the Commission and Court look at whether the domestic court granted both parties (the victim and the accused) enough time and opportunity to present their cases, and if there were any procedural violations in Article 8 of the Convention.¹⁷⁴ It is imperative to note that the Inter-American Commission and Court does not act as an Appeals Court for the domestic cases.¹⁷⁵ Additionally, the Court does not have the responsibility to replace domestic jurisdiction by coming up with

¹⁶⁷ ACHR Article 8(1)

¹⁶⁸ ACHR Article 8(2)

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ ACHR Article 25(1)

¹⁷² *Miguel Castro-Castro Prison Case*, *supra* note 25 at Pará. 158-160.

¹⁷³ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), pg. 243.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

better or more effective alternatives.¹⁷⁶ Instead, the Court's job is to *only* look at whether the domestic court violated the international obligation it signed onto in Article 8 and 25.¹⁷⁷ It is the domestic courts' responsibility to evaluate the "procedural criteria" in regards to the actual admissibility of the case and technicalities of the case being filed before even going into the merits of the case.¹⁷⁸

Article 25 of the ACHR provides that every person has the right to a competent court or tribunal for protection against acts 'that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention.'¹⁷⁹ This Article establishes the "Right to Judicial Protection"¹⁸⁰, and proclaims that everyone does have a right to "simple and prompt recourse" for protection from acts that violate the Convention, regardless if the act was committed by someone in the process of their official job or duty.¹⁸¹ In order for the State to enforce this, the State is responsible for making sure that any individual claiming a remedy from the State be evaluated by a legal authority from the State to determine potential judicial remedies, and, if remedies are ordered, that they are enforced.¹⁸²

According to the Inter-American Commission, "effectiveness" of a judicial remedy does not necessarily mean that the court's decision must be in favor of the victim.¹⁸³ The Commission stated that effectiveness, rather, means that the case and ruling was decided upon the merits.¹⁸⁴

¹⁷⁶ *Case of Castillo González et al v. Venezuela*, Pará 153.

¹⁷⁷ *Id.*

¹⁷⁸ *Case of the Dismissed Congressional Employees v. Peru*, Pará. 126.

¹⁷⁹ ACHR Article 25(1)

¹⁸⁰ American Convention on Human Rights, Basic Documents- American Convention, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> (last visited March 23, 2018).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Case of Castañeda Gutman v. México*, Pará 88

¹⁸⁴ *Id.*

a. María Elena Quispe and Mónica Quispe v. Special Military Base

Killapura, a non-governmental organization, brought claims forward on behalf of María Elena Quispe and Mónica Quispe against the Special Military Base (SMB). The Quispe sisters allege that, during a State of Emergency, the SMB held the sisters on false accusations for one month. The Quispe sisters further allege that while being held at the SMB on false accusations, they were forced to complete chores, such as cleaning, each day. Lastly, the Quispe sisters claimed that they were raped by officials of the SMB, and that other girls were sexually harassed and assaulted.

Petitioners are now claiming that because at the time the accusations were finally reported they were no longer in the executive branch's purview, NAIRA has violated Articles 8 and 25. However, the domestic court followed the procedural restraints it was tied to, meaning it did not violate either article.

The Republic of NAIRA did not violate Articles 8 or 25 in regards to María Elena Quispe and Mónica Quispe in Warimi. Under Article 8, it is the domestic court's responsibility to decide the procedural criteria in regards to the actual admissibility of the case and technicalities of the case being filed before even going into the merits of the case.¹⁸⁵ The domestic court was unable to hear the case because the Quispe sisters were time-barred by the statute of limitations. The statute of limitations is 15 years and the allegations occurred in 1992. The statute of limitations had come and long gone, as these claims were never filled until 22 years later. The Court does not have the authority to dictate what the procedural criteria is for a case to be heard.

Additionally, the executive branch stated that after the claims were brought forward and to its attention for the very first time, it was not within its purview to interfere in the court case. The domestic courts were barred from hearing the case, and NAIRA was absolutely incapable of

¹⁸⁵ *Case of the Dismissed Congressional Employees v. Peru*, Pará. 126.

doing anything, including investigation, before that 22-year point because the claims had never been brought forward, even in the media, until 2014.

Article 25 requires the right to judicial protection by being seen by a competent and legitimate court.¹⁸⁶ While the court was in fact unable to listen to the case due to a legal restriction, NAIRA did address the accusations to the extent it could. The executive branch created a High-Level Committee to explore the possibility of reopening criminal cases. NAIRA also committed to Quispe-specific solutions, including the Quispe sisters in the ZTPGBV, and doing what is necessary to guarantee their rights, as well as ordered a Truth Commission with both State and civil representatives, as well as created a special fund for the Truth Commission. Despite the fact that these allegations were brought forward far past the statute of limitations, NAIRA is willing to re-open and investigate the case.

NAIRA did not violate either Article 8 or 25. The State took steps far beyond its legal or statutory requirement in order to address the Quispe sisters' claims. The executive branch was limited in what it could accomplish because of the statute of limitations, however was and is still willing to continue to work with the Quispe sisters and other State and community representatives to act within the power they have to address what has happened in the past and prevent these issues from arising again.

b. María Elena Quispe v. Jorge Pérez

The Republic of NAIRA did not violate Articles 8 or Article 25 in regards to María Elena Quispe and Jorge Pérez. In order for Article 8 to be violated, the victim and/or the accused must have been denied their time in court.¹⁸⁷ Article 25 focuses on each person having access to a legitimate and competent court to hear their case within prompt timing. Petitioners attempt to

¹⁸⁶ ACHR, Article 25

¹⁸⁷ ACHR, Article 8

claim that because Ms. Quispe's case was not immediately brought to court, or, when it was, that the ruling was not in Ms. Quispe's favor, that the Republic of NAIRA violated Articles 8 and Articles 25.

It is the States submission that both parties to this dispute had their time in court, were heard by a competent court, and this occurred within a reasonable and appropriate time. Initially, the public prosecutor's office was unable to bring about charges because there was not enough evidence to do so effectively. The only medical examiner that could have conducted the exam after Ms. Quispe's incident with Jorge Pérez was not in town. Because the evidence needed was not present, Mr. Pérez was unable to be charged. There was nothing the public prosecutor's office could have done in charging someone where evidence did not exist. In fact, it would have been a violation of Mr. Pérez's rights to have been charged without any direct or circumstantial evidence available at this time. Articles 8 and 25 do not just guarantee the rights to victims, but also to the accused. The job of the Court and Commission is to ensure that the right procedures occurred for both the victim and the accused to have their just day in court.

Four months later, Ms. Quispe was both insulted and harassed in public. This time there was available evidence for Pérez to be arrested and prosecuted. He was sentenced to a year of suspended jail time because he had no prior record of a violent history, and the medical examiner found the injuries to be minor. Petitioners argue that the result of this case was a violation of Articles 8 and 25. The Court and Commission however, have determined that the Court does not act as an Appeal's Court for the domestic courts.¹⁸⁸ Additionally, the Court does not determine

¹⁸⁸ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), pg. 243.

whether the accused was guilty or not.¹⁸⁹ Rather, the Court's responsibility is to determine whether the domestic court made any procedural violations.¹⁹⁰

There were no procedural violations that occurred during this trial. The domestic court based their decision on both the evidence, as well as Pérez's history. Therefore, there are no other procedural violations that occurred. Additionally, if petitioners arguments were to hold true, Pérez's rights would have been ignored. Article 8 focuses on due process, and this due process protects the rights of the accused as well. At the end of the day, both the State, and the domestic court followed the necessary procedures. The Court could not have made any other decision without violating the rights of the accused.

Additionally, the very last time that Pérez harmed Ms. Quispe, he was arrested. Ms. Quispe was harmed, and ultimately Mr. Pérez faced penalty for this harm.

Respondents claim that because Ms. Quispe's son was first awarded to Pérez by the trial court, that somehow the court was not the unbiased actor that Article 25 requires. This is not the case. The Republic of NAIRA did not violate Articles 8 or 25 because of this ruling. First and foremost, throughout the time of the trial Ms. Quispe's sister has had custody of María Elena's son. Additionally, simply because the initial family court judge ruled that a bond between a father and his soon is not affected by intimate partner violence, this does not indicate that violations of Articles 8 or 25 occurred. Article 8, once again, does not allow for the Court to become an Appeals court or evaluate if the accused is guilty, or what the outcome of the trial should have been.¹⁹¹ The Court does not have any proof to find that the domestic court, at any level, has violated any sort of procedural requirement in the case between Ms. Quispe and

¹⁸⁹ *Id.*

¹⁹⁰ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), pg. 243.

¹⁹¹ Medina, Cecilia, *The American Convention on Human Rights* (Intersentia Ltd, 2nd Edition, 2016), pg. 243.

Pérez.¹⁹² Article 25 requires a competent court and the domestic court was neither incompetent, or biased. In fact, Pérez agreed to go through psychological treatment in an attempt to reunite with his son. The custody litigation is ongoing. The fact that the litigation is ongoing and continuous demonstrates that the procedures are being taken, that both sides are being heard, and that the State (specifically the domestic court) is not violating either parties rights as guaranteed by Article 8 and 25.

The Republic of NAIRA violated neither Article 8 nor 25 in the domestic court's handling of María Elena Quispe and Jorge Pérez.

IV. REQUEST FOR RELIEF

Based on the aforementioned submissions, the Republic of NAIRA respectfully requests that the Honorable Court declare and adjudge the following:

- (1.)The Republic of NAIRA did not violate Articles 4, 5, 6, 7, 8 or 25 of the American Convention on Human Rights in conjunction with Article 1(1);
- (2.)The Republic of NAIRA did not violate Article 7 of the Convention of Belem do Pará;
- (3.)The reparations provided and being provided are and will be sufficient;
- (4.)The Republic of NAIRA has fulfilled its responsibility in accordance with the American Convention of Human Rights and the Convention of Belém do Pará; and
- (5.)That the petitioners pay the cost of the proceedings.

¹⁹² See *Barbani Duarte et al. v. Uruguay*, Inter-American Court on Human Rights, Loy. L.A. Int'l. & Comp. L. Rev. Vol 37: p. 1617-18, (2010).