
**CASE OF MARIA ELENA QUISPE AND MONICA QUISPE
(PETITIONERS)**

V.

**DEMOCRATIC STATE OF NAIRA
(RESPONDENT)**

MEMORIAL FOR THE STATE

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2. Statement of Facts

A. Naira: 1979-1999

Naira is an economically sound and democratic state.¹ Naira has ratified all international human rights treaties.² Nevertheless, between 1979 and 1999, acts of violence occurred in the provinces of Soncco, Killki, and Warmi at the hands of drug traffickers known as the Freedom Brigades.³ Former President, Juan Antonio Morales, counteracted the traffickers by declaring a state of emergency, suspending guarantees, and establishing judicial command units to protect the citizens of Naira.⁴ President Morales properly alerted the OAS General Secretary of the specific rights from which Naira derogated, complying with Article 27 of the American Convention.⁵ There were no reports of human rights violations during this period of political unrest.⁶

B. Naira: 2000 to the Present

President Gonzalo Benavente, the leader of the Democratic Reform Party, was elected in April of 2014, and has three years remaining in office.⁷ Despite opposition from conservative extremists, he has remained committed to ensuring regulatory changes and implementing governmental programs to promote inclusion and improved conditions for Naira's most vulnerable groups.⁸ President Benavente has thus far implemented two new laws to address gender violence: Law 25253, which deals with violence against women and family, as well as Law 19198, which

¹ Hypothetical Case (hereinafter "HC") ¶ 1.

² HC ¶ 7.

³ HC ¶ 8.

⁴ HC ¶ 9.

⁵ Clarification Question (hereinafter "QC") ¶ 10.

Specifically, Naira derogated from Articles 7, 8, and 25 of the American Convention. Additionally, Naira derogated from the right to inviolability of the home, freedom of movement, right to assembly, and the right not be arrested without a probable cause warrant from a judge or by police authorities *in flagrante delicto*.

⁶ HC ¶ 10.

⁷ HC ¶ 2.

⁸ *Id.*

protects against street harassment.⁹ These laws were enacted before the following two cases occurred.

Zuleimy Pareja was a transgender person killed by her partner in 2010.¹⁰ Zuleimy's body was found in an open field.¹¹ After Zuleimy's family filed a police report, the police opened an investigation, and Pareja's partner, Angelino Mendoza, was charged with femicide, and the maximum sentence of forty years was sought.¹² After being reviewed twice on appeal, the original judgment of forty years was upheld.¹³

Analía Sarmiento was a nineteen-year-old student who disappeared in 2015 after a night of clubbing.¹⁴ Her body was found in a dumpster after she met Guillermo Alcázar.¹⁵ After being rejected by Ms. Sarmiento, Mr. Alcázar followed her and forced her into his car where he raped her and killed her.¹⁶

President Benavente recognized the State's duty to prevent and rectify the aforementioned crimes. Additionally, President Benavente created the Zero Tolerance Policy on Gender-Based Violence and allocated a budget for its immediate implementation to directly address these concerns.¹⁷ President Benavente also recognized that the State needed a woman's perspective in ensuring the free exercise of women's rights, so he enlisted proposals from the civil society, women's organizations, and victim associations.¹⁸

⁹ HC ¶ 4.

These laws were administered on July 7, 2014.

¹⁰ HC ¶ 16.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ HC ¶ 18.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ HC ¶ 19.

¹⁸ *Id.*

President Benavente's initiative includes a gender-based violence unit in the Public Prosecutor's Office.¹⁹ The unit will include a judicial branch that will implement specific measures to assist female victims, as well as mandatory training and education for judges, prosecutors, and other public servants.²⁰ This unit will have the authority to penalize those in public officers who abuse their positions by committing acts of gender-based violence and discrimination.²¹

Naira will also review current legislation on femicide, violence, discrimination, and issues of gender identity in the coming months, with broad citizen participation to help prevent cases like those of Pareja and Sarmiento from occurring.²² To make victims whole, Naira will implement an Administrative Program on Reparations and Gender to address the needs of victims, prioritizing femicide and rape.²³ This program will consist of different economic and social measures to address the physical, mental, educational, and housing needs of victims.²⁴ Although this program requires registration with the Unified Registry of Victims of Violence, all victims are eligible.²⁵

C. Disputes in Question

1. Alleged Rapes

María and Mónica Quispe allege that between 1990-1999²⁶ at Special Military Base (SMB) in Warmi, officials committed abuses against them and others.²⁷ Specifically in March of 1992, the Quispe sisters allege they were held at an SMB on false accusations for over a month and were forced to wash, cook, and clean every day in addition to being raped by soldiers.²⁸ Lastly they

¹⁹ HC ¶ 20

²⁰ *Id.*

²¹ *Id.*

²² HC ¶ 21.

²³ HC ¶ 22.

²⁴ *Id.*

²⁵ *Id.*

²⁶ HC ¶ 27.

²⁷ HC ¶ 28.

²⁸ *Id.*

allege women were forced to strip naked in front of soldiers who beat and groped them.²⁹ Authorities in the province of Warmi issued a public statement denying these unsupported allegations, and the vast majority of Warmi citizens echoed the authorities' sentiments.³⁰ In the meantime, Killapura, a Non-Governmental Organization (NGO), agreed to take on María and Mónica's cases.³¹

On March 10, 2015, Killapura filed criminal complaints on behalf of the Quispe sisters alleging acts of sexual violence.³² However, they were time-barred by an expiration of the fifteen-year statute of limitations.³³ Killapura then asked the government to come forward and take steps to permit the acts to be prosecuted.³⁴ Killapura specified that the complaints should not be limited to the sisters, but that a more general and contextual investigation should be opened to guarantee the rights of other victims.³⁵ Killapura urged for reparations to be available for women, as well as children born as a result of rapes.³⁶

On March 15, 2015, Naira's executive branch replied that it was not within its purview to interfere in the court case, but the State responded by creating a High-Level Committee to explore potentially reopening the criminal cases.³⁷ Furthermore, Naira included both sisters' cases in the ZTPGBV. Additionally, Naira has made crucial adaptations to guarantee victims' rights, by creating a Truth Commission that has expeditiously investigate the facts.³⁸

²⁹ HC ¶ 29.

³⁰ HC ¶ 32.

³¹ HC ¶ 31.

³² HC ¶ 33.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ HC ¶ 34.

³⁸ *Id.*

To show Naira's commitment to the changes, President Benavente held a press conference addressing the new policy changes and ensuring victims of their ability to obtain justice and remedies.³⁹ Furthermore, he allocated a special fund for reparations as soon as the Truth Commission issues its final report in 2019.⁴⁰ Also, children born of rape, would be immediately registered in the Public Registry of the ZTPGBV.⁴¹

2. Domestic Violence

Also at issue is the case of María Quispe, who on January 20, 2014, reported that her husband, Jorge Pérez, assaulted her.⁴² Although the local medical examiner was out of town⁴³, María Elena failed to obtain a gynecological examination.⁴⁴

Four months after the initial incident, María's husband intercepted her on the street and insulted her and hit her.⁴⁵ He was immediately arrested, prosecuted, and convicted.⁴⁶ After his release, María's husband went to her place of employment and accosted her and was then arrested again.⁴⁷ Mónica Quispe filed a complaint on María's behalf, and this case is still pending.⁴⁸ Naira vowed to continue to use due diligence by monitoring María's domestic violence case and the pending custody proceedings involving her son.⁴⁹

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ HC ¶ 35.

⁴² HC ¶ 23.

⁴³ *Id.*

⁴⁴ HC ¶ 24.

⁴⁵ HC ¶ 25.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ HC ¶ 26.

In the meantime, petitioner's sister has been caring for her son, and they are in the midst of custody litigation. Petitioner's husband argues his wife's health makes her unable to care for their son. He's expressed remorse and agreed to continue treatment. At the first instance, the family court judge ruled in favor of Maria's husband.

⁴⁹ HC ¶ 35.

D. Proceedings

On May 10, 2016, Killapura filed a petition with the Inter-American Commission on Human Rights alleging violations of Articles 4, 5, 6, 7, 8, and 25 of the American Convention relating to obligations to respect and guarantee those rights under Article 1(1).⁵⁰

Additionally, Killapura alleges a violation of Article 7 of the Convention of Belém do Pará.⁵¹ On June 15, 2016, the Commission admitted the petition for processing and forwarded pertinent parts to the state of Naira.⁵² On August 10, 2016, Naira replied denying responsibility for the alleged violations, indicating that it did not intend to reach a friendly settlement.⁵³ The State also filed a preliminary objection alleging lack of jurisdiction *ratione temporis*.⁵⁴ The Commission then adopted a report declaring the case admissible.⁵⁵ The case was submitted to the Inter-American Court of Human Rights on September 20, 2017.⁵⁶

3. Legal Analysis

A. Statement of Jurisdiction

Naira has ratified all regional and universal human rights instruments, including the American Convention on Human Rights.⁵⁷ In 1979, Naira accepted the contentious jurisdiction of the Court.⁵⁸ This Court is authorized to adjudicate matters concerning application and interpretation of the American Convention on Human Rights (ACHR) pursuant to Articles 61 and 62.⁵⁹

⁵⁰ HC ¶ 38.

⁵¹ *Id.*

⁵² HC ¶ 39.

⁵³ HC ¶ 40.

⁵⁴ CQ ¶ 7.

⁵⁵ HC ¶ 41.

⁵⁶ HC ¶ 42.

⁵⁷ HC ¶ 7.

⁵⁸ CQ ¶ 5.

⁵⁹ ACHR, Art. 61-62.

B. Preliminary Objections

1. Petitioners failed to exhaust domestic remedies.

Pursuant to Article 46(2) of the ACHR, petitioners may file a petition with this Court without exhausting all domestic remedies only if: (1) domestic law does not afford due process; (2) the State has denied access to adequate and effective domestic remedies; or (3) there has been a delay in rendering a final judgment.⁶⁰ This rule is designed for the “benefit of the State,” to protect it from unwarranted international proceedings, and to allow it to resolve the issue under its internal law.⁶¹ A petitioner is only exempt from this rule due to: (1) indigency, or (2) a lack of available legal representation.⁶²

Even though the Quispe sisters live in a situation of poverty and are members of an indigenous community, Warmi, they are not exempt from the exhaustion requirement because they are neither indigent nor lack legal representation.⁶³ Access to the judicial system of Naira is free. The Quispe sisters can obtain legal representation free of charge.⁶⁴ The Quispe sisters did not exhaust effective, available domestic remedies, including the writs of *amparo* and *habeas corpus*.⁶⁵

A writ of *amparo* is a proceeding that seeks to invalidate an official act or to render it without effect on the grounds of unconstitutionality or illegality.⁶⁶ The writ is used to safeguard human

⁶⁰ ACHR, Art. 46(2); *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a), and 46(2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90, Inter-Am. Ct. H.R., Ser. A, No. 11 (10 Aug., 1990), ¶ 36.

⁶¹ *Viviana Gallardo et al.* (Advisory Opinion), Inter-Am. Ct. H.R., Ser. A, No. G 101/81 (15 July, 1981), ¶ 26; Shelton, Dinah. *The Jurisprudence of the Inter-American Court of Human Rights*. American University International Law Review 10, No. 1 (1996), p. 333-372, 344.

⁶² *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90, Inter-Am. Ct. H.R., Ser. A, No. 11 (10 Aug., 1990), ¶ 19.

⁶³ CQ ¶¶ 52, 75.

⁶⁴ CQ ¶ 52.

⁶⁵ CQ ¶ 81.

⁶⁶ *Fernando A. Colmenares Castillo* (Mexico), Petition 12.170 (Inadmissibility), Report No. 36/05, Inter-Am. Comm’n H.R., (9 March, 2005), ¶ 33; IACHR, *Report on the Human Rights Situation in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, (24 September, 1998), ¶ 93.

rights established in the national constitutions with the exception of personal liberty, which is protected by *habeas corpus*.⁶⁷ In *Judicial Guarantees in State of Emergency (Arts. 27(2), 25 and 8 ACHR)*, the Court provided that Art. 25(1) of the ACHR embodies the *amparo* action, which offers a simple and prompt recourse designed for the protection of all fundamental rights.⁶⁸

The writ of *amparo* could have been invoked by the sisters immediately after their alleged detention at the military base, but they failed to do so. Additionally, the sisters could have pursued a writ of *amparo* to challenge the constitutionality of Naira's laws regarding the pending case against María Elena's alleged abuser, but the sisters failed to pursue this avenue as well.

In addition, the State of Naira provides a constitutional writ of *habeas corpus*.⁶⁹ A writ of *habeas corpus* is a judicial remedy designed to protect against arbitrary detentions by use of judicial decree ordering the authorities to bring a detained person before a judge, so the lawfulness of the person's detention may be determined.⁷⁰ *Habeas corpus* represents "the appropriate means of guaranteeing liberty, controlling respect for a person's life and integrity . . . and protecting individuals from torture or other cruel, inhuman or degrading punishment or treatment."⁷¹ With regard to the Quispe sisters' alleged detention at the military base in Warmi, the sisters could have filed a writ of *habeas corpus* to assess the legality of their detention. As stated in the *Tibi v. Ecuador* case, which concerned the allegedly illegal detainment of a merchant, this Court held that the petitioner failed to exhaust all available domestic remedies and dismissed because the petitioner failed to use the writ of *habeas corpus*.⁷²

⁶⁷ Hector Fix Zamudio, *The Writ of Amparo in Latin America*, 13 Univ. Miami Inter-Am. L. Rev. 361, 366 (1981).

⁶⁸ *Judicial Guarantees in State of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87, Inter-Am. Ct. H.R., (6 Oct. 1987), ¶ 23.

⁶⁹ CQ ¶ 81.

⁷⁰ *Habeas Corpus in Emergency Situations (Arts. 27(2) and 7(6) of the American Convention on Human Rights)*, Advisory Opinion OC-8/87 Inter-Am. Ct. H.R., Ser. A, No. 8 (30 Jan. 1987), ¶ 32.

⁷¹ *Serrano-Cruz Sisters v. El Salvador* (Merits, Reparations and Costs), Inter-Am. Ct. H.R., 1 March 2005, ¶ 79.

⁷² *Tibi v. Ecuador* (Preliminary Objections, Merits, Reparations and Costs), Inter-Am. Ct. H.R., 7 September 2004, ¶ 3, 44.

The Commission also failed to regard the procedural status of the Petitioners' case at the time of filing. After the criminal complaints filed by Killapura alleging acts of sexual violence against both sisters in Warmi were time barred by the fifteen-year statute of limitations, Killapura called on the government of Naira to take measures to allow these alleged acts to be investigated.⁷³ Naira responded promptly by creating a High-Level Committee to explore the potential reopening of the criminal cases, including the case of the Quispe sisters in the Zero Tolerance Policy on Gender-Based Violence (ZTPGBV), making the necessary adaptations to guarantee the sisters' rights, and ordering the creation of a Truth Commission composed of representatives of the state and civil society charged with the duty to urgently investigate the facts relating to the allegations.⁷⁴ Because the government of Naira responded to the sisters' allegations by implementing a multi-organizational fact-finding mission, the process of rendering a final decision is still ongoing.⁷⁵ The Truth Commission is actively conducting investigations, interviewing people, and taking testimonies in the areas affected by the violence that plagued the State of Naira between 1970 and 1999, with anticipation that its final report will be issued in 2019.⁷⁶ Further, the High-Level Committee is still evaluating the criminal cases to determine if the complaints of sexual violence in Warmi should be reopened.⁷⁷ The initiation of a thorough investigation into the allegations of sexual violence lodged by the Quispe sisters is not an unwarranted delay in rendering a final judgment within the meaning of Article 46(2) of the ACHR.⁷⁸

⁷³ HC ¶ 33.

⁷⁴ HC ¶ 34.

⁷⁵ CQ ¶¶ 1, 13, 15.

⁷⁶ CQ ¶¶ 15, 44.

⁷⁷ CQ ¶ 13.

⁷⁸ ACHR, Art. 46(2); *Exceptions to the Exhaustion of Domestic Remedies* (Arts. 46(1), 46(2)(b) of the American Convention on Human Rights), Inter-Am. Ct. H.R., Advisory Opinion OC-11/90, Inter-Am. Ct. H.R., Ser. A, No. 35 (10 Aug., 1990).

2. Killapura’s initial petition on behalf of the Quispe sisters should be dismissed for lack of timeliness.

Alternatively, even if the Court determines that the sisters exhausted all domestic remedies, the sisters’ petition should be deemed inadmissible because more than six months elapsed between the March 10, 2015, decision handed down by the Office of the Provincial Public Prosecutor of Warmi and March 10, 2016—the date Killapura filed a petition with the Inter-American Commission on Human Rights.⁷⁹ Under Article 46(1)(b) of the ACHR and Article 32(1) of the Rules of Procedure, a “petition must be filed within six months after the alleged victim has been notified of a decision that exhausted all available domestic remedies.”⁸⁰ Based on the foregoing, the IACHR should not have found the initial petition to be admissible.

3. Naira has no liability under the Convention of Belém do Pará because the alleged rapes occurred before Naira ratified the convention.

The Court does not have jurisdiction *ratione temporis* to consider the alleged violation of Article 7 of the Convention of Belém do Pará. As articulated by this Court in the case of “*Las Dos Erres*” *Massacres v. Guatemala*, in determining the scope of its jurisdiction, the Court must take into consideration the principle of non-retroactivity of treaties established in international law and enshrined in Article 28 of the Vienna Convention of the Law of Treaties of 1969.⁸¹ Article 28 of the Vienna Convention on the Law of Treaties states that a treaty’s “provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of entry into force of the treaty with respect to that party.”⁸² However, the Court provides an

⁷⁹ HC ¶¶ 33, 38; CQ ¶ 20.

⁸⁰ ACHR, Art. 46(1)(b); IACHR Rules of Procedure, Art. 32(1); Inter-American Commission on Human Rights Petitions and Case System Informational Brochure, <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>, ¶ 23.

⁸¹ “*Las Dos Erres*” *Massacres v. Guatemala* (Preliminary Objections, Merits, Reparations, and Costs), Inter-Am. Ct. H.R., 24 Nov. 2009, ¶ 44; Vienna Convention on the Law on Treaties of 1969, Art. 28.

⁸² Vienna Convention on the Law on Treaties of 1969, Art. 28.

exception to the principle of non-retroactivity by establishing that the Court has competence to examine human rights violations that are continuing or permanent in nature, even though the initial act of violating them took place before the date the State ratified the applicable convention.⁸³ Despite the previously stated exception to the principle of non-retroactivity, the jurisprudence of the Court has determined that rape is not a violation that is so continuing or permanent in nature to place it within the purview of the exception.⁸⁴

The alleged rapes against the Quispe sisters, which occurred in 1992, cannot be evaluated under the Convention of Belém do Pará since this convention was not ratified by the State of Naira until 1996—four years after the occurrence of the alleged violations.⁸⁵

In sum, the Court should dismiss the Petitioners' complaint based on the Petitioners' failure to exhaust available domestic remedies or for lack of jurisdiction *ratione temporis*. In the alternative, if this Court finds that the Petitioners exhausted all domestic remedies, then the State objects that the complaint should be dismissed for its lack of timeliness pursuant to Article 46(1)(b) of the ACHR and Article 32(1) of the Rules of Procedure.⁸⁶

C. Naira fulfilled all its legal obligations with regard to the Quispe sisters pursuant to Articles 4, 5, 6, ,7, 8, and 25 of the ACHR.

The State of Naira has taken many responsive steps to investigate the alleged rapes and to combat domestic violence and violence against women in general. This Court has noted that the obligation of States to investigate human rights violations is one of the positive measures which

⁸³ *The Rio Negro Massacres v. Guatemala* (Preliminary Objections, Merits, Reparations, and Costs), Inter-Am. Ct. H.R., 4 September 2012, ¶ 37.

⁸⁴ *M.Z. v. Bolivia*, Case 12.350, Report No. 73/01, Inter-Am. Comm'n HR, OEA/Ser.L/V/II.114, doc. 5 rev. (10 Oct. 2001), ¶ 23.

⁸⁵ HC ¶¶ 7, 28; "*Las Dos Erres*" *Massacres v. Guatemala*, *Supra* note 81 at ¶ 44; Vienna Convention on the Law on Treaties of 1969, Art. 28.

⁸⁶ ACHR, Art. 46(1)(b); IACHR Rules of Procedure, Art. 32(1); Inter-American Commission on Human Rights Petitions and Case System Informational Brochure, <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>, ¶ 23.

must be adopted to guarantee the rights established under the ACHR.⁸⁷ In *Fernández Ortega et al. v. Mexico*, the Court also noted that the obligation to investigate is an obligation of means rather than results, meaning that a State's failure to comply with the standard is not proved merely because the right has been violated.⁸⁸ Further, this Court has stated that the investigation must be undertaken by the State as an "inherent juridical obligation and not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the procedural initiative of the victims or their next of kin, or upon their offer of proof."⁸⁹

1. Naira fulfilled its legal obligations to the Quispe sisters regarding the investigation of the alleged rapes.

After Naira was alerted to the allegations of rape lodged by the Quispe sisters, the State responded promptly and effectively.⁹⁰ A State's duty to investigate and respond to allegations of rape is dictated by the standard of due diligence as articulated in the case of *Fernández Ortega et al. v. Mexico*.⁹¹ A State exercises due diligence, and complies with the Convention, when, upon learning of a rape, it initiates a serious, impartial, and effective investigation, without delay.⁹² Further, in cases of violence against women, the State must record the victim's statement in a safe environment; provide the victim with emergency medical treatment; provide a complete medical and psychological exam; carefully obtain evidence; and provide free legal assistance.⁹³ In

⁸⁷ *Fernández Ortega et al. v. Mexico* (Preliminary Objections, Merits, Reparations, and Costs), Inter-Am. Ct. H.R., (30 Aug. 2010), ¶ 191; *Cf. Velásquez Rodríguez v. Honduras* (Merits), Inter-Am. Ct. H.R., Ser. C, No. 4, (29 Jul. 1988) ¶¶ 166, 167 (referencing articles 4, 5, and 7 of the ACHR); *Case of Garibaldi v. Brazil* (Preliminary Objections, Merits, Reparations, and Costs), Inter-Am. Ct. H.R., Ser. C, No. 203, (23 Sept. 2009), ¶ 112.

⁸⁸ *Fernández Ortega et al. v. Mexico*, *Supra* note 87 at ¶ 191; Louise Doswald-Beck. *Human Rights in Times of Conflict and Terrorism*. Oxford University Press 2011, p. 36; *González et al. v. Mexico* (Preliminary Objections, Merits, Reparations, and Costs), Inter-Am. Ct. H.R., (16 November 2009), ¶ 252.

⁸⁹ *Id.*; *Cf. Case of Velásquez Rodríguez*, *supra* note 33, ¶ 177.

⁹⁰ HC ¶ 34.

⁹¹ *Fernández Ortega et al. v. Mexico*, *Supra* note 88 at ¶ 194.

⁹² *Id.* at ¶ 191.

⁹³ *Id.* at ¶ 194; UN. Office of the High Commissioner for Human Rights, Professional Training Series No. 8, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and other Cruel, inhuman or degrading treatment*, New York and Geneva, 2001

particular, States must also adopt measures to prevent rape, taking into account that women belonging to certain ethnic groups are at particular risk.⁹⁴

i. Naira investigated the alleged rapes in conformity with the standard of due diligence.

As stated above, a State exercises due diligence, and complies with the Convention, when, upon learning of a rape, it initiates a serious, impartial, and effective investigation, without delay.⁹⁵ In *Ortega*, the petitioner, a woman from an indigenous community, was raped and tortured by military personnel after she was interrogated in her home while held at gunpoint.⁹⁶ Following the attack, the petitioner attempted to file a complaint and submit to appropriate medical testing, but was prevented from doing so by government agents and physicians.⁹⁷ The *Ortega* court held that the State failed to undertake proper due diligence on the investigation and punishment of the perpetrators of the crimes against the petitioner, pursuant to Articles 5, 8, and 25 of the ACHR all in conjunction with Article 1(1).⁹⁸ In reaching this conclusion, the *Ortega* court noted that the official at the Civil Public Prosecutor's Office did not want to receive the petitioner's complaint and another government employee had to intervene to ensure the complaint was properly filed.⁹⁹ Further, the *Ortega* court noted that the petitioner, who did not speak Spanish at the time, was not provided with an interpreter to ensure the accuracy of the complaint and that the complaint was

(<http://www.ohchr.org/Documents/Publications/training8Rev1sp.pdf>), ¶¶ 67, 77, 89, 99, 101 to 103, 155, 162, 163, 170, 171, 224, 225, 260, 269, 290; World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003

(http://www.who.int/violence_injury_prevention/resources/publications/med_leg_guidelines/en/), pp. 17, 30, 31, 34, 39 to 44, 57 to 74.

⁹⁴ *Jessica Lenahan (Gonzales) et al. v. U.S.* (Merits), Case 12.626, Report No. 80/11, Inter-Am. Comm'n HR, OEA/Ser.L/V/II.142, doc. 11 (21 July 2011), ¶ 127.

⁹⁵ *Fernández Ortega et al. v. Mexico* (Preliminary Objections, Merits, Reparations, and Costs), Inter-Am. Ct. H.R., (30 Aug. 2010), ¶ 191.

⁹⁶ *Id.* at ¶ 82

⁹⁷ *Id.* at ¶¶ 84-89.

⁹⁸ *Id.* at ¶ 198.

⁹⁹ *Id.* at ¶ 195(i).

made in a place where general members of the public were present and could overhear the petitioner's story.¹⁰⁰ Additionally, the Court found the State's failure to collect evidence and to conduct a timely and thorough investigation of the crime scene to be strong evidence that the State did not use due diligence in investigating the petitioner's complaint.¹⁰¹ Lastly, the court noted that the State's failure to provide medical and psychiatric care to the petitioner and the incompetence with which the expert evidence was handled were persuasive indicators of the State's failure to comply with the due diligence standard of investigation.¹⁰²

In contrast with the *Ortega* case, Naira exercised due diligence in their response to the Petitioners' claims by initiating a serious, impartial, and effective investigation without delay. Unlike the State in *Ortega* where the official at the Civil Public Prosecutor's Office attempted to avoid filing the petitioner's complaint, the executive branch of Naira took exceptional measures to facilitate the investigation into the alleged abuses by creating a High-Level Committee to explore the reopening of the cases, despite the fact that legally, the sisters' complaints were time-barred by the expiration of the fifteen-year statute of limitations.¹⁰³ Also in contrast with the *Ortega* case where the court was concerned with the lack of privacy afforded the petitioner in making her statement, privacy was not a central concern in the case of the Quispe sisters, where they elected to describe the alleged abuses on Naira's most important media outlet, GTV.¹⁰⁴ Also unlike the *Ortega* case where the State failed to collect evidence and investigate the crime scene promptly after the petitioner's complaint, the State of Naira, upon learning of the alleged abuses from the sisters' GTV interview, implemented the Zero Tolerance Policy on Gender-Based Violence

¹⁰⁰ *Id.* at ¶ 195(ii), (iii).

¹⁰¹ *Id.* at ¶ 195(iv).

¹⁰² *Id.* at ¶ 195 (v), (vi).

¹⁰³ HC ¶¶ 33, 34.

¹⁰⁴ HC ¶ 27.

(ZTPGBV) and granted an extraordinary budget allocation for the implementation of the ZTPGBV policy within two months of the televised interview.¹⁰⁵ Further in contrast with the *Ortega* case where the State failed to provide medical and psychiatric care to the petitioner and also mishandled evidence, in the case of the Quispe sisters, there was no physical or gynecological evidence to be obtained since the alleged rapes occurred many years ago, and, Naira has created an Administrative Program on Reparations and Gender with policies geared specifically toward addressing both the physical and mental health of victims.¹⁰⁶

In sum, the Court should find that Naira exercised due diligence in their response to the Petitioners' allegations of rape by initiating a serious, impartial, and effective investigation without delay.

ii. Naira investigated the alleged abuses against the sisters as members of the indigenous community of Warmi in conformity with the standard of due diligence.

In the case of *Jessica Lenahan (Gonzales) v. U.S.* the IACHR recognized four principles related to the application of the due diligence standard which must govern States' actions when acts of violence are committed against indigenous women: (1) the State must take measures to prevent, investigate, punish, and offer reparation for acts of violence against women; (2) States must recognize the link between discrimination and violence against women and take measures to prevent and respond to the underlying discrimination that perpetuates the problem; (3) States must guarantee access to adequate and effective judicial remedies in fulfilling their duty of due diligence; and (4) States must consider, when adopting measures to prevent violence, that certain groups of women have been identified as being at particular risk for acts of violence, such as girls

¹⁰⁵ CQ ¶¶ 8, 93

¹⁰⁶ HC ¶ 22.

and women belonging to certain ethnic, racial, and other groups.¹⁰⁷ Under the first principle, the State of Naira has taken extensive measures to prevent, investigate, punish, and offer reparation for acts of violence against women in the State.¹⁰⁸ Specifically, the State of Naira has implemented a Zero Tolerance Policy on Gender-Based Violence; created a High-Level Committee to explore the potential reopening of criminal cases; and created a Truth Commission that has urgently begun investigating the events that took place in Warmi; will require mandatory training and education on gender-based violence for all judges, prosecutors, and other public servants; and will create an Administrative Program on Reparations and Gender.¹⁰⁹

In reference to the second principle listed above, the State of Naira has recognized the link between discrimination and violence against women. President Gonzalo Benavente is acutely aware of the link between discrimination and violence against women, which is why he centered his presidential campaign around the implementation and initiation of regulatory changes and government programs to promote inclusion and improved conditions for vulnerable groups.¹¹⁰ Further, despite resistance from the “Respect My Children” Party in Congress, President Benavente’s administration has managed to pass Law 19198 against street harassment.¹¹¹

Regarding the third principle articulated in the *Lenahan* case, Naira has fulfilled its obligation to guarantee access to adequate and effective judicial remedies. This Court has firmly stated that for a remedy to be effective, it has to be capable of producing its intended result.¹¹² The State of Naira provides free access to the judicial system, and it is possible to obtain legal advice and

¹⁰⁷ *Jessica Lenahan (Gonzales) et al. v. U.S.* (Merits), Case 12.626, Report No. 80/11, Inter-Am. Comm’n HR, OEA/Ser.L/V/II.142, doc. 11 (21 July 2011), ¶¶ 125- 127; CEDAW, General Recommendation 19: *Violence against Women*, (11th Session 1992), U.N. Doc.A/47/38 at 1 (1993), paras. 1-23.

¹⁰⁸ CQ ¶ 1.

¹⁰⁹ *Id.*

¹¹⁰ HC ¶ 2.

¹¹¹ HC ¶ 14; CQ ¶ 28.

¹¹² Case of *Velásquez Rodríguez v. Honduras* (Judgment) Inter-Am. Ct. H.R., Ser.C, No. 4 (29 July 1988), ¶ 66.

representation free of charge.¹¹³ Naira also provides judicial remedies in the forms of the writ of *amparo* which is used to challenge the constitutionality of laws, and the writ of *habeas corpus*, which is designed to protect personal freedom and physical integrity against arbitrary detentions by use of judicial decree ordering the authorities to bring a detained person before a judge.¹¹⁴ Even in states of emergency, as was the case in Naira from 1980 to 1999, these judicial remedies remain effective.¹¹⁵

Finally, under the fourth principle established in the *Lenahan* case, Naira has adopted measures to prevent violence against women with great consideration given to the fact that women from different ethnic groups are at particular risk for violence. The IACHR has stated that a State satisfies this fourth principle when the State creates spaces for the full and active participation of indigenous women in the design and implementation of initiatives, programs, and policies at all levels of government.¹¹⁶ Naira has also satisfied this fourth principle from the *Lenahan* case by soliciting input from civil society, women's organizations, and victim's associations regarding the design of the ZTPGBV program; by requesting broad citizen participation in amending points in the legislation regarding femicide, violence, discrimination, and gender identity which may be discriminatory; and by explicitly appointing representatives to the Truth Commission who are from indigenous communities.¹¹⁷

¹¹³ CQ ¶ 52.

¹¹⁴ Hector Fix Zamudio, *The Writ of Amparo in Latin America*, 13 Univ. Miami Inter-Am. L. Rev. 361, 366 (1981); *Judicial Guarantees in State of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*, Advisory Opinion OC-9/87, Inter-Am. Ct. H.R., (6 Oct. 1987), ¶ 23; *Habeas Corpus in Emergency Situations (Arts. 27(2) and 7(6) of the American Convention on Human Rights)*, Advisory Opinion OC-8/87 Inter-Am. Ct. H.R., Ser. A, No. 8 (30 Jan. 1987), ¶ 32.

¹¹⁵ HC ¶ 9.

¹¹⁶ *Indigenous Women and Their Human Rights in the Americas*, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II doc.44/17, (17 April 2017), ¶ 132.

¹¹⁷ HC ¶¶ 19, 21; CQ ¶ 65.

In sum, because Naira satisfied the four principles articulated in the *Lenahan* decision relating to the application of the due diligence standard when acts of violence are committed against indigenous women, the Court should find that Naira investigated the alleged abuses against the sisters as members of the indigenous community of Warmi in conformity with the standard of due diligence.

iii. Naira is not responsible for the alleged rapes because they cannot be substantiated.

A State cannot be found to have violated the ACHR if the allegation of rape by State actors cannot be substantiated by evidence.¹¹⁸ In *Loayza-Tamayo v. Peru*, the petitioner was a Peruvian woman accused of belonging to a Peruvian communist party and was subsequently detained, tried by a faceless military court, and convicted of treason.¹¹⁹ The petitioner also alleged that during her detention by the Peruvian anti-terrorist forces, she was raped and sexually abused.¹²⁰ The *Loayza* court held that the accusation of rape could not be substantiated by examining the file, and therefore no violation could be attributed to the State.¹²¹

Like the *Loayza* case, the Quispe sisters' allegations that they were raped while they were detained at the SMB cannot be substantiated.¹²² Indeed, even the authorities of the indigenous community of Warmi, where the alleged violations occurred, have issued a public statement denying the truth of the reports and the vast majority of the town's residents support the statement of the authorities.¹²³ Further, after several NGOs began reporting human rights violations to the media, Naira opened investigations on its own initiative, but subsequently closed them because

¹¹⁸ *Loayza-Tamayo v. Peru* (Merits), Inter-Am. Ct. H.R., Ser. C, No. 33, (17 September 1997), ¶ 58.

¹¹⁹ *Id.* at ¶¶ 3(b), 3(f).

¹²⁰ *Id.* at ¶ 38(f).

¹²¹ *Id.* at ¶ 58.

¹²² HC ¶ 32; CQ ¶ 43.

¹²³ HC ¶ 32.

they found no evidence of the acts alleged.¹²⁴ Therefore, based on the Court's conclusion in the *Loayza* case, Naira cannot be held responsible for the alleged rapes because they cannot be substantiated.

iv. Naira is not responsible for the alleged acts perpetrated by unknown State actors because Naira took measures to prevent the act and punish those responsible.

In the *Velásquez Rodríguez* case, this Court stated that an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.¹²⁵ A State may not be liable for the acts of a private or unidentified person if the State has used due diligence in preventing and responding to the alleged violation.¹²⁶ In the current case, Naira cannot be held responsible for the alleged rapes committed by State officials because Naira has used due diligence by taking measures to prevent the underlying behavior and by responding to the allegations. Specifically, Naira has laws that criminalize violence against women and punish rape, providing especially harsh punishment in cases involving minors.¹²⁷ Naira has also implemented the ZTPGBV, which provides a framework to eradicate gender violence and to provide services for victims.¹²⁸ Naira has also responded to the Quispe sisters' allegations by implementing a multi-organizational investigation aimed at discovering the truth of the alleged violations.¹²⁹

¹²⁴ CQ ¶ 43.

¹²⁵ Case of *Velásquez Rodríguez* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 4 (29 July 1988), ¶ 172.

¹²⁶ *Id.* at ¶ 173.

¹²⁷ HC ¶ 14.

¹²⁸ HC ¶¶ 19, 20.

¹²⁹ CQ ¶ 1.

2. Naira fulfilled its legal obligations to the Quispe sisters regarding the allegations of domestic violence, pursuant to Articles 8 and 25 of the ACHR.

After Naira became aware of the allegations of domestic violence reported by María Elena, Naira responded by launching an appropriate investigation in compliance with the procedural laws regarding such crimes.¹³⁰ A State is obligated to investigate every situation involving a potential violation of the rights protected by the Convention.¹³¹ The Court's task is to determine whether the alleged violation was the result of the State's failure to fulfill its duty to respect and guarantee those rights recognized by the Convention.¹³² As articulated in the case of *Maria da Penha v. Brazil*, this Court applies a three-pronged analysis to assess the sufficiency with which a State investigates domestic violence cases: (1) that the State took measures to prevent or punish those responsible; (2) the State investigated the complaints with due diligence; and (3) that the government apparatus is designed to prevent and punish domestic violence and promote the free enjoyment of rights.¹³³

i. Naira took significant measures to prevent and punish domestic violence and violence against women.

Naira has laws relevant to the prevention and punishment of domestic violence: (1) Law 25253 on violence against women and the family; and Law 19198 against street harassment.¹³⁴ Additionally, the Criminal Code of Naira recognizes the offenses of both femicide and rape, both of which carry severe penalties.¹³⁵ As previously stated, Naira also created the ZTPGBV to

¹³⁰ HC ¶¶ 23, 24.

¹³¹ *Maria da Penha v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 16 April 2001), ¶ 42.

¹³² *Id.*

¹³³ *Id.* at ¶¶ 42-44.

¹³⁴ HC ¶ 14.

¹³⁵ *Id.*

eradicate gender-based violence.¹³⁶ In addition, within the ZTPGBV framework, Naira created a Gender-Based Violence Unit in the public prosecutor's office and in the judicial branch, which will include specific measures to assist the victims and provide mandatory training and education for judges, prosecutors, and other public servants.¹³⁷ Further, Naira has requested citizen participation to further prevent domestic violence by reviewing the legislation on femicide, violence, discrimination, and issues of gender identity.¹³⁸

ii. Naira investigated the alleged domestic violence with due diligence.

Naira investigated the alleged domestic violence with due diligence. The Inter-American Commission established in *Maria da Penha v. Brazil* that the obligation of States to act with the due diligence necessary to investigate and sanction human rights violations applies to cases of domestic violence.¹³⁹ Specifically, the Commission interpreted the duty to act with due diligence towards domestic violence broadly, encompassing the prompt investigation, prosecution, and sanction of these acts.¹⁴⁰ Naira promptly investigated María Elena's complaint against her husband, Jorge Pérez, that he intercepted her on the street, insulted her and hit her.¹⁴¹ Pérez was arrested and prosecuted, and sentenced to a year of suspended jail time since he had no prior arrests and the medical examiner had classified the assault as one resulting in minor injuries.¹⁴² Again, promptly after Pérez attacked María Elena at her place of employment, he was arrested again.¹⁴³

¹³⁶ *Id.* at ¶ 19.

¹³⁷ *Id.* at ¶ 20.

¹³⁸ *Id.* at ¶ 21.

¹³⁹ *Jessica Lenahan (Gonzales) et al. v. U.S.* (Merits), Case 12.626, Report No. 80/11, Inter-Am. Comm'n HR, OEA/Ser.L/V/II.142, doc. 11 (21 July 2011), ¶ 131; *Maria da Penha v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 16 April 2001); In this case, the Commission noted that more than 17 years had passed since the launching of the investigation into the attacks suffered by the victim and to date the case against the accused remained opened without a final ruling.

¹⁴⁰ *Jessica Lenahan (Gonzales) et al. v. U.S.* (Merits), Case 12.626, Report No. 80/11, Inter-Am. Comm'n HR, OEA/Ser.L/V/II.142, doc. 11 (21 July 2011), ¶ 131; *Maria da Penha v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 16 April 2001).

¹⁴¹ HC ¶ 25.

¹⁴² *Id.*

¹⁴³ *Id.*

Further, Naira acted with due diligence in prosecuting María Elena's case and sanctioning the violent acts by punishing her husband.¹⁴⁴ At the present time, the criminal case against Pérez is at the formal sentencing phase.¹⁴⁵

iii. The government apparatus of Naira is designed to prevent and punish domestic violence and promote the free enjoyment of rights by its citizens.

Regarding the final prong of the Commission's analysis pertaining to domestic violence, Naira organized the governmental apparatus in a manner designed to prevent and punish domestic violence and promote the free enjoyment of rights by its citizens. The Commission has articulated that States have an obligation to ensure the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction.¹⁴⁶ In *Maria da Penha v. Brazil*, the Commission further stated that this obligation implies the duty of States to organize the governmental apparatus so that they are capable of juridically ensuring the free and full enjoyment of human rights.¹⁴⁷ Also in *Maria da Penha v. Brazil*, the Commission cited the reasoning of the Court by stating that if the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of rights is not restored as soon as possible, then the State has failed to comply with its duty under the Convention.¹⁴⁸ In the domestic violence case brought by Mónica Quispe on behalf of her sister, María Elena, the husband/abuser has been punished and the case is simply awaiting formal sentencing.¹⁴⁹ Naira prosecuted the case according to its domestic laws and the violation committed by the abuser is not going unpunished. Further, María Elena's

¹⁴⁴ CQ ¶ 86.

¹⁴⁵ *Id.*

¹⁴⁶ *Maria da Penha v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 16 April 2001), ¶ 43.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at ¶ 42.

¹⁴⁹ CQ ¶ 86.

rights have been restored with the enrollment of the sisters in the ZTPGBV Program designed to eradicate all forms of gender-based violence, which automatically registered the sisters in the Administrative Program on Reparations and Gender.¹⁵⁰

Similarly, the decision rendered in the European Court of Human Rights case, *Rumor v. Italy*, expands on this third prong of the analysis.¹⁵¹ In *Rumor v. Italy*, the applicant's partner attacked her, hitting her several times and threatening her with a knife and scissors.¹⁵² The police were alerted, and the applicant was taken to the hospital while her partner was arrested and charged.¹⁵³ The abuser was sentenced to an initial prison term which was reduced to house arrest at a reception center located near the applicant's home.¹⁵⁴ The abuser was later granted permission to work outside the center for the remainder of his sentence.¹⁵⁵ In *Rumor*, the court held that there was no violation and that the authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework was effective in punishing the perpetrator of the crime which the applicant was victim and preventing the recurrence of violent attacks against her physical integrity.¹⁵⁶ The *Rumor* court noted that the Italian police, prosecutors and courts had not remained passive, as the attacker had been arrested and charged.¹⁵⁷

¹⁵⁰ HC ¶ 19; CQ ¶ 88.

¹⁵¹ *Rumor v. Italy*, Appl. No. 72964/10. Judgment of 27 May 2014; *Consular Relations*, 1999 Inter-Am. Ct. H.R. (Ser. A) No. 16, ¶ 69 (“the Court has jurisdiction to interpret, in addition to the American Convention, other treaties concerning the protection of human rights in the American States”).

¹⁵² Ronagh J.A. McQuigg. *Domestic Violence as a Human Rights Issue: Rumor v. Italy*. The European Journal of International Law, Vol. 26 No. 4. Oxford University Press, 2016, p. 1012.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Rumor v. Italy*, *Supra* note 151 at ¶ 76.

¹⁵⁷ Ronagh J.A. McQuigg. *Domestic Violence as a Human Rights Issue: Rumor v. Italy*. The European Journal of International Law, Vol. 26 No. 4. Oxford University Press, 2016, p. 1013.

Similar to the *Rumor* case, Naira has created a legislative framework which allows the government to take measures against persons accused of domestic violence, specifically with the implementation of Law 25253 on violence against women and Article 234-C defining the crime of femicide.¹⁵⁸ Also like the *Rumor* case, the domestic violence framework of Naira was successful in punishing María Elena's abuser for the attack and he has been arrested by competent authorities, has been properly charged, and is simply awaiting the formal sentencing stage.¹⁵⁹ In comparison to the *Rumor* case, Naira has also taken significant steps to prevent the recurrence of violent attacks against María Elena's physical integrity by prosecuting her abuser to the full extent of the law.¹⁶⁰

4. Conclusion

Naira has fulfilled all its legal obligations with regard to the Quispe sisters by investigating the alleged rapes and abuses against the sisters as members of the indigenous community of Warmi in conformity with the standard of due diligence, by taking significant measures to prevent and punish domestic violence, by investigating the allegations of domestic violence with due diligence, and by designing the government apparatus of Naira to prevent and punish domestic violence and promote the free enjoyment of rights by its citizens.

5. Request for Relief

Based on the foregoing considerations, the State of Naira respectfully requests this Court to:

1. Dismiss this case based upon the lack of exhaustion of domestic remedies;
2. Alternatively, dismiss this case for lack of timeliness in filing;

¹⁵⁸ HC ¶ 14; CQ ¶ 4.

¹⁵⁹ CQ ¶ 86.

¹⁶⁰ HC ¶¶ 14, 25.

3. Dismiss the alleged violation of Article 7 of the Convention of Belém do Pará for lack of jurisdiction *ratione temporis*; and
4. On the merits, find the State in compliance with Articles 4, 5, 6, 7, 8, and 25 in conjunction with Article 1(1) of the ACHR.