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 is a democratic state made up of 25 provinces.[1] Throughout the years, it has ratified the following treaties: the American Convention on Human the Convention on the Elimination of All Forms of -American Convention to Prevent and Punish Torture) in 1992; and the Inter-American Convention of the Prevention, Punishment, and Eradication of Violence Against Women in 1996.[2] Respondent State also accepted the contentious jurisdiction of The Inter-American Court of [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 y 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]

[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.*

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 SM102

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- to explore the potential of reopening the criminal cases.[46] Additionally, the President offered to add the Quispe Sisters to the

Quispe Sisters.[51]

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 C .[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

[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 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

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[59] Clarifications, paras. 15, 21.
[60] AMERICAN CONVENTION ON HUMAN RIGHTS, ACT OF SAN JOSE, COSTA RICA
[61] OAS, INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE, art. 8, 9 Dec. 1985, O.A.T.S. No. 67.
[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

B. Jurisdiction Ratione Temporis

The Respondent State filed a preliminary obje

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 .[69] When determining whether it has jurisdiction *ratione temporis*, the Court must consider the date of the Stat its jurisdiction, the terms in which the State accepted it, and the principle of non-retroactivity [70]

Article 62 of the ACHR provides that the t 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 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 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

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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.

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

[86] Rather, it is meant to allow

to resolve the problem under its internal law before being conf-tq unWR0PDP0pRSS[

domestic remedies renders the victim defenseless and explains the need for international

.[89] This

[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]

in *ex officio*

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[93] A ack of specificity in a timely procedural manner before the Commission,

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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.

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

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

criminal case is still ongoing and the TC

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 Sistin y

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Moreover, either 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

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

right to judicial protection. Under the ACHR, State

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

recourse, or any other effective recourse, to a competent court or tribunal for protection against

This Court has repeatedly underscored the importance

[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]

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

ensure a veritable guarantee of the right to a fair trial, the proceedings must follow all the

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 , 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 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 persons subject to their jurisdiction the free and fu The Court has previously

positive duty for States to act in preservation of the right to life.[141] This positive duty requires

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

disposal to carry out a serious investigation o [147]

[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) -
[144] ACHR, Art. 27(2); *see also*, *Zambrano Velez*, para. 78.
[145] Clarifications, para. 43.
[146] *Id.*
[147] *Velasquez-Rodriguez*, para. 174.

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

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

Commission

[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
[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*.

[179] The Commission further declared

carries with it a specific and material *commitment to protect*

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 I

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-

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 affordn a

he Court held t

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,

vulnerability, lack of knowledge and defenselessness.[198]

Likewise, during 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

[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

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-

[206]

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

provide content and scope of Article 6(2) of the ACHR.[215] The ILO defines forced or

penalty and for which the said person has not offered himself volu [216] Accordingly, the Court observes that this definition encompasses two parts: (1) the work or service is exacted

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

That is, (1) the herdsmen were explicitly threatened with death if

[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).

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

2) Respondent State violated Article

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

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)

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 Mini 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

attempted to report her abusive husband to the Respondent State.[269] Due to procedural defects on the part of Respondent St