CASE OF MARÍA ELENA QUISPE AND MÓNICA QUISPE

Petitioners

v.

THE REPUBLIC OF NAIRA

Respondent

MEMORIAL FOR THE STATE

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STATEMENT OF FACTS

Background Information on the State of Naira

Between 1970 and 1999, the State of Naira (hereinafter "Naira" or "the State") suffered from numerous acts of violence and confrontations in the provinces of Soncco, Killki and Warmi by the armed group "Freedom Brigades". The armed group had ties to drug trafficking and carried terrorist acts with the aim of conducting its activities without state interference (Hypothetical Case ¶8, hereinafter "H.C."). As a result, Naira then-President took a series of measures such as declaring a state of emergency, suspending guarantees and establishing Political and Judicial Command Units in the three provinces from 1980 to 1999 (H.C. ¶9). The Command Units set Special Military Bases (hereinafter "SMB") in the three areas from 1990 to 1999. They held centralized power and exercised real authority over everything that happened in Warmi (Clarification Questions ¶12 hereinafter "C.Q."). When the situation was brought under control in 1999 with the surrender of the armed groups, the SMB was deactivated (H.C. ¶30).

Naira is now an economically stable democratic country (H.C. ¶1), but it has been dealing with an ongoing political crisis (H.C. ¶1). Naira faces opposition from the Coalition for the Resistance, which challenges the President on any reform they consider radical (H.C. ¶3), and from the "Respect My Children" Party that managed to prevent the inclusion of a gender perspective in the national educational curriculum (H.C. ¶4).

Different notorious gender-based violence (hereinafter "GBV") cases shook Naira in the past years (H.C. ¶16-18). Naira is aware of the situation of GBV in the country (H.C. ¶11-12) and has decided to take specific and immediate measures to address the problem. First, it implemented the Zero Tolerance Policy on GBV (hereinafter "Zero Tolerance Policy") in 2015 (C.Q. ¶8). The measure

was well received by civil society, women's organizations and victims' associations, which were invited to submit their proposals for the design of the Zero Tolerance Policy (H.C. ¶19 and C.Q. ¶8).

Naira is also in the process of establishing a GBV Unit in the public prosecutor's office and in the judicial branch that will include specific measures to assist female victims, in addition to mandatory training and education for judges, prosecutors, and other public servants (C.Q. ¶1, 2). The Unit will also have the authority to penalize public officials who commit acts of GBV and discrimination (H.C. ¶20). In addition, Naira offered to review its legislation on femicide, violence, discrimination, and issues related to gender identity in the coming months so that, with broad citizen participation to create national consensus, the points considered discriminatory can be amended (H.C. ¶21).

Finally, Naira is in the process of implementing an Administrative Program on Reparations and Gender to implement reparations measures to address physical and mental health, education, housing, and employment with the participation of victims to design the program (C.Q. ¶1). To access this program, recipients will be required to register with the Unified Registry of Victims of Violence (H.C. ¶22).

Contextual Information on the Alleged Victims and Facts Related to the Alleged Violations

In January 20, 2014, Ms. Maria Elena Quispe decided to report her husband Jorge Perez for having disfigured her with a broken bottle. Ms. Quispe went to the police to file a complaint, but because the only medical examiner in the area was on vacation (C.Q. ¶22), Ms. Quispe could not undergo the respective medical exam (H.C. ¶23). Since she did not have a medical certificate, the police could not process her complaint (H.C. ¶24).

In May of 2014, Jorge Perez was arrested and prosecuted after he intercepted Maria Elena Quispe on the street, insulting and hitting her in public view (H.C. ¶25). He was sentenced to a year of suspended jail time because he had no prior history of violence and the medical examiner had classified the assault as one resulting in minor injuries (H.C. ¶25).

In August of 2014, Jorge Perez sought out Ms. Quispe at her place of work and beat her again. This time she was left partially disabled, and therefore Mr. Perez was arrested (H.C. ¶25). Ms. Monica Quispe, Maria Elena's sister, filed a complaint at the time of the events, and the court case is still pending. Meanwhile, Ms. Maria Elena Quispe is in the midst of custody litigation because Jorge Perez has argued that Ms. Maria Elena's health condition makes her unable to care for their son. The family court ruled in favor of Jorge Perez on the grounds that the bond between a father and his children cannot be affected by intimate partner violence (H.C. ¶26).

In December of 2014, Ms. Monica Quispe was interviewed in Naira's most important media outlet. She described the difficult circumstances she and her sister had experienced as natives of Warmi, where the SMB had been established between 1990 and 1999 (H.C. ¶27). She alleged that, in March 1992, when her and her sister were respectively 15 and 12 years old (C.Q. ¶69), they were held for a month at the SMB where they were forced to wash, cook, and clean every day (H.C. ¶28). She reported that both of them were repeatedly raped – many times gang-raped – by the soldiers (H.C. ¶28). She also alleged that the accusations against them were false (H.C. ¶28) although the SMB said that they were accused of being accomplices to the armed group and providing the group with information about the military base (C.Q. ¶42). Ms. Monica Quispe added that she saw other women being forced to strip naked in front of soldiers, who beat and groped them in the cells on the base (H.C. ¶29).

The events were never reported by the victims or investigated by Naira on its own initiative (H.C. ¶30). Days after the news report, the authorities in the town of Warmi issued a public statement denying the allegations. The vast majority of the town's residents supported the authorities' statement (H.C. ¶32).

On March 10, 2015, the NGO Killapura, which had taken up the Quispe sisters' case, filed criminal complaints alleging acts of sexual violence against both Quispe sisters in Warmi, but they were time-barred by the expiration of the 15-year statute of limitations. Killapura then called on the government to come forward and take the necessary measures to allow for these acts to be prosecuted in order to guarantee the rights of possible other victims to truth, justice and reparations (H.C. ¶33).

Five days later, on March 15, 2015, the executive branch stated that it was not within its purview to interfere in the court case but that it would create a High-Level Committee to explore the potential reopening of the criminal cases of the Quispe sisters. Moreover, Naira said that it would include their case in the Zero Tolerance Policy and make the necessary adaptations to guarantee their rights. It also ordered the creation of a Truth Commission (hereinafter "TC") composed of representatives of the State and civil society, which will urgently undertake to investigate the facts (C.Q. ¶65). Both the High-Level Committee and the TC have been operating in Naira since 2016 (C.Q. ¶3). The State also announced the creation of a Special Fund for reparations that will be allocated as soon as the TC concludes its report. (H.C. ¶34). Indeed, Naira pledged to find the truth and promised that the victims would obtain justice and redress. Also, Naira provided assurances that it would be monitoring the case of the attempted femicide of Ms. Maria Elena Quispe as well as her custody case (H.C. ¶35).

Procedures in front of the Inter-American System of Human Rights

Killapura was not satisfied with Naira's response and believed that their clients' right to truth, justice and reparations was being denied (H.C. ¶37). Therefore, on May 10, 2016, Killapura filed a petition to the Inter-American Commission on Human Rights (hereinafter "Commission"), alleging the violation of the rights enshrined in Articles 4, 5, 6, 7, 8, 25 in relation of 1(1) of the American Convention on Human Rights (hereinafter "American Convention") and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter "Belém do Parà") (H.C. ¶38).

On June 15, 2016, the Commission admitted the petition for processing, forwarding the pertinent parts to Naira and granting it the period of time specified in the Rules of Procedures to present its reply (H.C. ¶39).

On August 10, 2016, Naira replied, denying its responsibility (H.C. ¶40) and filed a preliminary objection alleging this Court's lack of jurisdiction *ratione temporis* (C.Q. ¶7). The Commission adopted a report declaring the case admissible and finding violations of the articles mentioned above of both the American Convention and Belém do Parà, to the detriment of Ms. Maria Elena and Ms. Monica Quispe (H.C. ¶41).

On September 20, 2017, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights (hereinafter "this Court") (H.C. ¶42).

LEGAL ANALYSIS

I. PRELIMINARY OBJECTIONS

This Court has jurisdiction to hear cases involving Naira since the State has ratified all the international treaties, including the American Convention and accepted the authority of this Court in 1979[1]. This Court is entitled to rule on matters regarding the application and interpretation of the American Convention under Article 62(3). Also, this Court found itself competent to use other international instruments as interpretation tools[2]. Regarding the present case, Naira asserts that the Commission violated the "fourth instance formula" by referring the case to this Court. Alternatively, the recourse to this Court was premature since the alleged victims have not exhausted all available domestic remedies. Should this Court reject the first two preliminary objections, it should find it lacks jurisdiction *ratione temporis* regarding Article 7 of Belém do Parà.

At first, Naira only filed a preliminary objection alleging the Commission's lack of jurisdiction *ratione temporis*. Under Article 42 of the Rules of Procedures of this Court, a State may only filed preliminary objections in its answer to the presentation of the case. However, Article 43 of the same instrument allows to enter additional written pleadings that are deemed appropriate[3]. The additional objections submitted by Naira justify and contribute to procedural fairness and clarification of the present case[4]. Thus, this Court should consider these preliminary objections.

[1] H.C. ¶7
[2] *Ituango Massacres v. Colombia*, IACtHR (Ser. C) No.148 (July 1, 2006), ¶179.
[3] Rules of Procedure of the Inter-American Court of Human Rights, November 24, 2009, LXXXV Regular Period of Sessions, November 16 to 28, 2009 (Entry into force: January 1, 2010), Art. 43.
[4] *Cayara v. Peru*, IACtHR (Ser. C) No. 14 (February 3, 1993), ¶63; Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, Cambridge (2013), p.115.

A. The Commission Violates the "Fourth Instance Formula" by Referring the Case to this Court's jurisdiction

The Commission improperly referred the case to this Court's jurisdiction since it violates the "fourth instance formula[5]". The Commission "cannot review judgements issued by domestic court acting within their competence and with due judicial guarantees, unless it considers that [there is] a possible violation of the Convention[6]" in rendering the domestic judgment. Naira's criminal court is competent, as will be explained in Part II C) iii) of this memorial. It found that the alleged victims' complaint was inadmissible because it was time-barred by a 15-year statute of limitation[7]. This judgement did not violate the American Convention since the statute of limitation was legal and in conformity with international law, as will be explained in Part II C) ii) of this memorial. Therefore, this Court should declare that it lacks jurisdiction to hear this case since it violates the "fourth instance formula" by questioning the properly issued domestic judgment.

[5] Jo M. Pasqualucci, *supra* note 4 p.125-128; *Villagrán-Morales et al. v. Guatemala (Street Children),* IACtHR (Ser. C) No.63 (November 19, 1999), ¶17-18.
[6] *Santiago Marizioni v. Argentina*, IACHR, Report N°39/96, Case 11.673 (October 15, 1996), ¶50-51.
[7] H.Q. ¶33

B. Petitioners Have Not Exhausted All Available Domestic Remedies

Alternatively, Naira sustains that the petitioners have not exhausted all available domestic remedies under Article 46(1)(a) of the American Convention[8]. Indeed, the petitioners should exhaust all available domestic remedies, including extraordinary remedies before initiating a procedure before the Commission[9]. The State should have the opportunity to settle the matter and to rectify the possible irregularities in the domestic sphere before it is brought to this Court[10]. In the present case, Naira created the TC and High-level Committee before the initiation of the procedures by the Commission[11]. By doing so, it was trying to rectify the irregularities created by the statute of limitation. For instance, Naira set up the High-Level Committee to explore the possibility of reopening the alleged victims' criminal cases. Naira will explain below that those remedies are adequate and effective and that the exceptions found in Article 46(2) of the American Convention do not apply in the present case.

i. Naira's Domestic Remedies Are Adequate

This Court established that for a domestic remedy to be adequate, it should be "suitable to address the infringement of the specific legal right allegedly violated[12]". In *Yatama,* this Court found that a domestic remedy other than a court can be adequate[13]. Moreover, the Commission and this Court

[8] *American Convention on Human Rights,* November 22, 1969, O.A.S.T.S. N° 36, B-32, (Entry into force: July 1978), Art.46(1)(a).
[9] *Cantarol-Benavides v. Peru*, IACtHR (Ser. C) No.40 (September 3, 1998), ¶33; *Diaz Pena v. Venezuela*, IACtHR (Ser. C) No.244 (June 26, 2012), ¶123.
[10] *Velasquez Rodriguez v. Honduras*, IACtHR (Ser. C) No.1 (June 26, 1989), ¶60; Pasqualucci *supra* note 4, p.92; *Brewer Carias v. Venezuela*, IACtHR (Ser. C) No.278 (May 26, 2014), ¶98.
[11] H.C. ¶34
[12] *Velasquez Rodriguez v. Honduras*, IACtHR (Ser. C) No.4 (July 29, 1988), ¶64; *Comunidad Garifuna de punta Piedra y sus miembros v. Honduras*, IACtHR (Ser. C) No.304 (October 8, 2015), ¶239.
[13] *Yatama v. Nicaragua*, IACtHR (Ser. C) No.127 (June 23, 2005), ¶147, 149.

have applauded the work of truth commissions in the context of transitional justice[14]. Indeed, such instruments complement "the State's judicial response in accordance with its international obligations[15]" by providing a fundamental source of information for the institution and continuation of judicial proceedings[16]. In addition, criminal courts are known to be a suitable place to address criminal complaints because it can prosecute and punish[17]. In the present case, the TC's report will feed valuable information to the criminal court – which may regain competence following an upcoming decision by the High-Level Committee – information that will be essential to rule on the alleged violations. Therefore, this Court should rule that Naira's domestic remedies are adequate and it should let the internal process run its course as a ruling would currently be premature.

ii. Naira's Domestic Remedies Are Effective

For a remedy to be effective, this Court established that it has to be capable of producing the "result for which it was designed" and not be a "senseless formality"[18]. The remedy has to establish whether there has been a violation of human rights and provide redress within a reasonable time[19].

[14] IACHR, Report on Truth, Justice and Reparation: Fourth Report on Human Rights Situation, OEA/Ser.L/V/II. Doc. 49/13 (December 31, 2013), ¶255; IACHR, Report on The Right to Truth in the Americas, OEA/Ser.L/V/II.152 Doc. 2 (August 13, 2014), ¶34.
[15] Report on Truth, Justice and Reparation *supra* note 14 ¶255; Report on The Right to Truth note 14 ¶34.
[16] Report on The Right to Truth *supra* note 14 ¶34.
[17] *Manuela and family v. El Salvador*, IACHR, Report No29/17, Petition 424.12 (March 18, 2017), ¶8.
[18] *Palamara-Iribarne v. Chile*, IACtHR (Ser. C) No.135 (November 22, 2005), ¶163,183-184; *Velasquez Rodriguez, 1988 supra* note 12 ¶66; Pasqualucci *supra* note 4, p.95; Laurence Burgorgue-Larsen and Úbeda de Torres, A., *The Inter-American Court of Human Rights: Case Law and Commentary* (Oxford, 2011), ¶26.27.
[19] Burgorgue-Larsen, 2011 *supra* note 18 ¶26.27.

Also, both this Court and the Commission have ruled that truth commissions in relation with judicial proceedings can be effective remedies[20].

In the present case, Naira's TC and domestic court are more than mere formalities as the TC is undergoing investigations and will have its final report released in 2019[21]. Also, Naira is offering to rectify the situation by providing the possibility of reopening the criminal case[22], even if the statute of limitation was legal and in line with the international law, as explained in Part II C) ii) of this memorial. In addition, the five-year delay established by this Court to render a final judgement[23] has not yet elapsed as the TC's final report will be released next year and the HLC is currently examining the situation. Therefore, this Court should find that the petitioners have more remedies to exhaust before bringing the case to this Court and it should let the internal process run its course as a ruling would currently be premature.

iii. The Exceptions to the Exhaustion of Domestic Remedies Do Not Apply

Naira sustains that the exceptions to the exhaustion of domestic remedies cannot apply in the present case. Article 46(2) of the American Convention states that the alleged victims have the burden to prove that 1) no remedies were available, 2) the remedies were inaccessible, 3) there were unwarranted delays, or 4) they were within the scope of the indigency exception[24]. Naira

[20] Report on The Right to Truth, *supra* note 14 ¶33-34; Thomas M. Antkowiak, "Truth as Right and Remedy in International Human Rights Experience" 23:4 Mich.J. Int'lL. 977 (2002), p.996; Christian Steiner and Patricia Uribe (Eds.), *Convencion Americana sobre derechos humanos: Comentario,* KAS (2014), p.843.
[21] C.Q. ¶15
[22] H.C. ¶34
[23] *Las Palmeras v. Colombia*, IACtHR (Ser. C) No. 67 (February 4, 2000), ¶38.
[24] *American Convention supra* note 8 art.46 (2)(a)-(c); IACtHR, Advisory Opinion, Exceptions to the exhaustion of domestic remedies (art. 46(1), 46(2)(a) and 46(2)(b) American Convention of Human Rights), OC-11/90 (August 10, 1990), ¶20.

established the availability of domestic remedies in the preceding section, therefore, it is on the victims to prove that the exceptions apply to the present case[25].

Nonetheless, Naira wishes to underline that this Court ruled that "merely because a person is indigent does not […] mean that he does not have to exhaust domestic remedies[26]." For instance, to trigger the exception, the indigents should be unable to pay the fees required for accessing the justice system or be incapable to find a representative due to fear of government reprisals[27]. In the present case, the alleged victims were indigent, but had access to the judicial system and to legal advice since it is free in Naira[28] and they found legal representation through Killapura[29]. Therefore, the alleged victims cannot be exempted from the obligation to exhaust domestic remedies.

C. This Court Lacks of Jurisdiction *Ratione Temporis*

In the present case, this Court does not have jurisdiction over Article 7 of Belém do Parà since the alleged violations took place four years before Naira ratified the convention in 1996[30]. Indeed, under Article 21 of Belém do Parà, the convention enters into force 30 days after the date of ratification. It does not have a retroactive effect and it is therefore inadmissible[31].

However, this Court could have jurisdiction if the violation was continuous[32]. A continuing violation "refers to behaviors whose consummation extends over time as a single and constant

[25] *Cherokee Nation v. United States*, IACHR, Report No.6,97, Case 11.071, OEA/Ser.L/V/II.95 Doc.7 (March 12, 1997), ¶40.
[26] Exceptions to the exhaustion of domestic remedies *supra* note 24 ¶20.
[27] Pasqualucci *supra* note 4 p.97-98.
[28] C.Q. ¶17,52; *Jorge Portilla Ponce v. Ecuador*, IACHR, Report No.106,09, Petition 12.079 (2009), ¶24-25 ; *Maria Mercedes Zapata Parra v. Peru*, IACHR, Report No.45,09, Petition 12.079 (2009) ¶34.
[29] H.C. ¶33
[30] H.C. ¶7
[31] *Arguelles v. Argentina*, IACtHR (Ser. C) No.288 (November 20, 2014), ¶24.
[32] *Ibid* ¶26

violation[33]". In *Chichupac,* like in the present case, the alleged victims were indigenous women victims of arbitrary detention, sexual violations and forced labour[34]. This Court concluded it lacked jurisdiction to hear the case since the violations occurred before Guatemala's ratification of the American Convention and were not considered to be continuous nor permanent since they did not persist in time[35]. Therefore, this Court should use the same reasoning in the present case and find that the alleged violations are not continuous.

Moreover, this Court could consider itself competent if there was an ongoing denial of justice[36]. For example, in *Moiwana Community,* this Court decided to hear the case even if the violations occurred before the ratification of the American Convention by the State[37]. However, the circumstances were very different from the present case: no initiative had been taken to investigate and an amnesty law was enacted to prevent investigations and sanctions[38]. In the present case, as soon as Naira was made aware of the alleged violations, it immediately took measures to investigate and did not enact an amnesty law[39]. The statute of limitation was not a *post facto* reaction of the State to block access to justice since it was already in place when Killapura submitted their criminal complaint. Naira is now offering paths to justice and redress to the alleged victims through the TC and the potential reopening of their criminal cases. Thus, this Court should find that the allegations regarding Article 7 of Belém do Parà does not fall within its jurisdiction.

[33] *Ibid*
[34] *Miembros de la Aldea Chichupac y Comunidades Vecinas del Municipio de Rabinal v. Guatemala,* IACtHR (Ser. C) No.328 (November 30, 2016), ¶24; H.C. ¶28.
[35] *Chichupac supra* note 34 ¶24.
[36] Steiner & Uribe *supra* note 20 p.772.
[37] *Moiwana Community v. Suriname*, IACtHR (Ser. C) No.124 (June 15, 2005), ¶40.
[38] *Ibid* ¶41
[39] H.C. ¶34

In sum, Naira respectfully asks this Court to welcome the State's preliminary objections and find this case inadmissible. Indeed, the criminal court's decision on the inadmissibility of the alleged victims' complaint was legal and in line with international law. Therefore, by hearing this case, this Court would violate the "fourth instance formula". Alternatively, the petitioners have yet to exhaust all the available domestic remedies. Finally, this Court should find that it lacks jurisdiction *ratione temporis* regarding Belém do Parà. As previously submitted, this Court should let the internal processes – the TC and the High-Level Committee's undertaking – run its course as a ruling in the present case would be premature.

Naira also wishes to underline that it is dealing with a situation of transitional justice since the allegations were committed 26 years ago[40]. In addition, transitional justice is known to be highly relevant to deal with violations that occurred during past regimes or governments[41]. Therefore, by hearing this case prematurely, the Court would undermine Naira's domestic efforts to respect and ensure the effective protection of the alleged victims under the American Convention.

II. NAIRA IS MEETING ITS DUTY TO RESPECT AND ENSURE THE RIGHTS PROTECTED BY ARTICLES 4, 5, 6, 7, 8 AND 25, IN RELATION WITH ARTICLE 1(1) OF THE AMERICAN CONVENTION

Before exploring how Naira is specifically meeting its duty to respect and ensure the rights protected by the American Convention, the State respectfully wants to draw the attention of this Court on important elements. First, Naira will demonstrate that the state of emergency at the time of the events was legitimate. Indeed, a state of emergency enables the State to suspend certain

[40] H.C. ¶28

[41] CEJIL, "Transitional Justice in South America: The Role of the Inter-American Court of Human Rights", Revista CEJIL, IV:5, 2009, p.83,91.

guarantees. However, such a provision does not negate the rights enshrined in the American Convention but rather affect the interpretation of the State's obligation. Second, Naira will show that the petitioners did not fulfill their burden of proof and, therefore, the case should not be heard by this Court. Despite these important elements weighing in favour of Naira, the State will argue that it is meeting its duty to respect and ensure the rights protected by Articles 4, 5, 6, 7, 8 and 25, in relation with article 1(1) of the American Convention and Article 7 of Belém do Parà.

A. The State of Emergency Declared by Naira Was Legitimate

The American Convention does not include an exhaustive definition of situations that allow a State to declare a state of emergency[42]. However, war, public danger and other emergencies are stated as circumstances that would lead a State to suspend guarantees[43]. In the present case, Naira's then-President declared a state of emergency under Article 27(1) of the American Convention in 1980[44]. By doing so, he suspended the guarantees contained under Articles 7, 8 and 25 of the American Convention[45]. This measure was justified due to the threat to public security that represented the armed group "Freedom Brigades"[46]. In this section, Naira will demonstrate that it had legitimate grounds to take actions and that it respected the requirements established under Article 27 of the American Convention.

The situation in Naira between 1980 and 1999 cannot be defined as a non-international armed conflict since the armed groups were not included within the scenarios regulated by international

[42] Laurence Burgorgue-Larsen and Úbeda de Torres, A., "'War' in the Jurisprudence of the Inter-American Court of Human Rights" 33:1 HRQ 148 (February 2011), p.169.
[43] *American Convention*, *supra* note 8, Article 27(1).
[44] H.C. ¶9
[45] C.Q. ¶10
[46] H.C. ¶8

humanitarian law[47]. Thereby the *jus in bello* does not apply[48]. However, war is not the only situation that entails the suspension of guarantees by the State[49]. In *Zambrano-Velez,* this Court referred to criteria established by the European Court of Human Rights (hereinafter "European Court") to assess the legitimacy of the State of emergency[50]. It stated that there should "a) exist an exceptional situation of crisis or emergency; b) which affects the whole population, and c) which constitutes a threat to the organized life of the community"[51]. In the present case, these criteria were met since the context of terrorism and violence in Naira was an exceptional situation of crisis that affected the whole population of Soncco, Killki, and Warmi [52]. Also, both this Court and the Commission recognized that terrorist and criminal threats can legitimize the use of a state of emergency[53]. Therefore, Naira's decision to declare a state of emergency was legitimate.

Moreover, the state of emergency respected the principle of proportionality by meeting the requirement of "duration, geographical coverage and material scope[54]" established under Article 27(1) of the American Convention. Indeed, the proportionality of the measures is directly related to the fulfillment of those requirements[55]. In the present case, Naira took measures to respond to the gravity of the situation by suspending guarantees enshrined under Articles 7, 8, and 25 of the American convention, only in the three provinces where the "Freedom Brigades" committed

[47] C.Q. ¶32
[48] *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)* June 8, 1977, 1125 UNTS 609 (Entry into force: December 1978), Art.3.
[49] *American Convention*, *supra* note 8, Article 27(1).
[50] *Zambrano Velez and al v. Ecuador,* IACtHR (Ser. C) No.166 (July 4, 2007), ¶46.
[51] *Lawless v. Ireland (No3)* ECHR 332/57 (July 1, 1961), ¶28.
[52] H.C. ¶8
[53] *Zambrano Velez v. Ecuador supra* note 50 ¶96; IACHR, Report on Terrorism and Human Rights, OEA/SerL/V/II116 Doc.5/1 (2002), ¶8.
[54] IACtHR, Advisory opinion, Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), OC-8/87 (January 30, 1987), ¶48; UNHRC, General Comment, Article 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.1131 (August 31, 2001), ¶4.
[55] Steiner & Uribe *supra* note 20 p.681.

terrorist acts and solely for the time necessary to control the area[56]. Also, the non-derogable rights enshrined in Article 27(2) of the American Convention were not suspended as will be further developed in section IIC) of this memorial. In sum, the measures took by Naira did not "exceed the limits of that which is strictly required to deal with the emergency[57]".

The State also fulfilled its procedural obligation under Article 27(3) of the American Convention by notifying the other States Party to the American Convention through the Organisation of American States of its intentions to derogate from its obligations under the American Convention[58].

In light of all these elements, the state of emergency was legitimate and Naira was within its right to suspend certain guarantees under Article 27 of the American Convention. The legitimacy of this provision impacts the interpretation of the State's obligation under the American Convention[59] as further developed in the following sections.

B. The Petitioners Did Not Meet Their Burden of Proof

This Court established that the burden to prove the alleged violations is on the petitioners[60] and that the evidentiary value of each allegation depends on what can be corroborated[61]. The seriousness of the allegations requires to establish the truth in a convincing manner[62]. However, in situations where the State is uncooperative, the use of presumptions or circumstantial evidences

[56] H.C. ¶8,9; C.Q. ¶10
[57] Habeas corpus *supra* note 54 ¶48.
[58] C.Q. ¶10
[59] Habeas corpus *supra* note 54 ¶18.
[60] *Velasquez Rodriguez, 1988 supra* note 12 ¶122-139.
[61] *Radilla-Pacheco v. Mexico*, IACtHR (Ser. C) No.209 (November 23, 2009), ¶72.
[62] *Velasquez Rodriguez, 1988 supra* note 12 ¶129.

could be accepted to prove the allegations[63]. Naira submits that the petitioners did not meet their burden of proof because they are presenting allegations that are not corroborated and the principle of presumptions cannot apply.

In the present case, Naira sustains that the allegations based on a TV interview and on interviews with neighbors are not corroborated[64]. For 22 years, the alleged victims never reported the violations[65] and the vast majority of the town's residents and the authorities of Warmi denied the allegations[66]. Moreover, the principle of presumptions cannot apply to the present case since Naira is cooperating with the petitioners by creating the TC, which is currently investigating to shed light on the events[67]. Therefore, Naira respectfully asks this Court to declare that the petitioners did not meet their burden of proof and should allow Naira to continue its investigations domestically since this case is premature.

C. Naira Has Respected the Right to Fair Trial and the Right to Judicial Remedy

i. The "Essential" Judicial Guarantees Were Respected by Naira During the State of Emergency

Naira established in section II A) of this memorial that the state of emergency respected Article 27(1) and (3) of the American Convention. Moreover, Article 27(2) of the American Convention provides that the essential judicial guarantees for the protection of rights cannot be suspended. Indeed, this Court established in OC-97/87 that writs of *Habeas Corpus* and *Amparo*, as well as

[63] *Gangaram-Panday v. Suriname*, IACtHR (Ser. C) No.16 (January 21, 1994), ¶49; Pasqualucci *supra* note 4 p.170,173.
[64] H.C. ¶32-33
[65] H.C. ¶30
[66] H.C. ¶32
[67] H.C. ¶34

judicial procedures inherent to representative democracy are "essential"[68]. As explained in the Preliminary Objections, the alleged victims did not use the procedures of *Habeas Corpus* or *Amparo* even if they were available. Therefore, Naira respectfully asks this Court to conclude that the State respected the essential remedies since they were accessible during the state of emergency.

ii. The Statute of Limitation Is Legal and in Conformity with International Law

Statutes of limitation are used by States to stabilize their judicial system and to protect the constitutional rights of the accused[69]. This Court itself has a statute of limitation of six months for the petitioners to file a complaint[70]. However, the prosecution of crimes against humanity or war crimes cannot be barred by statutes of limitation[71]. This Court also established that, in certain circumstances, the use of the statute of limitation should be prohibited and a State could be ordered to investigate or punish despite the expiration of a statute of limitation[72]. The State sustains that, in the present case, the statute of limitation was legal and in conformity with international law.

In the present case, the alleged violations are neither war crimes nor crimes against humanity. Indeed, since the situation did not constitute a "war" as explained in Part II A), the alleged violations cannot be considered as war crimes[73]. Moreover, the Rome Statute defines crimes against humanity as crimes "committed as part of a widespread or systematic attack directed

[68] IACtHR, Advisory opinion, Judicial guarantees in State of emergency (Arts. 27(2), 8 and 25 of the American Convention on Human Rights), OC-9/87 (October 6, 1987), ¶2,41.
[69] Fernando Felipe Basch, "The Doctrine of the Inter-American Court of Human Rights Regarding State's Duty to Punish Human Rights Violations and its Dangers" 23:1 Am. U. Int'l L Rev, 196 (2007), p.207.
[70] Rules of Procedure of the Inter-American Court of Human Rights *supra* note 3 Art.46(1)(b).
[71] *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Hukanity*, November 26, 1968, Res. 2391 (Entry into force: November 11, 1990), Art.1; *Rome Statute of the International Criminal Court*, July 17, 1998, A/CONF.183/9 (Entry into force: July 1, 2002), Art.8; IACHR, Access to Justice for Women Victims of sexual violence: Education and health, OEA/Ser.L/V/II. Doc.65 (December 28, 2011), ¶47.
[72] Bash *supra* note 69 p.208-210; *Bulacio v. Argentina*, IACtHR (Ser. C) No.110 Reasoned opinion of judge Ricardo Gil Lavedra (September 18, 2003) ¶115, ¶4.
[73] *Rome Statute supra* note 71 (Entry into force: July 1, 2002), Art.8.

against any civilian population[74]". In that sense, the violations alleged by the Quispe sisters were not crimes against humanity since they were isolated. Indeed, the alleged victims were the only ones to file a complaint.

Naira also sustains that its statute of limitation is in conformity with international law. Indeed, this Court established that statutes of limitation are prohibited if their creation was "aimed at preventing criminal prosecution or at voiding the effects of conviction[75]" or if the limitation has expired as a result of unwarranted delays proacted by the State or the accused[76]. In the present case, Naira's statute of limitation did not aim at preventing criminal prosecution or at voiding the effects of conviction since it existed prior to the alleged victims' criminal complaint. Thus, Naira did not have the intention to prevent prosecution or investigation of this case. Also, the statute of limitation expired due to the alleged victims' own making since they waited 22 years to file a complaint.

iii. Naira Has Respected Article 8 and 25 of the American Convention

Under Articles 8 and 25 of the American Convention, "all persons are entitled to access to judicial remedies and to be heard by a competent authority or court when they think that their rights have been violated[77]". Also, States should act with due diligence in guaranteeing these rights[78] by "facilitating access to judicial remedies that are suitable and effective for addressing a violation of human rights"[79]. In this section, Naira will establish that it acted with due diligence in guaranteeing

[74] *Ibid* Art.7.
[75] *Gutiérrez-Soler v. Colombia*, IACtHR (Ser. C) No.132 (September 12, 2005), ¶97; *Palamara-Iribane v. Chile supra* note 18 ¶183-184; *Yarce v. Colombia* IACtHR (Ser. C) No.325 (November 22, 2016), ¶279.
[76] Access to Justice *supra* note 71 ¶151.
[77] *Maria Da Penha Maia Fernandes, Brazil*, IACHR, Report N°54/01, Case 12.051 (April 16, 2001), ¶37.
[78] *Paloma Angélica Escobar Ledezma et al*., IACHR, Report. No.51/13, Case 12. 551 (July 15, 2013), ¶72.
[79] *Ibid* ¶73

the rights protected under Articles 8 and 25 since the right to be heard by a competent court was not denied and Naira provided adequate and effective remedies in a prompt manner.

The right to be heard by a competent court enshrined in Article 8 of the American convention was not denied. This right is based upon the principle of equality in the judicial process meaning that the procedures should be public and before a competent, independent and impartial tribunal[80]. Moreover, a person cannot be denied access because of trivial reasons[81]. The judicial proceedings in Naira are public and the courts are competent, independent and impartial since they have demonstrated that they can investigate, prosecute and convict perpetrators[82]. Indeed, nothing in the facts submitted by the petitioners shows that Naira's court lacks competence, independence or impartiality. Finally, the Quispe sisters' case was examined before the domestic courts and was not denied for trivial reasons since Naira established in Part C) ii) of this section that the statute of limitation is legal and consistent with Naira's international obligations.

The right to judicial protection established in Article 25 of the American Convention has been respected by Naira. Indeed, as explained in section I B) of this memorial, the State is currently offering adequate and effective remedies through the TC and the potential reopening of the criminal case by a decision of the High-Level Committee. Moreover, the remedies were made available promptly[83]. Indeed, this Court has held that there is an unwarranted delay when a period of five years has passed from the initiation of proceedings to the presentation of the case before the Commission[84]. In the present case, the petitioners waited approximately one year and 2 months

[80] Cecilia Medina, *The American Convention on Human rights: Crucial Rights and their Theory and Practice*, Intersentia (2016), p.241.
[81] *Ibid* p.246; *Velasquez Rodriguez*, 1988 *supra* note 1210 ¶68.
[82] H.C. ¶15-18
[83] H.C. ¶34; Burgorgue-Larsen, 2011 *supra* note 18 ¶26.19.
[84] *Las Palmeras v. Colombia supra* note 23 ¶38.

from the moment they filed a complaint in Naira to the time it was brought to the Commission. Therefore, the State is still within the delays established by this Court.

Moreover, in *Rodriguez Vera*, this Court established that four criteria have to be analyzed to determine if a delay is reasonable: "a) the complexity of the matter, b) the procedural activity of the interested party, c) the actions of the judicial authorities and d) the effects on the legal situation of the person involved in the proceedings[85]". Also, a State can benefit from a longer delay if it has an acceptable justification[86].

In the present case, Naira is evolving in a context of transitional justice and is undergoing a broad investigation on alleged violations that occurred 26 years ago, including 19 years since the SMB were deactivated, factors which all add complexity to the case[87]. It has been established that situations of transitional justice are complex and that delays can increase in such context[88]. It is yet too early to analyze the three other criteria, since the process in the Inter-American System is premature. Indeed, the case is under investigation and the High-Level Committee is still evaluating the possibility to reopen the alleged victims' criminal cases. Therefore, this Court should it should declare that Naira is acting promptly considering the complexity of the present case and declare that Naira has respected Article 25 of the American Convention.

Accordingly, Naira respectfully asks this Court to find that the State has respected the rights protected under Articles 8 and 25 of the American Convention.

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[85] *Rodriguez Vera et al (The disappeared from the Palace of justice) v. Colombia,* IACtHR (Ser. C) No.287 (November 14, 2014), ¶506.
[86] *Gómez-Palomino v. Peru*, IACtHR (Ser. C) No.136 (November 22, 2005), ¶85.
[87] C.Q. ¶15
[88] IIHR, *Contribution of Truth, Justice and Reparation Policies to Latin American Democracies*, Editorial Production (2011), p.168.

D. Naira Has Respected the Right to Personal Liberty, Freedom from Forced and Compulsory Labor and the Right to Humane Treatment

i. Article 7: Right to Personal Liberty

Naira already established in section IA) of this memorial that the State's obligations under Article 7 of the American Convention were suspended during the state of emergency[89]. The right not to be arrested without a probable cause warrant from a judge or by police authorities *in flagrante delicto* was also suspended[90]. In the present case, Naira respected its obligation under Article 7 of the American Convention since the preventative detention of the alleged victims was legal, not arbitrary and within the ambit of the state of emergency.

First, for a detention to be legal under Article 7(2) of the American Convention, it has to be ordered by a competent authority and the detainee must be brought before a judge or another officer authorized by law[91]. At the time, the SMB held military, political and judicial power in Warmi and were thereby competent to undergo the arrest[92]. The requirement to be brought before a judge was impacted by the state of emergency and will, therefore, be addressed later in this section. However, the alleged victims were accused of being accomplices to the armed group and providing information about the SMB. Since the accusations were serious, the SMB were within their rights to order preventive detention of the alleged victims during the investigation[93].

Second, the detention was not arbitrary under Article 7(3) of the American Convention. Indeed, to determine the arbitrariness of a detention, the following aspects have to be analysed: compatibility

[89] H.C. ¶28
[90] C.Q. ¶10
[91] *Escué Zapata v. Colombia*, IACtHR (Ser. C) No.165 (July 4, 2007), ¶86.
[92] C.Q. ¶12
[93] Report on Terrorism *supra* note 53 ¶123.

with the convention[94], suitability of the measure[95], necessity[96], and proportionality[97]. In the present case, a state of emergency was in effect and these criteria did not apply. Indeed, this Court ruled in *Castillo-Páez* that the circumstances of a state of emergency would justify a person's detention by State agents without any judicial intervention[98].

However, in some cases involving a state of emergency, this Court concluded to a violation of Article 7 of the American Convention where there was an aggravating situation[99]. More precisely, the victims were either executed[100] or had experienced torture or inhumane treatment[101] or enforced disappearance[102]. In the present case, the alleged victims did not meet their burden to prove such aggravating situation and, even if they did, the valid statute of limitation blocked their claim. Nevertheless, Naira is actively investigating the events through the TC to shed light on theses serious allegations, and the High-Level Committee is examining the possibility to reopen the criminal cases. Therefore, the State respectfully asks this Court to find that the detention was not arbitrary and to let the internal process run its course.

Third, the alleged victims stated that they were detained under what they felt were "false accusations[103]", signalling that they were actually informed of the reasons of their detention. Since the alleged victims were informed of the reasons of their detention, the State did not violate Article 7(4) of the American Convention.

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[94] *Chaparro Álvarez y Lapo Íñiguez v. Ecuador* IACtHR (Ser. C) No.170 (November 21, 2007), ¶93.
[95] *Ibid*
[96] *Ibid*
[97] *López Álvarez v. Honduras* IACtHR (Ser. C) No.141 (February 1, 2006), ¶68.
[98] *Castillo-Páez v. Peru* IACtHR (Ser. C) No.34 (November 3, 1997), ¶56.
[99] *Servellón-García et al. v. Honduras*, IACtHR (Ser. C) No.152 (September 21, 2006), ¶87.
[100] *Gomez Paquiyauri Brothers v. Peru 2004 Inter-Am. Ct. H.R. (Ser. C) No. 110* (July 8, 2004), ¶8.
[101] *Servellón-García et al. v. Honduras supra* note 99, ¶99.
[102] *Osorio Rivera Y Familiares v. Perú*, IACtHR (Ser. C) No.274 (November 26, 2013), ¶167.
[103] H.C. ¶28

Fourth, Articles 7(5) and (6) of the American Convention provide for judicial guarantees for the detainees. This Court ruled that during a state emergency, "some legal restraints applicable to the acts of public authorities may differ from those in effect under normal circumstances. These restraints may not be considered as non-existent[104]. In the present case, there were legal restraints since recourses to *Habeas Corpus* and *Amparo* procedures were still available. However, these recourses were never used by the alleged victims or their next of kin[105].

The expression "without delay" or "promptly" used in Articles 7(5) and (6) of the American Convention was never specifically defined by this Court[106]. In *J. v. Peru,* this Court stated that each case had to be analysed to determine if the length of the delay was disproportionate[107]. In the present case, the situation of intense instability and violence in Naira would have reasonably increased the delays to see a competent judge. In *Castillo Petruzzi,* this Court stated, under the specific circumstances of the case, that 36 days of detention without recourse to a competent Court was disproportionate[108].

Moreover, the Paris Minimum Standard of Human Rights Norms in a State of Emergency, states that "[n]o person shall be detained for a period longer than 30 days unless the reviewing authority before its expiry has reported that there is in its opinion sufficient cause for such detention[109]". In the present case, the alleged victims were released after a month[110]. The delay was therefore within

[104] Habeas corpus *supra* note 54, ¶24.
[105] H.C. ¶28; Q.C. ¶14,77,81
[106] Medina, *supra* note 80 p.208.
[107] *J. v. Peru,* IACtHR (Ser. C) No.275 (November 27, 2013), ¶144.
[108] *Castillo Petruzzi et al. v. Peru* IACtHR (Ser. C) No.52 (May 30, 1999), ¶109.
[109] Richard B. Lillich, "The Paris Minimum Standards of Human Rights Norms in a State of Emergency" 79 Am. J. Int'l L. 1072 (October 1985), Art. 5(2)d).
[110] H.C. ¶28

the limits of what can be considered reasonable, according to international standards and caselaw. Consequently, the State respected Article 7(5) and (6) of the American Convention.

Finally, both the alleged victims were juveniles at the time of the events[111]. Indeed, they were both between 12 and 17 years of age, which constitutes the age range where minors can be held responsible for infractions[112]. Detention of minors is not prohibited by the American Convention, but it "shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time[113]". Naira already established that the detention was legal, not arbitrary and in compliance with the minimum human rights standards during a state of emergency.

Minors should be separated from adults[114] and the State should respect the right of the child to "maintain […] direct contact with both parents on a regular basis[115]", and minors may never be detained *incommunicado*[116]. In the present case, conditions of detention are unclear and it is unsettled whether the alleged victims were prevented from communicating with people outside the detention area or if they simply did not reach out to anyone[117]. Nevertheless, as soon as the State learned of the events, a TC was set in motion and it is currently investigating the facts to elucidate the circumstances of the detention[118]. Thus, the State was in compliance with its obligations

[111] C.Q. ¶69
[112] IACtHR, Advisory opinion, Juridical Condition and Human Rights of the Child, OC-17/2002 (August 28, 2002), p.8.
[113] Report on Terrorism *supra* note 53 ¶171; *Minors in detention v Honduras* IACHR., Report No.41/99, Case 11.491 (March 10, 1999), ¶113-115; AGNU, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, U.N.Doc. A/Res/40/33 (Nov. 29, 1985), ¶13.
[114] *Convention on the Rights of the Child*, November 20, 1989, U.N.T.S. vol.1577 (Entry into force: September 1990), Art.37.
[115] *Ibid* Art.9, 37; CRC, General Comment, Children's rights in juvenile justice, CRC/C/GC/10 (April 25, 2007), ¶87.
[116] Report on Terrorism *supra* note 53 ¶172.
[117] C.Q. ¶77
[118] H.C. ¶34; C.Q. ¶3

regarding juvenile detention. In conclusion, the detention was strictly within the limits of what was necessary to ensure both public safety and the alleged victims' fundamental rights. Thus, Naira did not violate Article 7 of the American Convention.

ii. Article 6: Freedom from Forced or Compulsory Labor

The right to be free from slavery or forced labor is a peremptory norm and is an obligation *erga omnes* and therefore cannot be suspended in any situation[119]. First, in the present case, the cleaning and cooking tasks allegedly required from the detainees[120] do not constitute slavery. Indeed, what distinguishes slavery from forced labor is the act of ownership on the person[121], which is not the case here[122].

Second, the tasks reportedly required from the alleged victims while in prison do not constitute forced labour. Indeed, this Court defined forced labor in *Trabajadores De La Hacienda Brasil Verde*[123] as "work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"[124]. In a context of deprivation of liberty, "coercion, imposition of penalties and withdrawal of privileges assume an entirely different significance[125]". Therefore, it can be complex to determine when work in prison

[119] *American Convention*, *supra* note 8, Art.27(2); IACHR, Comunidades cautivas: Situación del Pueblo indígena guaraní y formas contemporáneas de esclavitud en el Chaco de Bolivia, OEA/ Ser.L/V/II, Doc.58 (24 December 2009), ¶54-55.
[120] H.C. ¶28
[121] *Trabajadores De La Hacienda Brasil Verde v. Brasil*, IACtHR (Ser. C) No. 318 (October 20, 2016), ¶269-271.
[122] H.C. ¶28
[123] *Trabajadores De La Hacienda Brasil Verde supra* note 121 ¶291-292.
[124] *Ibid*; *Ituango Massacres supra* note 2 ¶157-160; *Convention concerning Forced or Compulsory Labour*, June 28, 1930, 14th session, ILO CO29 (Entry into force: May 1932), Art.2(1).
[125] ILO, Report on Stopping Forced Labor: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (2001), ¶58, Online: <http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203447/lang--en/index.htm>.

constitutes forced labor. However, in the present case, the maintenance tasks required from the alleged victims were light and undemanding.

It must be noted that certain forms of forced labor are excluded from the scope of Article 6 of the American Convention. Indeed, Article 6(3) sets forth exceptions such as "service[s] exacted in time of danger or calamity" and work or "service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority[126]". Even if other exceptions to Article 6 of the American Convention exist, only these two apply in the present case and will be examined.

Since this Court never ruled on Article 6(3) of the American Convention, the State respectfully asks to interpret this provision in light of the standards established by the ILO and the European Court[127]. First, this Court should take into consideration that the scope of Article 6 does not include "service[s] exacted in time of danger or calamity that threatens the existence or the well-being of the community"[128]. It must be reiterated that Naira was experiencing violence and terrorist acts threatening the well-being of the nation[129], a situation that would reasonably trigger Article 6(3)(c).

Moreover, citizens have a duty arising from Article XXXIV of the American Declaration of the Rights and Duties of Man to "render whatever civil and military service [their] country may require for its defense and preservation, and, in case of public disaster, to render such services as may be in [their] power.[130]" Of course, this duty is limited and should be restricted to what is strictly

[126] *American Convention*, *supra* note 8, Art.6(3)a)c).
[127] *Forced Labour Convention*, *supra* note 124 Art.2(1); Steiner & Uribe *supra* note 20 p.163-164.
[128] *American Convention*, *supra* note 8, Art.6(3)c).
[129] H.C. ¶8
[130] *American Declaration of the Rights and Duties of Man*, May 2, 1948, U.N.T.S vol.17955 (Entry into force: August 1979), Art.XXXIV.

required by the necessities of the situation[131]. Since the SMB were established solely to control the situation of violence in Naira[132], the State posits that the minimal labor required to keep the prison running during the state of emergency was within the scope of Article 6(3). Therefore, it does not constitute forced or compulsory labor.

Furthermore, the American Convention stipulates that tasks "required of a person in execution of a sentence or formal decision passed by the competent judicial authority[133]" would not constitute forced or compulsory labour. The language used by the ILO is slightly different and requires the work to be in "consequence of a conviction in a court of law[134]". Since the SMB held judiciary competence at that time[135], their decision to require the alleged victims to perform maintenance tasks fall under the scope of Article 6(3)a). Additionally, the ILO's Committee of Experts on the Application of Conventions and Recommendations stated that persons detained without a conviction from a court of law should not be forced to perform labor except regarding limited obligations to ensure cleanliness[136]. In the present case, the tasks required from the alleged victims were only related to maintaining the facility[137]. Therefore, the menial tasks required from the alleged victims were in compliance with Article 6(3)a) of the American Convention.

The State respectfully asks this Court to refer to the European Court's caselaw to determine what is considered "normally required work or service[138]" under Article 6(3) of the American

[131] Habeas corpus *supra* note 54, ¶48.
[132] H.C. ¶9
[133] *American Convention*, *supra* note 8, Art.6(3)a).
[134] *Forced Labour Convention*, *supra* note 124 Art.2(c).
[135] C.Q. ¶12
[136] ILO, Report on General Survey concerning the Forced Labour Convention, 1930 (No.29), and the Abolition of Forced Labour Convention, 1957 (No.105), III (Part 1B), (February, 2007), p.25.
[137] H.C. ¶28
[138] *American Convention*, *supra* note 8, Art.6(3)a).

Convention as this Court never ruled on the matter. Indeed, the European Court established that the type and amount of work involved should be considered to determine if the labor constitutes a "disproportionate burden"[139]. The amount of work allegedly required from the victims was light, not particularly demanding and only implied tasks necessary to keep the prison running[140]. Moreover, it is habitual for detainees to perform maintenance tasks even if it does not entail remuneration[141].

Additionally, the State reiterates that, as established in section II D) i) of the present memorial, the detention of the alleged victims, juveniles at the time of the events, respected Article 7 of the American Convention. The goal of any detention, especially of juveniles, is to re-educate and rehabilitate the detainees[142]. They should therefore be provided with opportunities to work[143]. The State must protect them from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development[144]". The alleged victims were under the supervision of public authorities and were not hired or placed at the disposal of private individuals, companies or associations[145]. Such supervision is necessary to make sure that the work stays under reasonable limits[146]. Also, Naira already established that the tasks required from the alleged victims were undemanding maintenance chores necessary to keep the prison running. The State

[139] *CN v France*, ECHR 67724/09 (October 11, 2012), ¶74.
[140] H.C. ¶28
[141] CEJIL, Report on Women in Prison: Regional (2006), p.38-39, Online: <https://www.cejil.org/sites/default/files/legacyfiles/womeninprison0.pdf>.
[142] Juridical Condition and Human Rights of the Child *supra* note 112 p.41-42.
[143] *UN Standard Minimum Rules for the Administration of Juvenile Justice supra* note 113 Art.18b).
[144] *Convention on the Rights of the Child supra* note 114 Art.32.
[145] H.C. ¶28
[146] *Stopping Forced Labor supra* note 125, p.60; Steiner & Uribe *supra* note 20 p.177; *Zhelyazkov v. Bulgaria*, ECHR 11332/04 (October 9, 2012), ¶15.

was therefore in compliance with its obligation regarding the rights of juveniles in regards with the Convention on the rights of the child.

Accordingly, the State submits that there was no violation of Article 6 of the American Convention since the tasks allegedly required from the victims were within the scope of the exceptions provided for under Article 6(3).

iii. Article 4 & 5: Right to Life and to Humane Treatment

Article 4(1) of the American Convention states that "every person has the right to have his life respected" and that "no one shall be arbitrarily deprived of his life[147]". In the present case, the alleged victims were not deprived of their lives[148]. However, this Court already stated that Article 4(1) also includes "access to the conditions that guarantee a dignified life (*vida digna*)"[149]. Indeed, this Court established in *Street Children* that "the compliance of Article 4, related to Article 1(1) of the American Convention, not only presumes that no person shall be deprived of his life arbitrarily […] but also requires the States to take all necessary measures to protect and preserve the right to life[150]". The right to a dignified life refers to the special measures of protection that a State party to the American Convention must adopt in order to protect persons, or group of persons, finding themselves in a situation of vulnerability and does not result in State's responsibility for all situations in which the right to life is at risk[151]. Indeed, in *Miguel Castro Castro Prison*, the detainees "constantly saw their lives threatened due to the intensity of the attack[152]", but this Court

[147] *American Convention*, *supra* note 8, Art.4(1).
[148] Q.C. ¶14
[149] Jo M. Pasqualucci, "The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System", 31:1 *HICLR* 1 (2008), p.1; *Street Children supra* note 5 ¶144.
[150] *Ibid* ¶139; *Miguel Castro-Castro Prison v. Peru*, IACtHR (Ser. C) No.160 (November 25, 2006), ¶237.
[151] *Sawhoyamaxa Indigenous Community*, IACtHR (Ser. C) No.146 (March 29, 2006), ¶155.
[152] *Miguel Castro Castro Prison supra* note 150, ¶242,252.

only found Peru responsible for the violation of the right to life of the 41 deceased individuals. In the present case, the alleged victims were not deprived of their life and this Court should therefore find that the State respected its obligation under Article 4 in relation to Article 1(1) of the American Convention.

However, the alleged rapes and gang-rapes, if proven, would entail the violation of the alleged victims' right to humane treatment[153]. It is well established by regional caselaw that rape, especially in a context of imprisonment, constitutes torture[154]. Indeed, this kind of violence "is not strictly necessary to ensure proper behavior on the part of the detainee [and, therefore,] constitutes an assault on the dignity of the person[155]". Furthermore, violations perpetrated by State agents are always imputable to the State[156]. The State is also responsible for physical integrity of the detainees while they are in custody, especially if they are minors[157]. The alleged violations, if proven, would be attributable to the State since the alleged perpetrators were State agents[158].

Naira acknowledges the difficult situation for the alleged victims and guarantees that the allegations are being investigated by the TC so that the victims can be heard and compensated through domestic courts[159]. The High-Level Committee is also examining the possibility of reopening their criminal cases. By doing so, the State is showing its good faith and is fulfilling its general obligation under Article 1(1) of the American Convention. Therefore, Naira respectfully

[153] H.C. ¶28
[154] *Rosendo Cantu et al. v. Mexico* IACtHR (Ser. C) No. 216 (August 31, 2010), ¶118 ; *Río Negro Massacres v. Guatemala* IACtHR (Ser. C) No.250 (September 4, 2012), ¶132-135; *Aydin v. Turkey* ECHR 676/866 (September 25, 1997), ¶83-84; UNHRC, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment -Manfred Nowak, A/HRC/7/3 (January 15, 2008), ¶34.
[155] *Loayza-Tamayo v. Peru,* IACtHR (Ser. C) No.33 (September 17, 1997), ¶57.
[156] *Paniagua Morales y Otros v. Guatemala*, IACtHR (Ser. C) No.37 (March 8, 1998), ¶120; ILC, Report on P*rojet d'articles sur la responsabilité de l'État pour fait internationalement illicite et commentaires relatifs*, Doc. NUA/56/10 (2011), Art. 8.
[157] *Street Children supra* note 5 ¶148.
[158] H.C. ¶28
[159] C.Q. ¶15,65

asks this Court to withhold its ruling on the alleged violations until Naira's TC issues its report on the historical and detailed truth of the events that occurred between 1980 and 1999 and until the High-Level Committee has rendered its decision regarding the reopening of their criminal cases.

III. NAIRA IS MEETING ITS DUTIES LISTED UNDER ARTICLE 7 OF BELÉM DO PARÀ

Notwithstanding the State's objection on this Court's competence regarding Article 7 of Belém Do Parà, Naira sustains that it respected the disposition since: 1) the allegations occurred years before Naira's ratification of Belém do Parà and all the appropriate means have been taken since to fulfill the State's duties under Article 7 and; 2) the State was diligent and it established the necessary legal and administrative mechanisms to ensure that the alleged victims have access to adequate and effective remedies.

Indeed, Naira ratified Belém do Parà in 1996 and, since then, it took a series of measures to carry out its duties. Punishing the State for a violation that happened before the ratification would undermine the State's good faith to fulfill its obligations. Indeed, Naira revised its regulatory framework to add laws on violence against women and street harassment. The Criminal Code now recognizes the offenses of feminicide and rape[160]. In addition, the State took specific and immediate measures to address the situation of GBV[161]. Indeed, political and administrative policies were implemented such as the Zero Tolerance Policy, the GBV Unit, the Administrative Program on Reparations and Gender and mandatory trainings[162]. It also must be understood that the present administration faces intense democratic opposition and that many legislative bills

[160] H.C. ¶14
[161] *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Parà)*, September 6, 1994, 33 I.L.M. 1534 (Entry into force: May 1995), Art. 7.
[162] C.Q. ¶1,93

which aims were to prevent, punish and eradicate violence against women could not be adopted by the legislative power[163]. In such context, the State is taking all appropriate measures to tackle the issue of GBV. Finding Naira responsible for the violation of Article 7 of Belém do Parà in 1992 would undermine the State's progress and good faith.

Naira wants to reiterate that the transitional justice process now occurring in Naira is complex, but necessary to redress the social order in the State[164]. In the present case, the alleged victims' complaint was time-barred by a statute of limitation that was legal and, by reviewing this decision, this Court would violate the "fourth instance formula". The State has also taken a series of measures from the moment it was aware of the allegations to make sure that the victims had access to adequate and effective remedies. Indeed, 5 days after Killapura filed a criminal complaint, the executive branch ordered the creation of the TC and High-Level Committee[165]. Naira even offered to allocate a Special Fund for reparation for the possible other violations of human rights that might have occurred between 1980 and 1999 in addition to the Administrative Program on Reparations and Gender[166]. Therefore, this Court should find the process in front of the Inter-American System was premature and that Naira respected its duties enshrined in Article 7 of Belém do Parà.

REQUEST FOR RELIEF

Naira respectfully requests this Court to declare that it lacks competence to hear the present case since it violates of the "fourth instance formula", the domestic remedies were not exhausted and this Court lacks jurisdiction *ratione temporis*. Alternatively, should this Court find this case

[163] H.C. ¶3; Q.C. ¶83
[164] IIHR, *Contribution of Truth, Justice and Reparation Policies supra* note 88 p.168; Report on The Right to Truth *supra* note 14 ¶34.
[165] H.C. ¶33-34
[166] H.C. ¶34

admissible, it should find that the State's actions are in compliance with Articles 4, 5, 6, 7, 8, and 25, in relation with Article 1(1) of the American Convention and Article 7 of Belém do Parà.