Case of María Elena Quispe and Mónica Quispe

Victims

v.

Republic of Naira

Respondent

Representatives for the Victims

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STATEMENT OF FACTS

The State of Naira ("Respondent State") is a democratic state made up of 25 provinces.[1] Throughout the years, it has ratified the following treaties: the American Convention on Human Rights ("ACHR" or "Convention") in 1979; the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") in 1981; the Inter-American Convention to Prevent and Punish Torture ("Convention to Prevent and Punish Torture" or "IACPPT") in 1992; and the Inter-American Convention of the Prevention, Punishment, and Eradication of Violence Against Women ("Belém do Pará") in 1996.[2] Respondent State also accepted the contentious jurisdiction of The Inter-American Court of Human Rights ("Court") in 1979.[3]

Warmi is one of three provinces in the southern region of the Respondent State that has been plagued by numerous acts of violence and confrontations.[4] In particular, from 1970 – 1999, the Freedom Brigades, an armed group connected to drug trafficking, began carrying out terrorist attacks in these three provinces.[5] The President of Respondent State attempted to counteract the group's actions by declaring a state of emergency and suspending certain guarantees, including, Article 7 (right to personal liberty), 8 (Right to a fair trial) and 25 (Right to judicial protection) of the ACHR.[6] The President also established Political and Judicial Command Units in the three provinces between 1980 and 1999.[7]

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[1] Hypothetical, para. 1.
[2] *Id.* para. 7.
[3] Clarifications, para. 5, 7.
[4] Hypothetical, para. 8.
[5] *Id.*
[6] Hypothetical, para. 9.
[7] *Id.*

In Warmi, a Special Military Base ("SMB") was instituted from 1990 – 1999.[8] Members of the SMB maintained centralized power and control over everything in Warmi, including military, judicial and political authority.[9] Consequently, the citizens of Warmi were in the complete control of, and subordinate to, the SMB.[10] During this time, the State officials from the SMB committed multiple human rights violations against the local citizens of Warmi, specifically women and children.[11] This included: arbitrary arrest and detention; forced disappearances and extrajudicial executions;[12] forced servitude; forced undressing; improper touching; attempted rape; actual rape; and gang rape.[13]

In March of 1992, sisters María Elena and Mónica Quispe ("Quispe Sisters" or "Sisters") were imprisoned at the SMB due to false accusations.[14] The girls were only twelve and fifteen-years-old respectively when the SMB arrested them and forced them into involuntary servitude.[15] The young Sisters were subjected to repeated counts of child sex abuse when the soldiers raped them, including gang-raped.[16] The Sisters were eventually released by the authorities of the SMB without any explanation of their actions and without the intervention of any authority.[17]

Subsequently, the SMB deactivated in 1999 due to surrender of the armed groups.[18] The President of Respondent State and the Ministry of Justice and Defense were aware of the abuses

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[8] Hypothetical, para. 27.
[9] Clarifications, para. 12.
[10] *Id.*
[11] Hypothetical, para. 28.
[12] Clarifications, para. 50.
[13] Hypothetical, para. 28, 29; Clarifications, para. 50.
[14] *Id.* para. 28.
[15] Clarifications, para. 69.
[16] *Id.*
[17] *Id.* para. 14.
[18] Hypothetical, para. 30.

perpetrated by the military and had the ability to investigate.[19] However, these State officials failed to undertake any examination of the violations perpetrated by the SMB.[20]

During the military occupation at the SMB, the victims did not report the abuses committed by the State Officials because they had received threats of retaliation and death from the military.[21] The few women who did speak of the abuses did not receive any support.[22] After NGO's became aware and began reporting the human rights violations to the media, the Respondent State opened investigations.[23] However, nothing came from these investigations as the Respondent State claimed there was no evidence of the acts.[24]

Yet still, the rampant gender-based violence[25] did not end in Respondent State with the deactivation of the SMB.[26] In fact, there are still daily acts of violence against women being reported by civil society organizations and the media.[27] Indeed, the NGO Killapura has been documenting and litigating cases of gender-based violence since its founding in 1980.[28]

Recently, two particularly troubling cases of gender-based violence shook the country.[29] In response, the Respondent State created the Zero Tolerance Policy on Gender-Based Violence ("ZTPGBV") and the Gender-Based Violence Units ("GBVU") in the public prosecutor's office and the judiciary branch.[30] While the ZTPGBV was implemented in 2015, its purpose and

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[19] *Id.*
[20] Hypothetical, para. 30.
[21] Clarifications, para. 43.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] Hypothetical, para. 12.
[26] *Id.* para. 11, 15.
[27] *Id.* para. 11.
[28] *Id.*
[29] *Id.* para. 15.
[30] *Id.* para. 20.

objectives are still unclear as there have been no reports or findings issued.[31] Additionally, the GBVU remains in implementation stages.[32]

It was in this environment that María Elena suffered repeated violent attacks from her husband.[33] Due to a lack of legal recourse,[34] the violence continued and eventually left María Elena disfigured and permanently partially disabled with right-sided hemiplegia.[35] While the perpetrator was arrested for one of these acts of violence, he was only sentenced to a year of suspended jail time.[36] As a result of ineffective legal procedures, he was free to seek out María Elena again and beat her so badly, leaving her with the above-mentioned injuries.[37]

Respondent State's most important media outlet, channel GTV, interviewed Mónica, in December 2014 for an in-depth look at María Elena's life and family background.[38] It was in this interview that Mónica recounted the atrocities and many acts of sexual and physical violence that the she and her sister suffered at the hands of the military officials at the SMB.[39] The next day, Killapura contacted the Quispe Sisters and offered representation.[40] Just days after the broadcast, the authorities in Warmi issued a statement denying the reports of violence.[41]

After conducting an extensive investigation that included interviews with neighbors, victims and witnesses, Killapura filed a criminal complaint asserting acts of sexual violence by

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[31] Clarifications, para. 35.
[32] *Id.*
[33] Hypothetical, para. 23-26.
[34] *Id.* para. 24.
[35] *Id.* para. 23, 25; Clarifications, para. 41.
[36] *Id.* para. 25.
[37] *Id.*
[38] Hypothetical, para. 27.
[39] *Id.*
[40] *Id.* para. 31.
[41] *Id.* para. 32.

the Respondent State against both Sisters.[42] However, the complaint was time-barred by the expiration of a the 15-year statute of limitations.[43] Killapura then called on Respondent State to take necessary measures to allow for an investigation and prosecution of the human rights violations.[44]

On March 15, 2015, the President of Respondent State replied that it was not within the purview of the executive branch to interfere with an ongoing court case.[45] However, he announced Respondent State would create an High-Level Committee ("HLC") to explore the potential of reopening the criminal cases.[46] Additionally, the President offered to add the Quispe Sisters to the ZTPGBV and order a Truth Commission ("TC") to urgently undertake an investigation of the facts.[47] The President further announced the creation of a Special Fund for reparations that will be allocated upon the completion of the TC's report.[48] However, to date, no reports have been issued.[49]

Believing that these measures were ineffective due to the mass nature of violence against women at the SMB, Killapura filed a petition with the Inter-American Commission on Human Rights ("Commission") on May 10, 2016.[50] In the petition, Killapura alleged the following violations: Article 4 (right to life); Article 5 (right to humane treatment); Article 6 (freedom from slavery); Article 7 (right to personal liberty); Article 8 (right to a fair trial); and Article 25 (right to judicial protection), all in relation to Article 1(1) of the ACHR, and to the detriment of the

[42] *Id.* para. 33.
[43] *Id.*
[44] Hypothetical, para. 33.
[45] *Id.* para. 34.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] Clarifications, para. 35.
[50] Hypothetical, para. 38.

Quispe Sisters.[51] Further, the petition alleged violations of Respondent State's obligations regarding violence against women pursuant to Article 7 of Belém do Pará.[52]

The Commission admitted the petition for processing on June 15, 2016.[53] Respondent State replied on August 10, 2016, and denied responsibility for the human rights violations.[54] Respondent State indicated that it had no intention of reaching a friendly settlement and would present the case for the defense before the Court.[55] Thus, the Commission entered a report declaring the case admissible and finding violations of Articles 4, 5, 6, 7, 8, and 25, all in relation to Article 1(1) of the ACHR, as well as Article 7 of Belém do Pará.[56] The Commission submitted the case to the Court on September 20, 2017, in compliance with the Inter-American Court of Human Rights Rules and Procedures ("Rules and Procedures").[57]

LEGAL ANALYSIS

I. Admissibility

A. Statement of Jurisdiction

The Court has jurisdiction to hear this case because in 1979 Respondent State ratified the ACHR without reservations or restrictions.[58] In that same year, Respondent State accepted the

[51] *Id.*
[52] *Id.*
[53] *Id.* para. 39.
[54] *Id.* para. 40.
[55] *Id.*
[56] Hypothetical, para. 41.
[57] *Id.* para. 42.
[58] *Id.* para. 7.

contentious jurisdiction of the Court.[59] Thus, pursuant to Article 62 of the Convention, Respondent State has recognized the adjudications of the Court as binding.[60]

Respondent State ratified the Convention to Prevent and Punish Torture on January 1, 1992, without restrictions or reservations. Article 8 of the Convention to Prevent and Punish Torture provides that "the case may be submitted to the international fora whose competence has been recognized by that State."[61] Although it does not explicitly mention it, the Court has held that it is competent to hear cases in violation of the Convention to Prevent and Punish Torture, when the State has accepted its jurisdiction.[62]

Additionally, Respondent State ratified, without restrictions or reservations, Belém do Pará in 1996.[63] Article 12 of Belém do Pará refers to the possibility of petitioning the Inter-American Commission on Human Rights ("the Commission") relating to complaints of violations of Article 7 of that same convention.[64] It establishes that the Commission shall consider such claims in accordance with the norms and procedures established by the ACHR and in the Statute and Regulations of the Commission.[65] Therefore, the Court has held that it is clear that the literal meaning of Article 12 "grants competence to the Court, by not excepting from its application any of the procedural norms and requirements for individual communications."[66]

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[59] Clarifications, paras. 15, 21.
[60] Organization of American States ("OAS"), AMERICAN CONVENTION ON HUMAN RIGHTS, "PACT OF SAN JOSE, COSTA RICA," art. 29, 22 Nov. 1969, O.A.S.T.S. No. 36, 1114 U.N.T.S. 123. ["ACHR"].
[61] OAS, INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE, art. 8, 9 Dec. 1985, O.A.T.S. No. 67. ["Convention to Prevent and Punish Torture"].
[62] *Vélez Loor v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment 23 Nov. 2010, Inter-Am.Ct.H.R., (Ser. C) No. 132, para. 33.
[63] Hypothetical, para. 7.
[64] INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF THE VIOLENCE AGAINST WOMEN, art. 12, 9 June 1994, 33 I.L.M. 1953. ["Belém do Pará"].
[65] *Espinoza Gonzáles v. Peru*, Judgment 20 Nov. 2014, Inter-Am.Ct.H.R., (Ser C.) No. 289, para. 22.
[66] *Id.* (citing *Veliz Franco et al. v. Guatemala*, Judgment 19 May 2014, Inter-Am.Ct.H.R., (Ser. C) No. 277, para. 36).

B. Jurisdiction Ratione Temporis

The Respondent State filed a preliminary objection alleging the Court's lack of jurisdiction *ratione temporis*.[67] The Court has the power inherent in its attributes to determine the scope of its own competence.[68] Pursuant to Article 62(1) of the ACHR, the instruments recognizing the optional clause on compulsory jurisdiction presume the State 's acceptance of the Court's right to decide any dispute concerning its jurisdiction.[69] When determining whether it has jurisdiction *ratione temporis*, the Court must consider the date of the State's acceptance of its jurisdiction, the terms in which the State accepted it, and the principle of non-retroactivity established in the Vienna Convention on the Law of Treaties ("VCLT").[70]

Article 62 of the ACHR provides that the "jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction." Respondent State ratified the ACHR[71] and accepted the contentious jurisdiction of the Court in 1979.[72] Additionally, Respondent State ratified the IACPPT in 1992, and Belém do Pará in 1996.[73] Respondent State has ratified the foregoing treaties without reservations or restrictions and has thus recognized the Court's jurisdiction for all violations of these treaties.

Pursuant to the principle of non-retroactivity codified in Article 28 of the VCLT, the Court may examine acts or facts that have taken place following the date of the ratifications "as

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[67] Clarifications, para. 7.
[68] *Espinoza Gonzáles*, para. 27. *See also Río Negro Massacres v. Guatemala*, Judgment of 4 Sept. 2012, Inter-Am.Ct.H.R., (Ser. C) No. 250, para. 35.
[69] *Espinoza Gonzáles*, para. 27. *See also J. v. Peru*, Judgment 27 Nov. 2013, Inter-Am.Ct.H.R., (Ser. C) No. 275, para. 18.
[70] *Garibaldi v. Brazil*, Judgment 23 Sept. 2009, Inter-Am.Ct.H.R., (Ser. C) No 203, para. 19.
[71] Hypothetical, para. 7.
[72] Clarifications, para. 5.
[73] Hypothetical, para. 7.

well as continuing or permanent facts that persist after that date."[74] When Respondent State ratified the ACHR in 1979, the IACPPT in 1992, and Belém do Pará in 1996, it was bound to comply with the obligations set forth in those treaties. The VCLT codified a recognized principal of international law by providing that a treaty is not binding on a party in relation to any act which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.[75] However, this Court has found that "it is competent to adjudge and declare on facts which constitute violations that occurred after the date on which Respondent State recognized the competence of the Court, or which had not ceased to exist as of that date."[76]

In *Moiwana Community v. Suriname*, the State argued that the violations alleged by the petitioners originated in events that occurred one year prior to its recognition of the Court's jurisdiction.[77] However, the Court found that the State had recognized the competence of the Court "without any express limitations" pursuant to Article 62 of the ACHR.[78] Thus, Suriname had "recognized as binding and not as requiring any special agreement the Court's jurisdiction on all matters relating to the interpretation and application of the Convention."[79] And pursuant to Article 28 of the VCLT, the Court was competent to examine cases of a "continuing or

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[74] *Espinoza Gonzáles*, para. 28 (citing *J. v. Peru*, para. 19; *Radilla Pacheco v. Mexico*, Judgment 23 Nov. 2009, Inter-Am.Ct.H.R., (Ser. C) No. 209, para. 22; *Osorio Rivera and family members v. Peru*, Judgment 26 Nov. 2013, Inter-Am.Ct.H.R., (Ser. C) No. 274, para. 30).
[75] VIENNA CONVENTION ON THE LAW OF TREATIES, art. 28, 23 May 1969, 1155 U.N.T.S. 331. ["VCLT"].
[76] *Espinoza Gonzáles*, para. 28 (citing *Radilla Pacheco*, para. 22; *Osorio Rivera,* para. 30.) *See also "Las Dos Erres" Massacre v. Guatemala*, Judgment 28 Nov. 2002, Inter-Am.Ct.H.R., (Ser. C) No. 211, para. 45.
[77] *Moiwana Community v. Suriname*, Judgment 15 June 2005, Inter-Am.Ct.H.R., (Ser. C) No. 124, paras. 34(b), 37.
[78] *Id.* para. 38.
[79] *Id.*

permanent violation, which begins before the acceptance of the Court's jurisdiction and persists even after that acceptance."[80]

Additionally, in *Espinoza Gonzáles*, the Court found that while it was unable to rule on possible violations of Article 7 prior to the State 's ratification of Belém do Pará, it still had competence to rule on whether the facts constituted a violation of the ACHR.[81] The Court also had competence to examine arguments concerning the continued denial of justice that occurred after the ratification of either treaty.[82]

Thus, because Respondent State ratified the ACHR prior to the incarceration of the Quispe Sisters in 1992, the Court has jurisdiction *ratione temporis* to examine the violations of Articles 4, 5, 6, 7, 8, and 25 all in relation to Article 1(1) of the ACHR. Also, because Respondent State ratified the IACPPT in January 1992, prior to the forced incarceration of the Quispe Sisters, in March of 1992, the Court has competence to examine its violations. Additionally, because Respondent State has continued to deny justice to the Quispe Sisters, even after the Respondent State ratified Belém do Pará in 1996, the Court has jurisdiction *ratione temporis* to examine the continued violations of Article 7.

C. Exhaustion of All Remedies

The Court should find that the Quispe Sisters have satisfied the requirement to exhaust domestic remedies pursuant to Article 46(1)(a) because the State waived its non-exhaustion defense when it failed to invoke the objection in its response to the Commission. The Court has established that the State must raise the objection that domestic remedies have not been

[80] *Id.* para. 39.
[81] *Espinoza Gonzáles*, para. 29.
[82] *Id.* (citing *J. v. Peru,* para. 21).

exhausted during the proceedings before the Commission.[83] Failure to do so, will result in the presumption that the State has tacitly waived this defense.[84] In its response to the Commission on August 10, 2016, Respondent State did not invoke this defense.[85] Therefore, because Respondent State did not raise this preliminary objection, it has been tacitly waived.

Alternatively, even if the State had not waived this defense, it still fails because: (1) domestic remedies are unavailable, inappropriate, and ineffective; and (2) the Quispe Sisters satisfy the unwarranted delay exception in article 46(2)(c) of the ACHR.

1) In the alternative, domestic remedies in Respondent State are unavailable, inappropriate, and ineffective.

Article 46(2) of the ACHR provides that exhaustion of remedies is not applicable when the laws of the State do not afford due process of law for the rights that have been violated. Violations to due process of law include victims being denied access to remedies or when there has been unwarranted delay in rendering a final judgement. The rule of exhaustion of domestic remedies "is not meant to be a procedural obstacle course" which requires the victims "to jump every possible hurdle before resorting to an international forum."[86] Rather, it is meant to allow the State the opportunity "to resolve the problem under its internal law before being confronted with an international proceeding."[87] The State is the principal guarantor of human rights, and if a violation occurs the State is in the best position to remedy the violations.[88] The "lack of effective

[83] *Herrera-Ulloa v. Costa Rica*, Judgment 2 July 2004, Inter-Am.Ct.H.R., (Ser. C) No. 107, para. 81. *See also Apitz Barbera et al. v. Venezuela*, Judgment 5 Aug. 2008, Inter-Am.Ct.H.R., (Ser. C) No. 182, para. 24.
[84] *Id.*
[85] Hypothetical, para. 40; Clarifications, para. 7.
[86] JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, (Cambridge University Press, 2013), p. 96.
[87] *Velásquez-Rodríguez v. Honduras*, Judgment 29 July 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4, para. 61.
[88] *Acevedo Jaramillo et al, v. Peru*, Judgment 24 Nov. 2006, Inter-Am.Ct.H.R., (Ser. C) No. 157, para. 66.

domestic remedies renders the victim defenseless and explains the need for international protection" of human rights.[89] This "is founded on the need to protect the victim from the arbitrary exercise of governmental authority."[90] Additionally, when the ineffectiveness of an exception to the rule of non-exhaustion of domestic remedies is invoked, the victim is under no obligation to pursue such remedies.[91]

Furthermore, the Court has emphasized that "according to its jurisprudence and international jurisprudence, it is not the Court's or the Commission's task to identify *ex officio* the domestic remedies to be exhausted."[92] Rather, "it is the State which shall point out the domestic remedies to be exhausted and their effectiveness."[93] A "lack of specificity in a timely procedural manner before the Commission," regarding the domestic remedies to be exhausted and "the lack of grounds about their availability, suitability, and effectiveness," make this defense without merit.[94]

To be available, the remedy must exist at the time the petition was filed before the Commission.[95] Further, to be appropriate and adequate, it must be suitable to address the infringement of the specific legal right violated.[96] Additionally, the State must demonstrate that there are remedies available which are appropriate and effective to remedy the violation.[97] To be

[89] *Velásquez-Rodríguez*, para. 93.
[90] *Id.*
[91] *Velásquez-Rodriguez*, Judgment 26 June 1989, (Preliminary Objections) Inter-Am.Ct.H.R., (Ser. C) No. 1 (1994), para. 91.
[92] *Usón Ramírez v. Venezuela*, Judgment 20 Nov. 2009, Inter-Am.Ct.H.R., (Ser.) C, No. 207, para. 22.
[93] *Id.*
[94] *Id.* at 29.
[95] *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, Judgment 24 Nov. 2010, Inter-Am.Ct.H.R., (Ser. C) No. 219, para. 46.
[96] *Godínez-Cruz v. Honduras*, para. 67.
[97] *Garibaldi*, para. 46.

appropriate and effective, the remedy must be capable of producing the anticipated result.[98] Furthermore, it is the "*jurisprudence constante* of this Court that it is not enough that such recourses exist formally; they must be effective" and "must give results or responses to the violations of rights established" in the ACHR.[99] Additionally, "remedies that, due to the general situation of the country or even the particular circumstances of any given case, prove illusory cannot be considered effective."[100] This may happen in a "situation in which justice is being denied, such as cases in which there has been an unwarranted delay in rendering a judgment."[101]

In the present case, the NGO Killapura filed a criminal complaint with the Office of the Provincial Public Prosecutor ("Prosecutor") of Warmi on March 10, 2015.[102] The Prosecutor decided not to proceed with the complaint.[103] This was the only remedy available to the Quispe Sisters and there is no other criminal court to which they can appeal.[104] The remedy must exist at the time the petition was filed with the Commission, and it must be suitable to address the infringement of the specific legal right violated.[105]

While Respondent State created the HLC, the TC, and added the case of the Quispe Sisters to the ZTPGBV, it was only done in response to the complaint of the Quispe Sisters. Additionally, none of these responses have led to any relief for the Sisters and are therefore illusory. Thus, the Quispe Sisters exhausted all domestic remedies available to them at the time of their petition.

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[98] *Velásquez-Rodríguez*, para. 66
[99] *Las Palmeras v. Colombia*, Judgment 6 Dec. 2001, (Merits) Inter-Am.Ct.H.R., (Ser. C) No. 90, para. 58.
[100] *Id.*
[101] *Id.*
[102] Hypothetical, para. 33; Clarifications, para. 20.
[103] Clarifications, para. 20.
[104] *Id.* at 20, 57.
[105] *Godínez-Cruz v. Honduras*, para. 67; *Guerrilha do Araguaia,* para. 46.

2) The delay in the final judgment for María Elena and Mónica Quispe is unwarranted.

The Court has emphasized that the "rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective."[106] Accordingly, the ACHR "sets out exceptions to the requirement of recourse to domestic remedies prior to seeking international protection, precisely in situations in which such remedies are, for a variety of reasons, ineffective."[107] One such exception is an unwarranted delay in the rendering of a final domestic judgement.[108] Therefore, because the HLC's evaluations of the criminal case is still ongoing and the TC's report is not expected to be released until 2019, the final domestic judgements have been delayed and are therefore ineffective.[109]

D. Timeliness of Submission

The Court should find the submission of the petition timely because the domestic remedies of Respondent State were unavailable, inappropriate, and ineffective and caused unwarranted delay in a remedy for the Quispe Sisters. Pursuant to Article 46(1)(b) of the ACHR, the petition should be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment" of the domestic remedies. However, under Article 32(2) of the Rules and Procedures, when an exception to the requirement of prior exhaustion of domestic remedies is applicable, the petition shall be lodged within a reasonable period of time.[110] The petition must be "analyzed in each case, taking into account

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[106] *Velásquez-Rodríguez*, (Preliminary Objections) para. 93.
[107] *Id.*
[108] ACHR, Art. 46(2).
[109] Hypothetical, para. 34; Clarifications, paras. 3, 13, 39.
[110] INTER-AMERICAN COURT OF HUMAN RIGHTS RULES AND PROCEDURES, Art. 32(2). ["Rules and Procedures"].

the legal action taken by the alleged victims, the State's actions, and the situation and context in which the violation is alleged to have taken place."[111]

Moreover, "neither the six-month rule nor the reasonable time test is a bar to admissibility when the violation is found to be ongoing at the time of the filing of the petition."[112] The Court should find that, because the violations were ongoing at the time of the petition, the Quispe Sister are not barred per the six-month rule under Article 46(1)(b) of the ACHR nor under Article 32(2) of the Rules and Procedures.

II. Argument on the Merits

A. Respondent Naira violated Articles 8 and 25 of the Convention, read in conjunction with Article 1(1), to the detriment of the María Elena and Mónica Quispe.

When Respondent State ratified the ACHR in 1979, it assumed the obligation to respect the Quispe Sisters' right to a fair trial and right to judicial protection. Under the ACHR, State Parties have an obligation to provide effective judicial remedies to victims of human rights violations under Article 25.[113] Pursuant to Article 8(1), every person has the right to a fair trial which must be substantiated in accordance with the rules of due process .[114] These both must be in keeping with the obligation of such States to guarantee the free and full exercise of the rights recognized by the ACHR to all persons subject to their jurisdiction pursuant to Article 1(1).[115]

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[111] Pasqualucci, p. 88–89.
[112] *Id.*
[113] *Velásquez-Rodríguez*, (Preliminary Objections), para. 91.
[114] *Id. See also Río Negro Massacres*, para. 191; *Cantoral Huamaní and García Santa*, para. 124.
[115] *Velásquez-Rodríguez*, (Preliminary Objections) para. 91.

1) Respondent State violated Article 25 (Right to Judicial Protection), read in conjunction with Article 1(1), to the detriment of the Quispe Sisters.

Under Article 25(1) of the Convention everyone has the "right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights." This Court has repeatedly underscored the importance of the State's obligation to investigate human rights violations,[116] and institute appropriate judicial and disciplinary proceedings against those who violate those rights.[117] This is a positive obligation that acquires particular importance given the seriousness of the crimes committed and the nature of the rights harmed.[118] This also implies the obligation of States Parties "to organize their governmental apparatus, and in general, all of the structures in which public power is manifested, in a way that assures individuals the free and full exercise of their human rights."[119] Consequently, "the States must prevent, investigate, and punish all violations to the human rights enshrined" in the ACHR.[120] If possible, it must also seek the reestablishment of the violated right, and where applicable, the reparation of the harm produced.[121]

When violations go unpunished by the State, or a group acts freely with impunity, this Court has held the State has failed in its duty to ensure the free and full exercise of the victim's rights.[122] Additionally, Article 25(1) recognizes that no one shall be deprived of their fundamental rights recognized by the constitution and laws of a state, *even if* the violation was "committed by persons acting in the course of their official duties." Further, in *Velásquez-*

[116] *Río Negro Massacres*, para. 190.
[117] *Cantoral Huamani,* para. 130.
[118] *Río Negro Massacres*, para. 190.
[119] *Guerrilha do Araguaia*, para. 140.
[120] *Id.*
[121] *Id.*
[122] *Velásquez-Rodríguez*, para. 196.

Rodríguez v. Honduras, the Court held that when a state's complacency results in the violation of an individuals' human rights as set forth in the ACHR, the complacency is deemed acquiescence.[123]

In *Rio Negro Massacres*, the Court declared that the obligation to investigate human rights violations cannot be ignored.[124] In that case, the agents of the State destroyed the Mayan community of Río Negro.[125] The Court took into account the "multiple grave, massive and systematic human rights violations that took place in the context of the internal armed conflict."[126] It also emphasized that "States are obliged to provide effective judicial remedies to the victims of human rights violations."[127]

2) *Respondent State violated Article 8(1) (Right to a Fair Trial), read in conjunction with Article 1(1), to the detriment of the Quispe Sisters.*

The Court has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the victims to know the truth about what happened, and that those eventually found responsible are punished.[128] Investigations of human rights violations "must be conducted using all available legal means and must include the responsibility of both the perpetrators and the masterminds, especially when State agents are or could be involved."[129] To

[123] *Id.* para. 173.
[124] *Id.* para. 189–90.
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Río Negro Massacres*, para. 191.
[129] *Id.* para. 192 (citing *González Medina and family members v. Dominican Republic*, Judgment 27 Feb. 2012, Inter-Am.Ct.H.R., (Ser. C) No. 240, para. 204).

ensure a "veritable guarantee" of the right to a fair trial, the proceedings must follow all the requirements that it is designed to protect a right or the exercise thereof.[130]

Article 8(1) of the ACHR provides that "every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal." In *Las Dos Erres*, the Court indicated that the reasonable term "must be appreciated in terms of the total duration of the proceeding until the final judgment is pronounced."[131] Accordingly, the solution of the controversy should occur within a reasonable term, since a prolonged delay could constitute in itself a violation of the right to a fair trial.[132] In failing to ensure the right to a fair trial, Respondent State has effectively diminished Article8(1)'s guarantee.[133] Any impairment of those rights constitutes an act imputable to the State Party."[134] Thus, despite the tolling of the fifteen-year statute of limitation, the Respondent State is obligated, under Article 8(1) of the Convention, to grant the Quispe Sisters a hearing.

While Respondent State implemented the so-called TC and HLC to explore the potential reopening of criminal cases, this does not satisfy its obligation to grant a hearing to the Quispe Sisters. Article 8(1) mandates measures be taken "within a reasonable time." Here, this has not been accomplished because the proceedings have yet to produce any results.[135] Killapura filed a criminal complaint against Respondent State for the illegal conduct of its soldiers against the Quispe Sisters on March 10, 2015.[136] Respondent State replied on March 15, 2015, asserting

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[130] *Río Negro Massacres*, para. 148. *See generally Juan Humberto Sanchez v. Honduras*, Judgment 7 June 2013, Inter-Am.Ct.H.R., (Ser. C) No. 99.
[131] *Las Dos Erres*, para. 132.
[132] *Id.*
[133] *Velásquez-Rodríguez,* para. 164.
[134] *Id.*
[135] Hypothetical, para. 34.
[136] *Id.*

that it would not interfere with a court case and subsequently promised to implement the TC, the HLC, and the Special Fund, among others.[137] However, by May 10, 2016—over fourteen months later—Respondent State had yet to mobilize any of these initiatives.[138] To date, over two and a half years has passed since Respondent State alleged that it would organize the HLC and others measures to rectify its past errors.[139]

Therefore, Respondent State has failed to investigate the human rights violations that started in the 1970's and it has failed in its duty, under Article 25, to provide effective judicial remedies to the Quispe Sisters.[140] Furthermore, Respondent State has been complacent and acquiesced to the human rights violations because it has failed to hold those responsible accountable. The denial of a hearing pursuant to Article 8 and the unreasonable delay in starting an investigation on the human rights violations, has barred the Quispe Sisters from the right to a fair trial.

B. Respondent Naira violated Article 4 and 5 of the Convention, read in conjunction with Article 1(1), to the detriment of María Elena and Mónica Quispe.

1) Respondent State violated Article 4(1) (Right to Life), read in conjunction with Article 1(1), to the detriment of the Quispe Sisters.

Respondent Sate violated Article 4(1) of the ACHR when it failed to respect María Elena and Mónica Quispe's right to life. Article 4(1) imposes on the State an obligation to respect the right to life of all persons. This right *shall* be protected by law and *must* be done from

[137] Hypothetical, para. 34, 35.
[138] *See generally*, Hypothetical.
[139] Clarifications, para. 2.
[140] Hypothetical, para. 8.

conception. Article 1(1) of the ACHR also places a general obligation on State Parties to respect all rights and freedoms granted by the Convention and to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." The Court has previously held that the State's obligation under Article 4(1), in conjunction with Article 1(1), creates a positive duty for States to act in preservation of the right to life.[141] This positive duty requires the State to adopt "any and all" necessary measures to protect and preserve the right to life of individuals in their jurisdiction.[142] This includes the creation of a legal framework that deters any possible threat to the right to life.[143] This right is fundamental, and cannot be derogated—even in times of war.[144]

During the internal conflict in Warmi, Respondent State had a positive duty to protect and preserve the right to life of the women detained at the SMB, including the Quispe Sisters. Women were reluctant to report abuses committed by members of the military as they received death threats and threats of retaliation.[145] Furthermore, those women who did speak did not receive support and were judicially silenced as the perpetrators—members of the military—controlled the avenues of legal recourse.[146] The positive duty to act conferred on the State requires it to "take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction."[147]

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[141] *Zambrano Velez et al. v. Ecuador*, Judgment 4 July 2007, (Merits, Reparations, and Costs) Inter-Am.Ct.H.R., (Ser. C), No.11.579, para. 80.
[142] *Id.*
[143] *Id. See also* THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS (David J. Harris & Stephen Livingstone eds., Clarendon Press, Oxford 1998), p. 215. ["Inter-American System"].
[144] ACHR, Art. 27(2); *see also*, *Zambrano Velez*, para. 78.
[145] Clarifications, para. 43.
[146] *Id.*
[147] *Velásquez-Rodríguez*, para. 174.

Thus, when women in Warmi reported instances of abuse, the State had a responsibility to investigate and identify the responsible parties.[148]

Because Respondent State allowed the military command to monopolize all branches of political power in Warmi,[149] crimes of sexual violence were hidden during the almost thirty-year period of internal conflict.[150] In this way, the State failed in its positive duty to protect the lives of María and Mónica.[151] This failure of the State to protect the Sisters right to life violates Article 4(1), with respect to Article 1(1) of the ACHR.

In *Velásquez-Rodríguez*, this Court previously found that a State's failure to fulfil its positive obligation to act preventatively violated the victims full and free exercise of her human rights under Article 4(1) of the Convention.[152] In that case, the Court found sufficient evidence that Honduran officials participated or tolerated actions that led to the disappearance of the victim.[153] Thus, a mere lack of action by the State, when required, resulted in a violation of the States obligation under Article 1(1) of the ACHR to ensure the rights granted under Article 4(1).[154]

Similarly, the Quispe Sisters were deprived of positive action by Respondent State when it failed to investigate their claims, identify responsible parties, impose legal punishment, and ensure reparations.[155] Even if the State could assert that it had no knowledge of the pervasive sexual violence at the SMB—which it could not—the State's failure to act alone is sufficient

[148] *Id.*
[149] *Id.* para. 12.
[150] *Id.* para. 43.
[151] *Id.* para. 12.
[152] *Velásquez-Rodríguez*, paras. 182, 188.
[153] *Id.* para. 126.
[154] Inter-American System, p. 220 (citing *Velásquez-Rodríguez*, paras. 148, 182).
[155] *Velásquez-Rodríguez*, para. 174.

cause to find it in violation of Article 4(1), with respect to Article 1(1) of the ACHR.[156] Thus, Respondent State's failure to act is an endorsement of toleration for the actions of the military soldiers. In *Zambrano Velez et al. v. Ecuador*, the Court declared that the "right to life is fundamental . . . [and the exercise of this right] is a *prerequisite* for the enjoyment of *all other human rights*."[157] This Court emphasized that if the right to life is not respected, all other rights "lack meaning."[158] Thus, any restrictive approaches of the right to life is inadmissible.[159] All human life must be respected.[160] Deviations, no matter the cause, are intolerable.[161]

Given the above considerations, the State stands in violation of Article 4(1), in conjunction with Article 1(1), as it failed to positively protect the Quispe Sisters' right to life and ensure that the right is respected. While the State created a TC in 2016 to investigate human rights violations in Warmi during the military regime, it has failed to produce a timely report.[162] The TC merely "anticipates" production of a final report in 2019, nearly four years after the Sisters filed a criminal complaint,[163] and approximately twenty years after the dismantling of the SMB.[164] Thus, Respondent State's continued failure to ensure a legal framework to investigate and punish the actions of abuse by State military officials renders this violation continuous. In accordance with Article 1(1), Respondent State stands in violation of Article 4(1) of the ACHR.

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[156] *Id.* paras. 182, 188.
[157] *Zambrano Velez*, para. 78. (emphasis added).
[158] *"Street Children" v. Guatemala (Villagrán-Morales et al.)*, Judgment 19 Nov. 1999, Inter-Am.Ct.H.R., (Ser. C) No. 63, para. 144.
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] Clarifications, para. 3.
[163] Hypothetical, para. 33.
[164] *Id.* para. 27.

2) Respondent State violated Article 5 (Right to Humane Treatment), read in conjunction with Article 1(1), to the detriment of the Quispe Sisters.

Respondent State violated Article 5 of the ACHR when it failed to protect the Quispe Sisters from cruel and sexually degrading treatment while detained at the SMB.[165] The Sisters were subjected to repeated counts of child sex abuse when the soldiers raped them, including gang-raped, throughout their month long period of confinement.[166] At the time, María and Mónica were only twelve and fifteen-years-old, respectively.[167] These egregious acts by military officials violated the Sisters' right to have their physical, mental, and moral integrity respected under Article 5(1) of the ACHR. Article 5(2) prohibits individual subjection to torture or cruel, inhumane, or degrading punishment or treatment.[168] Torture is defined in Article 2 of the Convention to Prevent and Punish Torture as "any act intentionally performed whereby physical or mental pain and suffering is inflicted on a person for purposes of criminal investigation, as means of intimidation, as personal punishment . . . or for any other purpose."[169] Article 5(2) further guarantees all persons deprived of their liberty the right to be treated with respect by sole virtue of their status as a human person. Article 1(1) confers upon the State a duty to respect the rights and freedoms recognized in Article 5, irrespective of gender, economic status, or any other social condition.[170]

These rights are non-derogable, as outlined in Article 27(2) of the ACHR.[171] As such, neither the ACHR nor the Convention to Prevent and Punish Torture tolerate any State action

[165] *Id.* para. 27.
[166] *Id.*
[167] Clarifications, para. 69.
[168] *Id.* 5(2).
[169] Convention to Prevent and Punish Torture, Art. 2.
[170] *Id.*1(1).
[171] ACHR, Art. 27(2).

that sanctions or perpetuates torture or cruel, inhumane or degrading punishment or treatment.[172] This fixed principle is a preemptory norm of international law, enshrined by the Court as *jus cogens*.[173] *Jus cogens* are fundamental principles of international law, from which no derogation is ever permitted.[174] Following this principle, Article 3 of the IACPPT expressly prohibits a public or state employee—even one acting within their official duties—from instigating or inducing torture.[175] Officials in violation of Article 3 shall be held guilty of the crime of torture, even if was just they were able to prevent acts of torture, but fail to do so.[176]

In the instant case, multiple State officials possessed actual knowledge of the mass sexual violence in Warmi, including the President and the Ministry of Justice and Defense.[177] Both governing bodies exercised control over the military and had the opportunity to investigate the acts of violence during the years of internal conflict.[178] However, Respondent State officials failed to act under their obligation to do address the misconduct, as required under Article 5(2) of the ACHR. As a result, multiple acts of violent rape of young women and girls and forced labor was tolerated at the SMB.

Moreover, Article 5(2) guarantees all persons deprived of their liberty be "treated with respect for the inherent dignity of the human person." In defining the scope of "dignity," the Commission stated that individuals in State confinement must be "regarded and treated as

[172] *See generally*, ACHR, Art. 5; Convention to Prevent and Punish Torture, Art. 2.
[173] DIEGO RODRÍGUEZ-PINZÓN & CLAUDIA MARTIN, THE PROHIBITION OF TORTURE AND ILL-TREATMENT IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: A HANDBOOK FOR VICTIMS AND THEIR ADVOCATES (Leonor Vilás Costa ed., 2006), p. 104 (citing *Cesar v. Trinidad and Tobago*, Judgment 25 Nov. 2004, Inter-Am.Ct.H.R., (Ser. C) No. 119, para. 100). ["Prohibition of Torture"].
[174] *Jus Cogens*, LEGAL INFORMATION INSTITUTE. March 21, 2018, https://www.law.cornell.edu/wex/jus_cogens.
[175] Convention to Prevent and Punish Torture, Art. 3.
[176] *Id.*
[177] Clarifications, para. 36.
[178] *Id.*

individual human beings."[179] The Commission further declared that the "action of imprisonment carries with it a specific and material *commitment to protect* the prisoner's human dignity" while the individual is in State custody.[180] Thus, when Respondent State imprisoned María and Mónica Quispe, they were obligated to protect the human dignity of the then young girls. Surely, forced labor and individual and gang rape do not constitute respect of human dignity as required under Article 5(2).

i. The State Violated the Quispe Sisters Right to Fair Conditions of Detention by Subjecting Them to Incommunicado Detention and Failing to Consider Their Status as Minors.

Article 5(1) prevents cruel or inhumane treatment and requires respect for a person's inherent dignity. Incommunicado detention violates this requirement. Incommunicado detention occurs when a detainee is denied communication with anyone outside the detention facility, including lawyers, family members, and consular officials.[181] Inter-American case law considers prolonged isolation and forced incommunicado detention to be *per se* cruel and inhumane treatment.[182] Effects of incommunicado detention include psychological suffering, particularly on persons in vulnerable positions.[183] The narrowly tailored exception for incommunicado detention permits confinement to ensure the results of an investigation.[184] The Court states this

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[179] Prohibition of Torture, p. 109 (citing *Donnason Knights v. Grenada*, Case 12.028, Report No. 47/01. Inter-Am.C.H.R., Annual Report 2000, OEA/Ser.L/V/II.111, para. 81).
[180] Prohibition of Torture, p. 109 (citing *Minors in Detention v. Honduras*, Case 11.491, Report No. 41/99, Inter-Am.C.H.R., Annual Report 1998, para. 135) (emphasis added).
[181] Prohibition of Torture, p. 126.
[182] *Bámaca-Velásquez v. Guatemala*, Judgment 25 Nov. 2000, Inter-Am.Ct.H.R., (Ser. C) No. 70, paras. 128, 150.
[183] *Castillo-Pertuzzi v. Perú*, Judgment 30 May 1999, Inter-Am.Ct.H.R., (Ser. C) No. 52, para. 195; *see also Velásquez-Rodríguez*, para. 156.
[184] Prohibition of Torture, p. 126 (citing *Suárez Rosero v. Ecuador*, Judgment 12 Nov. 1997, (Merits) Inter-Am.Ct.H.R., (Ser. C) No. 35, para. 72).

is an "exceptional" measure and may not be applied unless it was previously established by law.[185]

In *Suárez Rosero v. Ecuador*, the Court held that holding Mr. Rosero in incommunicado detention for thirty-six days with no communication "with the outside world" was a violation of Article 5(2), in that his isolation consisted of cruel, inhumane and degrading treatment.[186] Further, Ecuador state law only permitted a 24-hour period of incommunicado detention.[187] Likewise, in *Castillo-Pertuzzi v. Perú*, one of the victims was held thirty-six days in incommunicado detention before being brought before the court.[188] The Court held that this period of incommunicado detention of the victim was also *per se* cruel, inhumane, or degrading treatment or punishment and violated Article 5(2) of the ACHR.[189]

In the instant case, María and Mónica were held incommunicado for thirty days before being released.[190] During their confinement, the Sisters were denied communication with anyone outside the SMB,[191] including access to State-appointed counsel.[192] Moreover, the Sisters status as minor children afforded them increased protection.[193] The Commission has consistently held that when a victim is a child, the child's mental maturity, sex and status as a minor subjects the alleged violation to held to a higher level of scrutiny.[194] In *Bulacio v.*

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[185] *Suárez Rosero*, para. 72.
[186] Prohibition of Torture, p. 127 (citing *Suárez Rosero*, paras. 91–92).
[187] Prohibition of Torture, p. 127 (citing *Suárez Rosero*, paras. 91–92).
[188] Prohibition of Torture, p. 127 (citing *Castillo-Pertuzzi*, para. 192).
[189] *Castillo-Pertuzzi*, para. 199.
[190] Hypothetical, para. 28; Clarification Questions, para. 14.
[191] Clarifications, para. 77.
[192] *Id.* para. 52.
[193] Prohibition of Torture, p. 108 (citing *Bulacio v. Argentina*, Judgment 18 Sept. 2003, Inter-Am.Ct.H.R., (Ser. C) No. 100, para. 126).
[194] Prohibition of Torture, p. 108 (citing *Jailton Neri Da Fonseca v. Brazil*, Case 11.634, Report No. 33/04, Inter-Am.C.H.R., Annual Report 2004, para. 64).

Argentina, the victim was seventeen-years-old when detained by the State.[195] He was denied access to proper procedural due process and his next of kin did not receive notice of his detention.[196] Bulacio eventually died while in State custody.[197] The Court found that the State, in processing Bulacio's arrest, should have considered his status as a minor detainee, his vulnerability, lack of knowledge and defenselessness.[198]

Likewise, during the Quispe Sister's period of confinement, Respondent State failed to consider their vulnerabilities, including their status as defenseless minor detainees, women and members of an indigenous community.[199] At the SMB, the Sisters were not separated from adult detainees, as required by Article 5(5) of the ACHR,[200] even though the Court holds this separation to be "indispensable" to the administration of justice.[201] Mónica recounts seeing women forced to strip naked for the soldiers, who would subsequently beat and grope the women in their cells.[202] This indicates that the Quispe sisters were likely not separated from adult detainees, further heightening their exposure to sexual violence.

Like the victims in the above mentioned cases, Respondent States incommunicado detention of the Quispe Sisters also meets the Courts definition of *per se* cruel and inhuman treatment.[203] Respondent State's blatant disregard for the vulnerabilities of the Quispe Sisters renders the violation more so alarming as the State has shown its willingness to remain inactive during a time of known inhuman and degrading treatment. Therefore, as the Court in *Bulacio*

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[195] *Bulacio*, para. 133.
[196] *Id.* para. 3(1).
[197] *Id.* para. 3(5).
[198] *Id.* para. 136.
[199] Clarifications, para. 16–17.
[200] Hypothetical, para. 29.
[201] *Bulacio*, para. 127.
[202] Hypothetical, para. 29.
[203] *Castillo-Pertuzzi*, para. 195

found the State of Argentina in violation of Article 5, the Court should likewise find Respondent State in violation of Article 5(1), (2), and (5) of the ACHR.[204]

ii. Rape is a Form of Torture.

The Commission has consistently found that rape is a form of torture.[205] This classification of rape as a form of torture is not unique. Previously, the Commission held the rape of a seven-year-old girl by a military soldier violated the "respect for personal dignity guaranteed in Article 5(1)."[206] To support its finding, the Commission detailed how the rape of the victim in *Raquel Martín de Mejía v. Perú* met the elements of torture as outlined in the Convention to Prevent and Punish Torture.[207] The Commission analyzed that the rape: (1) caused the victim physical and mental pain and suffering; (2) was intended to punish the victim for her husband's political views; and (3) was done by a member of the security forces, a State actor.[208] This satisfied the elements of "torture" as defined in Article 2 of the IACPPT.[209]

Similarly, the circumstances surrounding the rape of the Quispe Sisters meets the element of torture. That is, the rape (1) caused mental suffering; (2) was done for "any other purpose";[210] and (3) was perpetuated by military soldiers, actors of the State.[211] The Sisters were forced to wash, clean and cook for their rapists, with the threat of another rape by one or more of the

[204] *Bulacio*, para. 38(a).
[205] Inter-American System, p. 229 (citing, *Raquel Martín de Mejía v. Peru*, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., Annual Report 1995, para. 157, 187).
[206] Inter-American System, p. 228 (citing to Case 10.772 (El Salvador), IACHR Annual Report 1993, p. 186).
[207] Inter-American System, p. 228 (citing *Raquel Martín de Mejía*, p. 187).
[208] *Raquel Martín de Mejía*, p. 157.
[209] Convention to Prevent and Punish Torture, Article 2–3.
[210] Hypothetical, para. 28.
[211] *Id.*

soldiers constantly looming. Accordingly, the repeated rapes of María Elena and Mónica constitute torture.

The prohibition against torture is highly protected by this Court and the Commission. Indeed, not only does rape and incommunicado detention constitute torture, but both governing bodies have held that a credible threat alone is sufficient to amount to inhumane treatment.[212] A "credible threat" is defined as threatening another with physical mistreatment and may rise to the level of psychological torture.[213] As this Court has set a high standard against torture, the respondent State's physical action of rape, prolonged incommunicado detention, and involuntary servitude meet the standard of cruel or inhumane, or degrading punishment or treatment. As such, Respondent State should be found in violation of Article 5(1) and (2) of the ACHR.

C. Respondent Naira violated Article 6 and 7 of the Convention, read in conjunction with Article 1(1), to the detriment of María Elena and Mónica Quispe.

1) Respondent State violated Article 6 (Freedom from Slavery), read in conjunction with Article 1(1), to the detriment of the Quispe Sisters.

Article 6(1) of the ACHR directly prohibits slavery or involuntary servitude, in all forms, as well as the slave trade and traffic in women. Article 6(2) further prohibits the performance of compulsory labor, except as required for punishment by law. Article 1(1) imposes an obligation to respect the rights and guarantees protected under the Convention and to ensure their free and

[212] *19 Merchants v. Colombia,* Judgment 5 July 2004, Inter-Am.Ct.H.R., (Ser. C) No. 109, para.149.
[213] *Tibi v. Ecuador*, Judgment 7 Sept. 2004, Inter-Am.Ct.H.R., (Ser. C) No. 114, para. 145.

full exercise. These rights are non-derogable and may not be limited by the State—even during times of war or public danger.[214]

To define "forced or compulsory labor" in the context of Article 6(2), the Court turns to the International Labor Organization ("ILO") Convention No. 29 concerning Forced Labor to provide content and scope of Article 6(2) of the ACHR.[215] The ILO defines forced or compulsory labor 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."[216] Accordingly, the Court observes that this definition encompasses two parts: (1) the work or service is exacted "under the menace of a penalty"; and (2) the work or service is performed involuntarily.[217] Additionally, the Court notes that for a finding of an Article 6(2) violation, the alleged violator must be a State agent who directly participated or acquiesced to the facts.[218]

Analyzing these factors, in *Itunago Massacres v. Colombia*, the Court found that the State violated Article 6(2) of the ACHR. In that state, members of law enforcement and paramilitary groups killed dozens of unarmed civilians and burned over fifty-nine properties.[219] The paramilitary groups then forced the victims, seventeen residents of the region, to herd between 800 and 1,000 livestock for seventeen days.[220] Members of the State Army were aware of the theft and assisted the paramilitary group by imposing a curfew to prevent residents from witnessing the theft.[221] In light of this, the Court found that all the elements of "forced or compulsory labor" were met. That is, (1) the herdsmen were explicitly threatened with death if

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214 ACHR, Art. 27(20).
215 *Itunago Massacres v. Colombia*, Judgment 1 July 2006, Inter-Am.Ct.H.R., (Ser. C) No.148, paras. 157–58.
216 *Id.* para. 159.
217 *Id.* para. 160.
218 *Id.*
219 *Id.* at paras. 125(82)–(86).
220 *Id.* paras. 125(81), (82).
221 *Itunago Massacres*, para. 125(85).

they tried to escape, thus the labor was done "under the menace of a penalty"; and (2) the Court conclusively found that the herdsmen did not volunteer their labor, thus the service was performed involuntarily. Further, the participation and acquiescence by members of the State Army in protecting the paramilitary group and facilitating their theft implicates a State agent.[222] Thus, the Court found the State in direct violation of Article 6(2).[223]

Turning to the instant case, a similar analysis reveals that Respondent State likewise violated Article 6(2) of the ACHR. (1) While detained at the SMB, the Quispe Sisters were forced to wash, cook, and clean every day.[224] The threat of forced disappearance and extrajudicial execution created an environment of fear and induce the Sisters to work "under the menace of a penalty."[225] (2) The work that the Sisters performed must be involuntarily.[226] The Court defines involuntary as an "unwillingness to perform the work or service; [an] absence of consent or free choice."[227] The Quispe Sisters have repeatedly asserted that they were *forced* to wash, cook, and clean everyday while at the SMB.[228] This negates "voluntary." Finally, the soldiers at the SMB were agents of the State, thus fulfilling the Convention requirement that the violator be a State actor.[229] Additionally, the State having knowledge of the pervasive sexual violence in Warmi, acquiesced to the conduct of the soldiers by neglecting to affirmatively act. From this, it is clear that the Respondent State violated Article 6(2) of the ACHR.

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[222] *Id.* paras. 161–66.
[223] *Id.* para. 168.
[224] Hypothetical, para. 28.
[225] Clarifications, para. 50.
[226] *Itunago Massacres*, paras. 160, 164.
[227] *Id.* para. 164.
[228] Hypothetical, paras. 28, 31; Clarifications, para. 50.
[229] *See* ACHR, Art. 1(1).

2) Respondent State violated Article 7 (Right to Personal Liberty) of the Convention, read in conjunction with Article 1(1), to the detriment of the Quispe Sisters.

Article 7(1) of the ACHR confers on "every person" the right to personal liberty and security. Arbitrary detention is a violation of procedural due process under Article 7(2). Article 7(3) prevents a State from subjecting its citizens to arbitrary detention or arrest. Article 7(4) requires detained persons to be informed of the reasons of their detention. Article 7(5) demands that any detained person be brought "promptly" before the court. While the Convention does not define "promptly," in *Street Children*, the Court provides guidance for determining promptness, discussed below.[230] Finally, under Article 7(6), anyone deprived of their liberty "shall be entitled to recourse to a competent court."

i. Right to Security of the Person.

Article 7(1) of the ACHR guarantees all persons the right to personal liberty and security. As mentioned above, while credible threats may amount to inhumane treatment,[231] in the context of arrest and detention, the Commission has ruled that threatening a person—with arbitrary and unjustified detention—is also a sufficient infringement on the right to personal security.[232] In *Garcia v. Peru*, the Peruvian army illegally entered the home of the former President to arrest him.[233] Although the President was able to escape, the Commission found the threat of unlawful arrest a violation of Article 7.[234]

[230] *Street Children*, paras. 133–34.
[231] *19 Merchants*, para.149.
[232] Inter-American System, p. 235 (citing *Alan Garcia v. Peru*, Case 11.006, Report No. 1/95, Inter-Am.C.H.R., Annual Report 1995, para. 100).
[233] Inter-American System, p. 235.
[234] *Id.*

In the instant case, the women who attempted to report the mass human rights violations in Warmi were threatened with death and retaliation from the military.[235] In this way, the soldiers' threats prevented the women from ensuring personal security. As in *Garcia*, the threats by the military soldiers in the case at hand likewise constitute an unlawful restriction of personal liberty and security.

ii. Freedom from Deprivation of Liberty.

Article 7(2) prohibits the deprivation of physical liberties except as established beforehand by a State Party constitution. The Court likens deprivation of personal liberty to a breach in procedural safeguards required by an individual State.[236] For example, in *Gangaram Panday v. Suriname*, the Court found that a lack of compliance with State law concerning detained persons violated Article 7(2) of the ACHR.[237] In that case, the military police detained the victim to question him on his recent expulsion from the Netherlands.[238] As a result of the detention, the State conceded that the victim's psychological condition intensified.[239] Subsequently, the victim was found dead in his cell.[240] In investigating the circumstances surrounding the death, this Court found that the State deviated from its procedural processes, which deprived the victim of his physical liberty.[241]

In the instant case, Respondent State did not satisfy the exception to bar the restriction of personal liberty as set forth in Article 7(2). During the internal conflict in Warmi, Respondent

[235] Clarifications, para. 43.
[236] Inter-American System, p. 235.
[237] *Gangaram Panday v. Suriname*, Judgment 21 Jan. 1994, Inter-Am.Ct.H.R., (Ser. C) No. 16, para. 1.
[238] *Id.* para. 3(a), 61.
[239] *Id.* para. 61.
[240] *Id.* para. 43(c).
[241] *Id.* para. 1.

State declared a state of emergency and notified the appropriate State Parties that it derogated from Article 7 of the ACHR, *inter alia*.[242] Though Article 27(2) of the ACHR does not forbid derogation from Article 7, the Commission has expressly held that arrests must be done "in accordance with the procedure required by international law."[243] When an arrest is made outside the procedures of a State, the "arrests cease to be arrest . . . and become kidnappings."[244]

Respondent State failed to abide by procedural processes in its arrest of the Quispe Sisters. During the 1990 – 1999 period, the Ministry of Justice and Defense failed to investigate conditions at the SMB, though on notice of the violence occurring at the Warmi outpost.[245] Furthermore, women were unable to report instances of abuse, as the military command at the SMB had judicial, political, *and* policing authority.[246] Any attempt to seek recourse was blocked by the military command authority. This violated the procedural due process of arrest and deprived the Sisters of personal liberty in Warmi.

iii. Right to be Brought Promptly Before a Judge and Freedom from Arbitrary Arrest and Imprisonment.

Article 7(5) requires a detained person to be brought "promptly" before the Court. In *Street Children*, the Court held that the State's failure to bring the victims before a competent judicial authority within six hours of arrest, as required by the Guatemalan Constitution, violated Article 7(5) of the ACHR.[247] Further, in a separate case, the Court held that even a brief period

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[242] Clarifications, para. 10.
[243] Inter-American System, p. 236.
[244] *Id*. (citing Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, 1985, para. 138).
[245] Clarifications, para. 36.
[246] Clarifications, para. 12.
[247] *Street Children*, paras. 133–34.

of illegal detention is enough to infringe on the "mental and moral integrity [of a victim,] according to the standards of international human rights law."[248]

In the instant case, the Quispe Sisters were held for thirty-days without the benefit of counsel, not informed of the charges against them and denied the right to appear before a judge.[249] As the Court previously found six hours of arbitrary detention without the benefit of court appearance a violation of Article 7(5), surely a month-long detention will rise to the level of improper restriction of an individual's physical liberty.

Additionally, Article 7(3) of the ACHR bars arbitrary arrest and imprisonment. Respondent State concedes that the SMB released the Sisters without any explanation for their confinement nor any subsequent State intervention.[250] This State action, or rather inaction, directly contradicts the requirements of Article 7(3) of the ACHR, which states that "no on shall be subjected to arbitrary arrest or imprisonment." Moreover, Respondent State neither considered nor took account of the vulnerability of the Quispe Sisters, thus exposing them to the risk of illegal and arbitrary detention. This risk is especially egregious as the Court notes that the "vulnerability of the detainee worsens when the detention is illegal or arbitrary."[251]

[248] *Juan Humberto Sanchez*, para. 98
[249] Clarifications, paras. 14, 52.
[250] *Id.* at 14.
[251] *Bulacio*, para. 127.

D. Respondent Naira violated Article 7 of Belém do Pará, to the detriment of María Elena and Mónica Quispe.

1) Respondent State is bound to pursue, punish, and eradicate all forms of violence against women and failed to do so, with respect to the Quispe Sisters.

Belém do Pará imposes upon the State an obligation to guarantee rights to women.[252] Article 7 of Belém do Pará requires State Parties to act with diligence to prevent, punish, and eradicate all forms of violence against women.[253] This includes an obligation on the State to act without delay and use all appropriate means to protect women.[254] Specifically, Article 7(b) requires States to "prevent, investigate and impose penalties for violence against women."

In *González et al. ("Cotton Field") v. Mexico*, the Court found that the State violated Article 7(b) and (c) of Belém do Pará,[255] holding that the State failed to take adequate steps to prevent the disappearance, abuse, and death of the victims.[256] The Court also found that the State failed to exercise diligence in their response to the murder of the victims.[257] The Court lamented the State's ineffective response, stating that the "indifferent attitude toward the crimes only seems to perpetuate the violence."[258] Finally, in spite of having "full awareness" of a history of gender-based violence that resulted in the femicide of hundreds of women and girls, the State failed to act to prevent and punish violators.[259]

[252] *González et al. ("Cotton Field") v. Mexico*, Judgement 16 Nov. 2009, Inter-Am.Ct.H.R., (Ser. C) No. 205, para. 284.
[253] Belém do Pará, Art. 7.
[254] *Id.* Art. 7.
[255] *Cotton Field*, para. 389.
[256] *Id.*
[257] *Id.* paras. 123–33.
[258] *Id.*
[259] *Id.* para. 2.

Likewise, Respondent State is in violation of Article 7 of Belém do Pará. Respondent State failed to exercise diligence and pursue all appropriate means to prevent, punish, and eradicate violence as required by the convention. During the 1990 – 1999 period of military occupation in Warmi, Respondent State was aware of the sexual violence against women like María and Mónica, but remained indifferent and failed to act.[260]

Beginning in 2014, the State began implementing a series of measures to redress the persistent gender-based violence under the ZTPGBV. While these measures are welcomed, they do not absolve the State of its legal obligations under Belém do Pará. In, *Gomez-Papqiyauri*, the Court stated that "if by the time the petition was submitted to the Inter-American System the State had not redressed the violation, any subsequent action to remedy the situation would not permit the State to avoid international responsibility."[261] Thus, despite Respondent State's domestic courts adoption of measures to correct the human rights violations, the State is not excused from its obligations under international law.[262]

Accordingly, despite the States belated efforts to redress present-day gender-based violence, the State is still under a continuing obligation of Belém do Pará to prevent, punish, and eradicate all forms of violence, without delay and with diligence. Presently, Respondent State's obligation to María Elena and Mónica is outstanding. Had the State acted under its obligation to *prevent* violence against women at the SMB and *investigate* and *impose penalties* against perpetrators, the current climate of intolerance for gender-based crimes in Naira could have

[260] Clarifications, para. 36.
[261] Prohibition of Torture, p. 151 (citing *Gómez-Paquiyauri Brothers v. Peru*, Judgment 8 July 2004, Inter-Am.Ct.H.R., (Ser. C) No. 110, para. 75).
[262] *Id.*

quelled. However, Respondent State failed in its past obligations, leaving the current climate in Naira toxic towards women.

In fact, the Public Ministry confirms that there are 10 femicides or attempted femicides in the country every month.[263] Femicide is defined as the killing of a woman because of her status as such.[264] In 2016, the National Statistics Institute reported three of every five women were abused by their current or former partners.[265] More recently, in 2017, the Ministry of Women's Affairs of Naira indicated that 121 femicides and 247 cases of attempted femicides were reported.[266] This recent data shows a monthly increase in femicides and attempted femicides in Respondent State. The emergency service unit further reports that of its 95,317 cases of domestic and sexual violence, 85% of the victims were women.[267]

These statistics are alarming, yet this is the climate in which the Quispe Sisters were raised. After experiencing prolonged sexual trauma at the SMB, they witnessed their State ignore the women who faced threats of death and intimidation to report acts of sexual violence by the hands of the soldiers. Part of several vulnerable classes themselves—women, minors, and members of an indigenous community—when the military authorities simply released them without explanation or intervention of the State, Respondent State reinforced their inferiority.[268] As such, the failure of the State to act on behalf of the Quispe Sisters in 1992 led to a present continuing violation. This is seen contemporarily with María Elena, who in January 2014,

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[263] Hypothetical, para. 12.
[264] Clarifications, para. 4.
[265] Hypothetical, para. 12.
[266] Clarifications, para. 23.
[267] *Id.* para. 23.
[268] *Id.* para. 14.

attempted to report her abusive husband to the Respondent State.[269] Due to procedural defects on the part of Respondent State, she was denied opportunity to secure the required police report to generate legal protection.[270] This procedural defect violates Article 7 of Belém do Pará, which requires preventative—not reactionary—state action. Thus, by of Respondent State's failure to address the nearly thirty-year period of violence in Warmi by the soldiers at the SMB, the State stands in continuous violation of their obligation to "prevent, punish, and eradicate" all forms of violence against women.

REQUEST FOR RELIEF

Wherefore, based on the foregoing submissions, the Representative for the Victims respectfully request this Honorable Court declare the instant case admissible and:

(1) Adjudge and declare that the Republic of Naira violated Article 8 and 25 of the ACHR, in relation to Article 1(1), to the detriment of María Elena and Mónica Quispe;

(2) Adjudge and declare that the Republic of Naira violated Article 4 and 5 of the ACHR, in relation to Article 1(1), to the detriment of María Elena and Mónica Quispe;

(3) Adjudge and declare that the Republic of Naira violated Article 6 and 7 of the ACHR, in relation to Article 1(1), to the detriment of María Elena and Mónica Quispe;

(4) Adjudge and declare that the Republic of Naira violated Article 7 of Belém do Pará.

[269] Hypothetical, para. 23.
[270] *Id.* para. 24.