

INTER-AMERICAN COURT OF HUMAN RIGHTS*

CASE OF ESPINOZA GONZÁLES v. PERU

JUDGMENT OF NOVEMBER 20, 2014

(Preliminary objections, merits, reparations and costs)

In the case of *Espinoza González v. Peru*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

Humberto Antonio Sierra Porto, President
Roberto F. Caldas, Vice President
Manuel E. Ventura Robles, Judge
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this Judgment structured as follows:

* In accordance with Article 19(1) of the Rules of Procedure of the Inter-American Court applicable to this case, Judge Diego García-Sayán, a Peruvian national, did not take part in the deliberation of this Judgment. In addition, for reasons beyond his control, Judge Alberto Pérez Pérez did not participate in the deliberation of this Judgment.

TABLE OF CONTENTS

I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE	5
II PROCEEDINGS BEFORE THE COURT	6
III COMPETENCE	8
IV PRELIMINARY OBJECTIONS	8
A) Preliminary objection of lack of competence <i>ratione materiae</i> with regard to Article 7 of the Convention of Belém do Pará	8
A.1. Arguments of the parties and of the Commission	8
A.2. Considerations of the Court	9
B) Preliminary objection of lack of competence <i>ratione temporis</i> with regard to Article 7 of the Convention of Belém do Pará	9
B.1. Arguments of the parties and of the Commission	9
B.2. Considerations of the Court	10
V PRELIMINARY CONSIDERATIONS	11
A) Determination of the presumed victims in this case.....	11
A.1. Arguments of the Commission and of the parties	11
A.2. Considerations of the Court	11
B) Factual framework of the case.....	11
B.1. Arguments of the Commission and of the parties	11
B.2. Considerations of the Court	12
VI EVIDENCE	13
A) Documentary, testimonial and expert evidence	13
B) Admission of the evidence	13
C) Assessment of the evidence	15
VII FACTS.....	15
A) Context in which the facts of the case occurred.....	15
A.1. The conflict in Peru.....	17
A.2. The states of emergency, the anti-terrorism laws, and also the coup d'état of April 5, 1992	17
A.3. The practice of detentions, torture, and cruel, inhuman and degrading treatment at the time of the facts.....	19
A.4. The practice of rape and other forms of sexual violence against women at the time of the facts.....	21
A.5 Conclusions	22
B) The proven facts concerning Gladys Carol Espinoza Gonzáles.....	23
B.1. The arrest of Gladys Carol Espinoza Gonzáles and the time she spent at the headquarters of the DIVISE and the DINCOTE.....	23
B.2. The transfer to different prisons and her continuing incarceration.....	26
B.3. The alleged acts of violence, in particular sexual violence, perpetrated against Gladys Espinoza	27
B.4. Investigation into the alleged acts of violence, in particular sexual violence, perpetrated against Gladys Carol Espinoza Gonzáles (Third Supra-provincial Criminal Prosecutor, Case file No. 08-2012).....	28

VIII MERITS	36
VIII.1. RIGHT TO PERSONAL LIBERTY, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE RIGHTS	37
A) Arguments of the parties and of the Commission.....	37
B) Considerations of the Court	40
<i>B.1. Article 7(2) of the American Convention (right not to be deprived of liberty unlawfully) in relation to Article 1(1) of this instrument.....</i>	<i>41</i>
<i>B.2. Article 7(4) of the American Convention (right to be informed of the reasons for the detention), in relation to Article 1(1) of this instrument.....</i>	<i>47</i>
<i>B.3. Article 7(5) and 7(3) of the American Convention (right to judicial control of the detention and right not to be deprived of liberty arbitrarily), in relation to Article 1(1) of this instrument</i>	<i>48</i>
<i>B.4. Article 7(6) of the American Convention (right to recourse to a competent judge or court for a decision on the lawfulness of the arrest or detention), in relation to Article 1(1) of this instrument.....</i>	<i>50</i>
<i>B.5. Conclusion.....</i>	<i>51</i>
VIII.2. RIGHT TO HUMANE TREATMENT AND TO PRIVACY, AND OBLIGATION TO PREVENT AND PUNISH TORTURE	51
A) General standards relating to personal integrity and the torture of detainees	52
B) The detention of Gladys Espinoza and the events that took place on the premises of the DIVISE and DINCOTE in April and May 1993.....	53
<i>B.1. Arguments of the Commission and of the parties</i>	<i>53</i>
<i>B.2. Considerations of the Court</i>	<i>55</i>
C) Detention conditions of Gladys Carol Espinoza Gonzáles in the Yanamayo Maximum Security Prison of Puno and the incident that occurred on August 5, 1999	72
<i>C.1. Arguments of the Commission and of the parties</i>	<i>72</i>
<i>C.2. Considerations of the Court</i>	<i>73</i>
VIII.3 SEXUAL VIOLENCE AND THE OBLIGATION NOT TO DISCRIMINATE AGAINST WOMEN, IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS	77
A) Arguments of the parties and of the Commission.....	77
B) Considerations of the Court	77
<i>B.1. The discriminatory practice of sexual violence and rape</i>	<i>79</i>
VIII.4. RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION	81
A) Arguments of the Commission and of the parties.....	81
B) Considerations of the Court	83
<i>B.1. The failure to investigate between 1993 and 2012 the events that occurred on the premises of the DIVISE and the DINCOTE in 1993 and the incident that took place in the Yanamayo Prison in 1999.....</i>	<i>86</i>
<i>B.2. The investigation opened in 2012.....</i>	<i>100</i>
VIII.5. RIGHT TO PERSONAL INTEGRITY OF THE VICTIM'S NEXT OF KIN, IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE RIGHTS	101
A) Arguments of the parties and of the Commission.....	101
B) Considerations of the Court	102

IX REPARATIONS.....	103
A) Injured party	104
B) Obligation to investigate the facts that gave rise to the violations and to identify, prosecute and punish, as appropriate, those responsible	104
C) Measures of rehabilitation and satisfaction, and guarantees of non-repetition ...	106
C.1. Rehabilitation.....	106
C.2. Satisfaction.....	107
C.3. Guarantees of non-repetition.....	108
C.4. Other measures requested	111
D) Compensation	111
E) Costs and expenses	112
F) Reimbursement of the expenses to the Victims' Legal Assistance Fund	113
G) Method of complying with the payments ordered	114
X OPERATIVE PARAGRAPHS.....	114

I

INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On December 8, 2011, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented a brief (hereinafter "submission brief") in which it submitted the case of Gladys Carol Espinoza Gonzáles against the Republic of Peru (hereinafter "the State" or "Peru") to the jurisdiction of the Inter-American Court. According to the Commission, this case relates to the supposed unlawful and arbitrary arrest of Gladys Carol Espinoza Gonzáles on April 17, 1993, as well as to the alleged rape and other acts constituting torture that she endured while in the custody of agents of the former Abduction Investigation Division (DIVISE) and of the National Counter-terrorism Directorate (DINCOTE), both attached to the Peruvian National Police. The Commission affirmed that, in addition to the alleged acts of torture that took place at the beginning of 1993, Gladys Espinoza had been subjected to inhuman detention conditions during her incarceration in the Yanamayo Prison from January 1996 to April 2001, presumably without access to adequate medical care and food, and denied the possibility of receiving visits from members of her family. It also indicated that, in August 1999, agents of the National Special Operations Directorate of the Peruvian National Police (DINOES) had beaten her on sensitive parts of her body, without the presumed victim having access to prompt medical care. Lastly, it stated that the facts of the case had not been investigated and punished by the competent judicial authorities, and remained in impunity.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a) *Petition.* On May 10, 1993, the Inter-American Commission received the initial petition from the *Asociación Pro Derechos Humanos* (APRODEH) and Teodora Gonzáles de Espinoza. Subsequently, on November 19, 2008, the Center for Justice and International Law (CEJIL) joined the litigation before the inter-American system for the protection of human rights.

b) *Report on Admissibility and Merits.* On March 31, 2011, the Commission approved Report on Admissibility and Merits No. 67/11, pursuant to Article 50 of the Convention (hereinafter "the Report on Admissibility and Merits"), in which it reached a series of conclusions and made several recommendations to the State:

i. *Conclusions.* The Commission concluded that the State was responsible for:

1. Violations of the rights recognized in Articles 5(1), 5(2), 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 11(1), 11(2), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this international instrument, to the detriment of Gladys Carol Espinoza.
2. The violation of Article 7 of the Convention of Belém do Pará, to the detriment of Gladys Carol Espinoza.
3. The violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Gladys Carol Espinoza.
4. The violation of Article 5(1) of the American Convention in relation to Article 1(1) of this international instrument, to the detriment of Teodora Gonzales viuda de Espinoza, Marlene, Mirian and Manuel Espinoza Gonzales.

3. *Notification of the State.* The Report on Admissibility and Merits was notified to the State on June 8, 2011, granting it two months to report on compliance with the recommendations. The State presented a report in this regard on August 8, 2011, and following two extensions, submitted another report on December 1, 2011.

4. *Submission to the Court.* On December 8, 2011, and “owing to the need to obtain justice for the [presumed] victims,” the Inter-American Commission submitted this case to the jurisdiction of the Court and attached a copy of Report on Admissibility and Merits No. 67/11. At the same time, it appointed Commissioner José de Jesús Orozco and the Executive Secretary at the time, Santiago A. Canton, as its delegates before the Court, and Elizabeth Abi-Mershed, Deputy Executive Secretary, Tatiana Gos and Daniel Cerqueira as legal advisers.

5. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations described in its Report on Admissibility and Merits (*supra* para. 2.b). The Commission also asked the Court to order the State to undertake certain measures of reparation, which are described and analyzed in Chapter IX of this Judgment.

6. *Actual situation of the presumed victim.* It should be remembered that the presumed victim remains confined in the Women’s Maximum Security Prison of Chorrillos serving a sentence of 25 years’ imprisonment that will end on April 17, 2018 (*infra* para. 82).

II PROCEEDINGS BEFORE THE COURT

7. *Notification of the State and the representatives.* The submission of the case by the Commission was notified to the State and to the representatives of the presumed victims on March 23, 2012.

8. *Brief with motions, arguments and evidence.* On May 26, 2012, the representatives of the presumed victims, the *Asociación Pro Derechos Humanos* (APRODEH) and the Center for Justice and International Law (CEJIL), submitted their brief with motions, arguments and evidence (hereinafter “motions and arguments brief”) to the Court. The representatives were in substantial agreement with the arguments of the Commission and asked the Court to declare the State’s responsibility for the violation of the same articles alleged by the Commission; however, they also alleged violations of Article 24 of the American Convention to the detriment of Gladys Espinoza. Lastly, the representatives asked that the Court order the State to adopt diverse measures of reparation, and to reimburse certain costs and expenses.

9. *Answering brief.* On September 28, 2012, the State presented its brief with preliminary objections, answering the submission of the case, and with observations on the motions and arguments brief (hereinafter “answering brief”). With regard to the merits of the case, the State affirmed that it was not responsible for any of the alleged violations. In this brief, it appointed Luis Alberto Huerta Guerrero, Special Supra-national Public Attorney¹ as its Agent for this case and Iván Arturo Bazán Chacón and Mauricio César Arbulú Castrillón, lawyers of the office of the Special Supra-national Public Attorney, as its Deputy Agents.

10. *Application for access to the Legal Assistance Fund.* In an Order of the acting President of February 21, 2013, the presumed victims’ application, through their representatives, for access to the Court’s Legal Assistance Fund was declared admissible, and the necessary financial assistance was approved for the presentation of a maximum of three statements, either by affidavit or during the public hearing.²

¹ Initially, the State had designated Oscar José Cubas Barrueto as its Agent. However, Peru then appointed Luis Alberto Huerta Guerrero, actual Special Supra-national Public Attorney, as its Agent.

² *Cf. Case of Espinoza González et al. v. Peru.* Order of the acting President of the Inter-American Court of Human Rights of February 21, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/espinoza_fv_13.pdf

11. *Observations on the preliminary objections.* On March 5 and 6, 2013, the Commission and the representatives, respectively, presented their observations on the preliminary objections filed by the State.

12. *Public hearing.* In an Order of the President of March 7, 2014,³ the Commission, the representatives and the State were convened to a public hearing in order to receive their final oral observations and arguments, respectively, on the preliminary objections and eventual merits, reparations and costs, as well as to receive the statements of an expert witness proposed by the Commission, a witness proposed by the representatives, and a witness proposed by the State. Also, in this Order, affidavits were required from two presumed victims, one witness and three expert witnesses proposed by the representatives, as well as three expert witnesses proposed by the State. The public hearing took place on April 4, 2014, during the fiftieth special session of the Court, which was held at its seat.⁴

13. *Amicus curiae.* On April 10 and 15, 2014, the “Marisela Escobedo” Gender and Justice Clinic of the *Universidad Nacional Autónoma de México*, and also Women’s Link Worldwide and the Legal Clinic of the *Universidad de Valencia*, respectively, submitted *amicus curiae* briefs, which were forwarded to the Commission and to the parties so that they could present any observations they deemed pertinent together with their final written observations and arguments.

14. *Final written arguments and observations.* On May 5, 2014, the State, the representatives, and the Commission forwarded their final written arguments and observations, respectively. The State and the representatives remitted diverse documentation with their briefs. On May 27, 2014, the Commission indicated that it had no comments to make on the attachments forwarded by the parties with their final written arguments. On May 30, 2014, the representatives and the State forwarded their comments on the attachments to the final written arguments of the other party.

15. *Helpful evidence.* On May 16, 2014, on the instructions of the Inter-American Court and pursuant to the provisions of Article 58(b) of its Rules of Procedure, the State and the representatives were asked to present documentation as helpful evidence. With communications of May 23 and 30, and June 2, 2014, the State forwarded the requested documentation, while the representatives forwarded the requested documentation with a brief dated June 2, 2014. On June 25, 26 and 27, 2014, the State, the representatives and the Commission, respectively, presented their observations on the helpful evidence. Since the Commission’s observations were presented belatedly, the Court will not assess them.

16. *Disbursements in application of the Assistance Fund.* On May 16, 2014, the report on the disbursements made in this case from the Court’s Legal Assistance Fund was sent to the State. On May 30, 2014, Peru presented its observations on the disbursements made from the fund.

17. *Deliberation of this case.* The Court initiated the deliberation of this Judgment on November 18, 2014.

³ Cf. *Case of Espinoza González v. Peru*. Order of the President of March 7, 2014. Available at: http://www.corteidh.or.cr/docs/asuntos/espinoza_07_03_14.pdf

⁴ There appeared at this hearing: (a) for the Inter-American Commission: Silvia Serrano Guzmán and Erick Acuña Pereda, lawyers of the Commission’s Executive Secretariat; (b) for the representatives of the presumed victims: Gisela Astocondor, Jorge Ábrego, Alejandra Vicente and Gisela De León, and (c) for the State: Luis Alberto Huerta Guerrero, Special Supra-national Public Attorney, Agent; Iván Arturo Bazán Chacón and Mauricio Cesar Arbulú Castrillón, lawyers from the office of the Special Supra-national Attorney, Deputy Agents.

III COMPETENCE

18. The Court is competent to hear this case pursuant to Article 62(3) of the Convention, because Peru has been a State Party to the American Convention since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981. In addition, the State ratified the Inter-American Convention to Prevent and Punish Torture on March 28, 1991, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women on June 4, 1996.

IV PRELIMINARY OBJECTIONS

A) Preliminary objection of lack of competence *ratione materiae* with regard to Article 7 of the Convention of Belém do Pará

A.1. Arguments of the parties and of the Commission

19. The State argued the Court's lack of competence *ratione materiae* to determine violations of the Convention of Belém do Pará because the Court "can only interpret and apply the American Convention and the instruments that expressly grant it competence [...]." It added that Peru had "accepted the jurisdiction of the Court exclusively for cases that relate to the interpretation or application of the American Convention and not of other international instruments." The State based itself on the following arguments: (a) "the authority to establish the responsibility of a State in application of other treaties is not extensive when [...] the Court exercises its contentious jurisdictional function"; (b) Article 12 of the Convention of Belém do Pará mentions, expressly and exclusively, the Inter-American Commission as the organ responsible for the protection of [that] Convention"; (c) "the non-judicialization of the system of petitions included in the Convention of Belém do Pará is possible, taking into account [other] international human rights instruments that do not establish mechanisms for submitting petitions to international courts [...]"; (d) "the criteria used by the Court in order to apply the Inter-American Convention to Prevent and Punish Torture [...] and the Inter-American Convention on Forced Disappearance of Persons [...] are inapplicable," and (e) "the fact that the Commission may submit a case to the Court should not be confused in any way with the procedure for individual petitions."

20. The Commission indicated that, on numerous occasions, it has insisted on the application of Article 7 of the Convention of Belém do Pará in order to establish the full scope of the State's responsibility in cases involving the failure to investigate acts of violence against women. When submitting such cases to the Court, the Commission has argued that the Court has competence to rule on the said Article 7 of the Convention of Belém do Pará, and that the States Parties themselves have accepted this competence, because Article 12 of that Convention refers to the procedures of the system of individual petitions established in the American Convention, which includes the eventual processing of the case before the Court. The Inter-American Court has declared violations of this provision based on the same understanding. The Commission affirmed that there is no reason for the Court to depart from its reiterated opinion, which accords with international law. Consequently, it asked the Court to declare this preliminary objection inadmissible.

21. The representatives indicated that the Court had applied the Convention of Belém do Pará constantly and consistently throughout its case law, thus recognizing its competence to do so. They added that the Peruvian State had not presented any argument that would justify the Court departing from its case law in relation to its competence to rule on violations of the

Convention of Belém do Pará, and asked the Court to reject the preliminary objection filed by the Peruvian State.

A.2. Considerations of the Court

22. The State ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) on June 4, 1996, without reservations or restrictions (*supra* para. 18). Article 12 of this treaty refers to the possibility of lodging “petitions” with the Commission relating to “denunciations or complaints of violations of [its] Article 7,” establishing that “the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and in the Statute and Regulations of the [...] Commission.” As the Court indicated in the cases of *González et al. (“Cotton Field”) v. Mexico*, and *Véliz Franco v. Guatemala*, “it would appear clear that the literal meaning of Article 12 of the Convention of Belém do Pará grants competence to the Court, by not excepting from its application any of the procedural norms and requirements for individual communications.”⁵ It is worth noting that, in other contentious cases against Peru,⁶ the Court has declared the State’s responsibility for the violation of Article 7 of the Convention of Belém do Pará. In those cases, the State did not contest the Court’s material competence to examine violations of that Convention. The Court does not find that there is any factor that would justify departing from its case law.

23. Consequently, the Court rejects the preliminary objection of its lack of competence *ratione materiae* in this case with regard to Article 7 of the Convention of Belém do Pará.

B) Preliminary objection of lack of competence *ratione temporis* with regard to Article 7 of the Convention of Belém do Pará

B.1. Arguments of the parties and of the Commission

24. The State argued the Inter-American Court’s lack of competence *ratione temporis* to examine the presumed violations of the Convention of Belém do Pará based on events that had occurred between 1993 and the date of ratification of that treaty relating to the presumed lack of activity in the investigation into the acts that had allegedly constituted violence against women. It also affirmed that the said Convention is not applicable in this case as regards the alleged acts of torture and rape, because the alleged acts took place in 1993, and Peru ratified this instrument on June 4, 1996. Thus, when the acts occurred, the Peruvian State was not a party to that treaty, so that this was not in force under its laws. Peru clarified that “this objection refers only to the acts of torture and rape alleged by Gladys Carol Espinoza that took place in 1993, but not to the obligation to investigate that has arisen concurrently to the obligation contained in the American Convention [...] as of the date on which the State ratified the Convention of Belém do Pará. Consequently, the objection also includes the possible omissions in the investigations in which the State could have incurred between the date of the facts and June 3, 1996, under this instrument.”

⁵ Cf. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 41. In that judgment, the Court explained that the “wording” of Article 12 of the Convention of Belém de Pará “does not exclude any provision of the American Convention, so that it must be concluded that the Commission will act in the case of petitions relating to Article 7 of the Convention Belém do Pará ‘pursuant to the provisions of Articles 44 to 51 of [the American Convention]’, as established in Article 41 of this Convention. Article 51 of the Convention [...] refers [...] expressly to the submission of cases to the Court.” Similarly, see, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 36.

⁶ Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275.

25. The Commission indicated that it had “not attributed responsibility to the State of Peru for the violation of the Convention of Belém do Pará as a result of the [alleged] sexual violence in itself, but as a result of the failure to investigate this as an obligation of a continuing nature. When referring to the absence of an investigation, the Commission did not indicated that it attributed responsibility to the State under the Convention of Belém do Pará specifically due to the inaction prior to the ratification of that instrument. This responsibility is included under the relevant paragraphs of Articles 8 and 25 of the Convention. Thus, since the absence of an investigation continued after June 4, 1996, and persists to date, the responsibility for the said omissions under the Convention of Belém do Pará began on that date and, in its Merits Report, the Commission clarified that this is how it understood the matter. Consequently, the Commission considered that this preliminary objection was also inadmissible.

26. The representatives explained that they had “not alleged non-compliance with the obligations contained in Article 7 of the Convention of Belém do Pará [...] in relation to the sexual violence, torture, cruel, inhuman and degrading treatment to which [Ms. Espinoza] was subjected during her detention in the DIVISE and the DIRCOTE [*sic*] in 1993. However, [they] indicated that [...] the said article was applicable in this case with regard to Peru’s obligation to ensure the punishment and the eradication of violations against Gladys Carol Espinoza Gonzáles. [They] also argue[d] that this provision had not been complied with owing to the [presumed] acts of violence that she suffered [...] after June 4, 1996, while she was detained. Consequently, [they] ask[ed] the Court to reject the second preliminary objection presented by the Peruvian State.”

B.2. Considerations of the Court

27. The Court notes that, as is the case of every organ with jurisdictional functions, it has the power inherent in its attributes to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*). The instruments recognizing the optional clause on compulsory jurisdiction (Article 62(1) of the Convention) presume the acceptance by the States that present them of the Court’s right to decide any dispute concerning its jurisdiction.⁷

28. The State deposited the document ratifying the Convention of Belém do Pará before the General Secretariat of the Organization of American States on June 4, 1996. Based on this, and on the principle of non-retroactivity codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the Court may examine acts or facts that have taken place following the date of this ratification,⁸ as well as continuing or permanent facts that persist after that date.⁹

29. Taking this into account, the Court considers that it is unable to rule on the possible violations of Article 7 of the Convention Belém do Pará as a result of the alleged torture and sexual violence that Gladys Espinoza supposedly suffered and the alleged lack of investigation that supposedly occurred before June 4, 1996. However, the Court does have competence to rule on whether these facts constituted a violation of the American Convention. Furthermore, as it has in other cases, including the cases of the *Miguel Castro Castro Prison v. Peru* and *J. v. Peru*, the Court will analyze the arguments concerning the supposed denial of justice that occurred after that date, for which the Court does have competence, in light of the alleged

⁷ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, paras. 32 and 34, and *Case of J. v. Peru, supra*, para. 18.

⁸ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, paras. 39 and 40, and *Case of J. v. Peru, supra*, para. 19.

⁹ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 22, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 30.

violation of the rights recognized in Article 7(b) of the Convention of Belém do Pará.¹⁰ Therefore, the preliminary objection filed by the State, is admitted partially in the said terms.

V PRELIMINARY CONSIDERATIONS

A) Determination of the presumed victims in this case

A.1. Arguments of the Commission and of the parties

30. The Commission indicated in its Report on Admissibility and Merits that the presumed victims in this case are Gladys Carol Espinoza González and her family: (i) Teodora González viuda de Espinoza (mother); (ii) Marlene Espinoza González (sister); (iii) Miriam Espinoza González (sister), and (iv) Manuel Espinoza González (brother). In their motions and arguments brief, the representatives agreed with the list of presumed victims presented by the Commission. However, subsequently, they presented a communication in which they advised that Marlene and Miriam Espinoza González, sisters of Gladys Carol Espinoza González, “do not want to be considered victims in the litigation before the Court [...],” and, therefore, had not presented their powers of attorney. The State asked the Court not to take into account Marlene and Miriam Espinoza González, if reparations were eventually ordered, because they had voluntarily renounced their condition of presumed victims.

A.2. Considerations of the Court

31. Although Marlene and Miriam Espinoza González were identified as presumed victims in the Report on Admissibility and Merits, in view of their express request and, as it has decided previously,¹¹ the Court will not rule on the alleged violations to their detriment and declares that it will only consider Gladys Carol Espinoza González, Teodora González de Espinoza and Manuel Espinoza González as presumed victims and eventual beneficiaries of any reparations that are in order.

B) Factual framework of the case

B.1. Arguments of the Commission and of the parties

32. The Commission indicated in its Report on Admissibility and Merits that “its task [was] not to rule on the guilt or innocence of Ms. Espinoza González and [...] that the facts of this case do not include any possible violations of the American Convention arising from the criminal proceedings brought against her.” Regarding the death of Rafael Edwin Salgado Castillo, the Commission indicated that “[a]lthough that incident [was] not at issue in the instant case, [it would] take into consideration the CVR’s conclusions regarding the way in which Gladys Carol Espinoza was detained and transferred to the DIVISE’s premises.”

33. The representatives alleged certain facts that the Commission had not mentioned in its Report on Admissibility and Merits. In particular, they referred to: (i) the first detention and acquittal of Gladys Espinoza for the crime of terrorism in 1987 and in 1988, respectively; (ii) the circumstances, other than the detention and presumed delay in being brought before a judge, which allegedly occurred during the criminal proceedings for the crime of terrorism instituted

¹⁰ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, paras. 5 and 344, and *Case of J. v. Peru*, *supra*, para. 21.

¹¹ Cf. *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 31, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 49.

against Gladys Espinoza in 1993, and (iii) the actions taken in the new proceedings against Gladys Espinoza for terrorism in 2004, before the National Terrorism Chamber and, subsequently, before the Permanent Criminal Chamber of the Supreme Court, which differed from the facts described by the Commission in that the said courts had been aware of the alleged torture and sexual violence against Gladys Espinoza, but had not ordered an investigation into these facts. Regarding the death of Rafael Salgado, the representatives indicated that “[e]ven though the facts included in this section are not being litigated in the instant case, [they] consider[ed] that they were relevant to establish the facts alleged by Gladys Carol Espinoza.

34. The State indicated that the “Commission [had] expressly indicated that this case refers solely to the supposed unlawful and arbitrary detention of Gladys [Espinoza], to the torture and inhuman detention conditions, and to the absence of investigations, and that it would abstain from ruling on the criminal proceedings brought against her and on her guilt or innocence, so that the representatives assertion [...] that Gladys [Espinoza] had been over-penalized when the Supreme Court increased the punishment imposed ‘using discriminatory criteria and with a stereotypical view of women’ was an affirmation that had no relationship to this dispute before the Court.”

B.2. Considerations of the Court

35. The factual framework of the proceedings before the Court consists of the facts contained in the Report on Admissibility and Merits submitted to its consideration. Consequently, it is not admissible for the parties to argue new facts that diverge from those contained in the said report, without prejudice to including those that may explain, clarify or reject the facts that have been mentioned in the report and submitted to the Court’s consideration (also known as “complementary facts”).¹² The exception to this principle are facts that are classified as supervening, provided they are related to the facts of the proceedings. Ultimately, it is the Court’s task to decide in each case on the admissibility of arguments relating to the factual framework in order to protect the procedural balance of the parties.¹³

36. In its Report on Admissibility and Merits, the Commission expressly excluded the facts related to the criminal proceedings brought against Gladys Espinoza from the factual framework of the case, including only her “supposed unlawful and arbitrary detention, [and the] presumed torture and inhuman detention conditions to which she had been subjected, as well as the alleged absence of investigations in this regard.” In addition, the Commission made no mention of the alleged first detention and acquittal of Gladys Espinoza for the crime of terrorism in 1987 and 1988, respectively. The Court considers that the facts alleged by the representatives in their motions and arguments brief and indicated *supra* in points (i), (ii) and (iii) are not merely explaining, clarifying or rejecting the facts presented by the Commission in its Report on Admissibility and Merits and, therefore, introduce elements that do not form part of it. Consequently, based on the Court’s consistent case law (*supra* para. 35), this series of facts alleged by the representatives does not form part of the factual framework submitted to the Court’s consideration by the Commission.

37. Nevertheless, the Court notes that, in its analysis of the alleged violation of Gladys Espinoza’s rights to judicial guarantees and protection, the Commission referred to the fact that, in 2004, the National Terrorism Chamber and the Permanent Criminal Chamber of the Supreme

¹² Cf. *Case of the Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Veliz Franco et al. v. Guatemala, supra*, para. 25.

¹³ Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 58, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 28.

Court of Justice had been made aware of the presumed acts of torture and sexual violence allegedly suffered by Gladys Espinoza, and also to the presumed conclusions of these courts as regards the possible existence of torture based on reports and statements of the forensic doctors of the Institute of Forensic Medicine. Consequently, the Inter-American Court will consider the 2004 judgments in the criminal proceedings before the National Terrorism Chamber and the Permanent Criminal Chamber of the Supreme Court only in relation to its analysis of the alleged failure to investigate the acts of torture and sexual violence perpetrated against Gladys Espinoza that presumably occurred in 1993 and 1999.

38. Lastly, regarding the facts surrounding the death of Rafael Salgado Castilla, the Court notes that the Commission referred to them only as indications of the circumstances of the arrest and transfer to the DIVISE of Gladys Carol Espinoza Gonzáles, who presumably was with him when they were intercepted on April 17, 1993 (*supra* para. 32). Therefore, the Court will consider them as elements to determine what happened to Gladys Carol Espinoza Gonzáles.

VI EVIDENCE

A) Documentary, testimonial and expert evidence

39. The Court received diverse documents presented as evidence by the Commission and the parties, attached to their main briefs (*supra* paras. 4, 8 and 9). The Court also received documents it had requested as helpful evidence from the parties. In addition, it received “supervening” documentary evidence from the representatives following the presentation of the motions and arguments brief. The Court also received the affidavits made by expert witnesses Ana Deutsch, Rebecca Cook and María Jennie Dador, presumed victims Gladys Espinoza and Manuel Espinoza Gonzáles, and witness Félix Reátegui Carrillo, all of them proposed by the representatives. It also received the affidavits made by expert witnesses Moisés Valdemar Ponce Malaver, Federico Javier Llaque Moya and Ana María Mendieta Trefogli, proposed by the State. Regarding the evidence provided at the public hearing, the Court received the expert opinion of Julissa Mantilla, proposed by the Commission, as well as the testimony of Lily Cuba Rivas (who Gladys Espinoza met in the DINCOTE immediately after the acts of torture presumably perpetrated against her), proposed by the representatives, and of Yony Efraín Soto Jiménez, proposed by the State. In a brief presented by the Commission, the expert witness Julissa Mantilla subsequently presented a “supplementary brief” to her expert opinion. Lastly, the Court received documents presented by the State and the representatives attached to their respective final written arguments.

B) Admission of the evidence

40. The Court admits the documents presented at the appropriate procedural opportunity by the parties and by the Commission, the admissibility of which was not objected to or contested.¹⁴ The documents requested by the Court that were provided by the parties after the public hearing are incorporated into the body of evidence in application of Article 58 of the Rules of Procedure.

41. Regarding the newspaper articles presented by the Commission and the State, the Court has considered that these may be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case.

¹⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of October 15, 2014. Series C No. 286, para. 26.

Consequently, the Court decides to admit the documents that are complete or that, at least, allow their source and date of publication to be verified.¹⁵

42. Also, regarding some documents indicated by the parties and the Commission by means of electronic links, if a party provides at least the direct electronic link to the document cited as evidence and it is possible to access it up until the respective judgment is delivered, neither legal certainty nor procedural equality is impaired, because the Court and the other parties can locate it immediately.¹⁶

43. Regarding the representatives' request that the "Concluding observations on the fifth periodic report of Peru, adopted by the [Human Rights] Committee at its 107th session (11-28 March 2013)" and the Country Report on Peru prepared by the Monitoring Mechanism of the Convention of Belém Do Pará (MESECVI) of March 26, 2012, be incorporated into the body of evidence, the Court notes that the former document was issued after the presentation of the motions and arguments brief on May 26, 2012. Therefore, this document is admitted under Article 57(2) of the Rules of Procedure. Furthermore, the Court notes that these documents were forwarded to the Commission and to the State; they did not object to them, and they form the basis for the written questions posed by the representatives to the expert witnesses offered by Peru. Therefore, given its nature, the Court also considers it useful to admit the second above-mentioned document under Article 58 of the Rules of Procedure.

44. The Court also observes that both the representatives and the State presented documents with their final written arguments. In this regard, the Court notes that four documents presented by the representatives and two documents presented by Peru date from after the presentation of the motions and arguments brief and the answering brief,¹⁷ respectively, and they are therefore incorporated into the body of evidence in accordance with Article 57 of the Rules of Procedure.

45. In addition, the Court finds it pertinent to admit the statements and expert opinions provided during the public hearing¹⁸ and by affidavit that are in keeping with the purpose defined by the President in the Order requiring them,¹⁹ and with the purpose of this case. Furthermore, the Court notes that, following the public hearing, expert witness Julissa Mantilla remitted a "complementary brief" to her expert opinion provided during the public hearing, which was forwarded to the parties so that they might submit any comments they deemed pertinent in their final written arguments. The Court notes that this document, which was not contested, refers to the purpose defined by its President for this expert opinion and is useful for

¹⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, para. 40.

¹⁶ Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Tarazona Arrieta et al. v. Peru, supra*, para. 26.

¹⁷ Supervening documents provided by the representatives: (i) Decision of the Third Supra-provincial Criminal Prosecution Unit of the Public Prosecution Service of March 31, 2014; (ii) Remedy of complaint filed by APRODEH before the Third Supra-provincial Criminal Prosecutor of the Public Prosecution Service on April 4, 2014; (iii) Communication of April 24, 2014, from the Third Supra-provincial Criminal Prosecutor of the Public Prosecution Service to APRODEH, and (iv) Communication of April 25, 2014, from the Third Supra-provincial Criminal Prosecutor of the Public Prosecution Service to APRODEH. Supervening documents provided by the State: (i) Note No. 056-2014-AMAG/DG of the Peruvian Academy of the Judiciary of March 19, 2014, and (ii) Decision of the Third Supra-provincial Criminal Prosecution Unit of the Public Prosecution Service of March 31, 2014.

¹⁸ In its brief with final arguments, the State asserted that the expert opinion of Julissa Mantilla was not relevant to inter-American public order, because "the Inter-American Court could not be allowed to define some issues, or deal with issues that it has not dealt with previously or, in any case, adopt or vary its position in relation to some issues regarding which disagreement exists." In this regard, the Court ratifies the decision taken in the Order of the President of the Court of March 7, 2014 (*supra* para. 12).

¹⁹ The purpose of all these statements is established in the Order of the President of the Court of March 7, 2014 (*supra* para. 12).

the assessment of the disputes in this case; it is therefore admitted based on Article 58 of the Rules of Procedure.

C) Assessment of the evidence

46. Based on the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as on its consistent case law concerning evidence and its assessment, the Court will examine and assess the probative elements admitted in the preceding section (*supra* paras. 40 to 45). To this end, it will abide by the principles of sound judicial discretion, within the corresponding legal framework, and taking into account the whole body of evidence and the arguments submitted during the proceedings.²⁰ Furthermore, the statements made by the presumed victims will be assessed in the context of all the evidence in the proceedings inasmuch as they can provide further information on the presumed violations and their consequences.²¹

VII FACTS

47. In this chapter, the Court will examine, first, the context in which the facts of this case occurred and, then, the proven facts concerning Gladys Espinoza.

A) Context in which the facts of the case occurred

48. The Commission and the representatives both affirmed that the facts of this case took place against the background of the conflict in Peru, the indiscriminate violence used by the insurgent groups, and the illegal actions of the security forces, in a context that included the practice of torture, sexual violence and rape in the counterinsurgency efforts, as well as the anti-terrorism laws enacted starting in 1992, the effects of the latter on the institutionalization of such practices and the impunity in which they were maintained. The State did not contest the context presented by the Commission and the representatives in its answering brief.²² Moreover, it indicated that the facts of this case took place in a context characterized by the situation of unparalleled violence created by the terrorist organizations at the time, the Communist Party of Peru-Shining Path (*Sendero Luminoso*) and the Túpac Amaru Revolutionary Movement (MRTA), whose acts of violence resulted in the loss of lives and property, in addition to the moral harm caused by the general situation of permanent unrest to which Peruvian society was subjected. Specifically, it referred to the MRTA as one of the armed groups that, during this period of extreme violence in Peru, had carried out numerous subversive attacks. In the case of the MRTA, abduction and extortion were the main methods used to obtain money to fund its subversive activities, and these crimes were carried out by the so-called "Special Forces," composed of elite militants within the organization. Furthermore, hostage-taking and abductions for political and/or financial purposes that could be attributed to the MRTA had a particular impact on Peruvian society. The State also referred to specific cases of abduction that could be attributed to the MRTA. In its final arguments, the State presented observations on the evidence provided by the Commission and the representatives regarding the alleged context in this case.

²⁰ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37 para. 76, and *Case of Tarazona Arrieta et al. v. Peru, supra*, para. 28.

²¹ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Tarazona Arrieta et al. v. Peru, supra*, para. 28.

²² The State indicated in its brief with final arguments that "the truth regarding the alleged generalized pattern of sexual violence in the context of the detention of women who were prosecuted and/or convicted of the crime of terrorism" should be questioned because, in previous cases before the Court, such as those of *Loayza Tamayo*, *Castillo Petruzzi*, *De la Cruz Flores*, and *Lori Berenson*, all against Peru, "the existence of such acts was not alleged." The Court considers that this observation is time-barred, since it was submitted for the first time in the State's final written arguments.

49. In the exercise of its contentious jurisdiction, the Court has examined different historical, social and political contexts that situated the facts that were alleged to have violated the American Convention within the specific circumstances in which they occurred. In some cases, the context made it possible to characterize the facts as part of a systematic pattern of human rights violations,²³ as a practice that was applied or tolerated by the State,²⁴ or as part of massive and systematic or generalized attacks on one sector of the population.²⁵ In addition, in order to determine the international responsibility of a State,²⁶ the Court has taken into account its understanding and assessment of the evidence,²⁷ the admissibility of certain measures of reparation, and the standards established as regards the obligation to investigate such cases.²⁸

50. In particular, in order to establish the context relating to the armed conflict in Peru, the Court has resorted repeatedly to the Final Report issued on August 28, 2003, by the Truth and Reconciliation Commission (hereinafter "the CVR"),²⁹ created by the State in 2001 "to clarify the process, the facts, and the responsibilities of the terrorist violence and of the human rights violations committed between May 1980 and November 2000 that can be attributed to both terrorist organizations and State agents, as well as to propose initiatives to strengthen peace and harmony among Peruvians." The report was presented to the different branches of the State, which acknowledged its conclusions and recommendations and acted in consequence, adopting policies that reflected the significance accorded to this institutional document.³⁰ The report provides an important reference point, because it offers a holistic vision of the armed conflict in Peru. In the instant case, the Commission, the State, and the representatives have substantiated their considerations on the context by referring to the CVR Report (*supra* para. 48), which forms part of the body of evidence in the case. Consequently, the Court will use it as a fundamental element of the evidence on the political and historical context at the time of the facts.³¹ On this point, the Court will take into account the arguments on the context presented by the State, as well as its comments regarding the evidence.

²³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 126, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 73.

²⁴ Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 82, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258, para. 96.

²⁵ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, paras. 94 to 96, 98 and 99, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 244.

²⁶ Cf. *Case of Goiburú et al. v. Paraguay, supra*, paras. 61 and 62, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, paras. 73 and 153.

²⁷ Cf. *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 73.

²⁸ Cf. *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 157, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 127.

²⁹ Cf. *Case of De La Cruz Flores v. Peru. Merits, reparations and costs*. Judgment of November 18, 2004. Series C No. 115, para. 57.c, and *Case of J. v. Peru, supra*, para. 54.

³⁰ Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 72.1, and *Case of J. v. Peru, supra*, para. 54.

³¹ Volumes I, II, III, IV, V and VI of the *Informe Final de la Comisión de la Verdad y Reconciliación* have been used as a probative element in this chapter, and the information cited by the Court can be consulted in: Volume I, Chapter 1.1, pp. 54 and 55; Volume I, Chapter 4, p. 242; Volume II, Chapter 1.1, p. 13, Conclusions, pp. 127 and 128; Volume II, Chapter 1.2, pp. 164, 218, 219, 221, 205, 206 and 232; Volume II, Chapter 1.4, pp. 379 to 435; Volume III, Chapter 2.3, pp. 83 to 85; Volume IV, Chapter 1.4, p. 183; Volume V, Chapter 2.22, pp. 706 and 707; Volume VI, Chapter 1.2, pp. 112 and 11; Volume VI, Chapter 1.3, pp. 129 and 179; Volume VI, Chapter 1.4, pp. 183, 212, 214, 221 to 224, 240, 241, 250, 252, 315, 322, 324, 348 and 372; Volume VI, Chapter 1.5, pp. 272, 273, 279, 304, 306, 307 to 309, 315, 328 to 330, 337, 348, 374 to 376, and Volume VI, Chapter 1.7, pp. 547, 550 to 555 and 565. This information is available at: <http://cverdad.org.pe/lfinal/>

A.1. The conflict in Peru

51. In previous cases, the Court has recognized that, starting in the early 1980s and until the end of 2000, Peru experienced a conflict between armed groups and members of the Police and the Armed Forces.³² This conflict was exacerbated by a systematic practice of human rights violations, including extrajudicial executions and forced disappearances of persons suspected of belonging to the insurgent groups. These practices were perpetrated by State agents on the orders of military and police commanders.³³

52. The Court has indicated that the suffering that Shining Path caused to Peruvian society is widely and publicly known.³⁴ Meanwhile, the actions of the Túpac Amaru Revolutionary Movement (hereinafter “the MRTA”) were characterized by the “taking” of radio stations, schools, markets and poor neighborhoods; the theft of the distribution trucks of well-known commercial companies, assaults on trucks full of basic goods, attacks on companies that provided water and electricity, attacks on police posts and the homes of members of the Government, the selective assassination of senior public officials and businessmen, the execution of indigenous leaders, and some murders based on the victim’s sexual orientation or gender identity, the latter in a series of terrorist acts that continued for a long time. In addition, journalists and businessmen were abducted in order to obtain large sums of money for their release. During their captivity, the hostages were concealed in the so-called “people’s prisons” (small, unhealthy spaces).

53. The CVR stressed that, among the acts that can be attributed to the MRTA, hostage-taking and abductions for political and/or financial reasons had a particular impact on Peruvian society, owing to the way and the conditions in which they were carried out. The evidence obtained by the CVR allowed it to conclude that, between 1984 and 1996, the MRTA carried out dozens of individual and collective abductions for purposes of extortion.³⁵ From 1988 to 1995, this became a systematic practice that reached its climax in 1992. Sixty-five per cent of the abductions occurred in Lima. Abductions for financial reasons accounted for 66% of the total, while only 9% of abductions were for political reasons, and 14% of the cases were based on both financial and political reasons. One of the organizational components of the MRTA was the Revolutionary Military Force, which was made up of “elite units” known as “Special Forces.” In this regard, the CVR indicated that, once the MRTA had decided who would be a victim of abduction, the members of the Special Forces studied that person’s daily activities carefully. Usually, at least four individuals took part in the abductions, and they were armed with submachine guns, FAL or AKM rifles, short-range weapons, steel ropes, and hammers. In some cases they used ski-masks, while in others they wore similar clothing to members of the National Police or to medical personnel so as not to arouse suspicion among passers-by. The abductions took place in the victims’ home, in their workplace, or on streets or other public places.

A.2. The states of emergency, the anti-terrorism laws, and also the coup d’état of April 5, 1992

³² Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 197.1, and *Case of J. v. Peru*, *supra*, para. 57.

³³ Cf. *Case of Loayza Tamayo v. Peru. Merits*, *supra*, para. 46, and *Case of J. v. Peru*, *supra*, para. 59.

³⁴ Cf. *Case of the Miguel Castro Castro Prison v. Peru. Interpretation of judgment on merits, reparations and costs*. Judgment of August 2, 2008. Series C No. 181, para. 41, and *Case of J. v. Peru*, *supra*, para. 60.

³⁵ The practice of carrying out abductions began in 1984; no cases were recorded during the next two years, but starting in 1989 the number gradually increased, with a slight decrease in 1988, 1989 and 1990. In 1993, the practice began to decrease considerably until 1994, when no case was recorded. Finally, in 1995, it began again and then decreased again, until it concluded definitively in 1996.

54. *States of emergency.* According to the CVR, starting in October 1981, “the use of states of emergency was generalized, suspending, on a renewable basis, the constitutional guarantees relating to personal liberty and security, the inviolability of the home, and freedom of association and movement throughout the territory.” In this regard, on September 5, 1990, a state of emergency was decreed in the Department of Lima and the Constitutional Province of Callao by Supreme Decree, and this was extended on several occasions,³⁶ including on March 23, 1993. In this last Supreme Decree the constitutional guarantees established in article 2, paragraphs 7 (inviolability of the home), 9 (freedom of movement in national territory), 10 (freedom of association) and 20(g) (detention by court order or by the police authorities *in flagrante delicto*). It was also decided that the Armed Forces would be responsible for controlling internal order.³⁷

55. *The coup d'état.* On the evening of April 5, 1992, President Alberto Fujimori announced a series of measures “to try and expedite the process of [...] national reconstruction,” including the temporary dissolution of the Congress of the Republic and the total reorganization of the Judiciary, the National Council of the Judiciary, the Court of Constitutional Guarantees, and the Public Prosecution Service.” In addition, he stated that “the articles of the Constitution that [were] not compatible with the Government’s objectives [were] suspended.” At the same time, “troops of the Army, the Navy, the Air Force, and the National Police [took] control of the capital and the main cities in the interior of the country, [and occupied] Congress, the Palace of Justice, the media, and public places.”³⁸ On April 6, 1992, Decree Law No. 25,418 was promulgated, instituting, on a transitory basis, the so-called “Emergency and National Reconstruction Government.” In execution of the announcement made the previous evening, the decree dissolved Congress and ordered the “complete reorganization of the Court of Constitutional Guarantees, the National Council of the Judiciary, the Public Prosecution Service, and the Comptroller General’s office.”³⁹ The coup d'état installed the “Emergency and National Reconstruction Government.”

56. *The anti-terrorism laws.* On May 5, August 7 and September 21, 1992, the “Emergency and National Reconstruction Government” issued Decrees 25,475, 25,659 and 25,744, which defined the crimes of terrorism and treason, and also established the norms applicable to penalization, police investigation, preliminary proceedings, and trial in the case of such crimes. Furthermore, the competence of the military justice system to hear trials for the crime of treason was established.⁴⁰ These decrees, as well as Decrees Nos. 25,708, 25,880 and other complementary norms constituted the so-called Peruvian anti-terrorism laws.

57. *Inexistence of due process of law.* The proceedings instituted on the basis of Decrees 25,475 and 25,744 were characterized, among other matters, by: the possibility of ordering that detainees be held totally incommunicado for the maximum time allowed by law; the restriction of the participation of the defense counsel, who could only intervene after the detainee had given his statement in the presence of the representative of the Public Prosecution Service; the

³⁶ Cf. *Case of J. v. Peru*, *supra*, para. 61.

³⁷ Cf. Supreme Decree 019-93-DE/CCFFAA of March 22, 1993, published in the Official Gazette *El Peruano* on March 23, 1993 (evidence file, folio 5995).

³⁸ Cf. *Case of J. v. Peru*, *supra*, para. 62, and IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III, Situation since April 5, 1992, paras. 42 and 52, Available at: <http://www.cidh.org/countryrep/Peru93eng/toc.htm>.

³⁹ Cf. *Case of J. v. Peru*, *supra*, para. 63, and IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III, Situation since April 5, 1992, para. 52, Available at: <http://www.cidh.org/countryrep/Peru93eng/toc.htm>.

⁴⁰ Cf. Decree Law No. 25,475 of May 5, 1992 (evidence file, folios 6012 to 6015); Decree Law No. 25,744 of September 21, 1992 (evidence file, folios 6017 and 6018), and Decree Law No. 25,659 of August 7, 1992 (evidence file, folio 1971).

inadmissibility of the pre-trial release of the accused during the preliminary investigation; the prohibition to offer as witnesses those who had intervened, owing to their functions, in the preparation of the police attestation; the holding of the trial in private hearings; the inadmissibility of any recusal of the judges or judicial auxiliaries intervening in the proceedings; the participation of “faceless” judges and prosecutors, and permanent solitary confinement during the first year of any imprisonment terms that were imposed.⁴¹ In addition, Decree Law No. 25,659 established the inadmissibility of “applications for *amparo* by detainees.”⁴²

58. *Disregard of basic guarantees.* In this regard, the CVR indicated that the absence of basic guarantees for detainees and of control or supervision of the police actions during the pre-trial investigation, the fact that, in practice, the police attestation became the sole evidence during the trial, and the compulsory application of the repentance law, together with a policy of basing promotion on the number of terrorists detained, resulted in a series of abuses by the National Counter-terrorism Directorate (hereinafter “DINCOTE”)⁴³ in Lima and its agencies in the police regions. Among others, it is worth mentioning the institutionalization of indiscriminate arrests, the planting or fabricating of evidence by police agents, the prosecution and conviction of innocent people, as well as the renewed increase in the perpetration of acts of torture (to obtain statements in which detainees pleaded guilty or accused others), and sexual violence against those detained.

59. *Amendments to the laws and political changes.* The State has pointed out that, since 1997, various changes have been made in the anti-terrorism laws in Peru.⁴⁴ However, the most important amendments were made following the re-establishment of the democratic institutional framework on January 3, 2003, when the Constitutional Court of Peru delivered a judgment in which it analyzed the alleged unconstitutionality of some provisions of Decree Laws Nos. 25,475, 25,659, 25,708, 25,880 and 25,744. The Constitutional Court concluded that various substantive and procedural provisions of the anti-terrorism laws were unconstitutional and established a new way of interpreting other provisions.⁴⁵

A.3. The practice of detentions, torture, and cruel, inhuman and degrading treatment at the time of the facts

60. The CVR received thousands of reports of acts of torture and cruel, inhuman or degrading treatment or punishment perpetrated over the period from 1980 to 2000. In its final report, it asserted that, of the 6,443 acts of torture and cruel, inhuman or degrading treatment or punishment it had recorded, 75% corresponded to acts attributed to State officials or individuals acting with their authorization and/or acquiescence, 23% corresponded to the subversive group Shining Path,⁴⁶ 1% to the subversive group MRTA, and 2% to undetermined elements.

61. The Court has recognized that a generalized practice of cruel, inhuman and degrading treatment existed in Peru in 1993 in connection with criminal investigations into the crimes of

⁴¹ Cf. *Case of De la Cruz Flores v. Peru*, *supra*, para. 73.4, and *Case of J. v. Peru*, *supra*, para. 71.

⁴² Decree Law No. 25,659 of August 7, 1992 (evidence file, folio 1971).

⁴³ DINCOTE was created on November 8, 1991, and replaced the Counter-terrorism Directorate (DIRCOTE). The State created DINCOTE as a specialized agency of the National Police in charge of preventing, reporting and combating terrorist activities and treason.

⁴⁴ In this regard, the State presented the following: Supreme Decree No. 005-97-JUS of June 25, 1997 (evidence file, folios 6020 to 6029); Supreme Decree No. 008-97-JUS of August 20, 1997 (evidence file, folio 6031); Supreme Decree No. 003-99-JUS of February 18, 1999 (evidence file, folios 6033 and 6034), and Supreme Decree No. 006-2001-JUS of March 23, 2001 (evidence file, folios 6062 and 6063).

⁴⁵ Cf. Judgment of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TCLIMA, findings 41, 112, 113 and 222 to 224 (evidence file, folios 5643, 5656, 5657 and 2677).

⁴⁶ Cf. *Case of J. v. Peru*, *supra*, para. 66.

treason and terrorism.⁴⁷ In this regard, numerous reports prepared by different domestic and international sources note this practice, and also the systematic and generalized practice of torture over the period from 1993 to 2001, as follows:

a) The Inter-American Commission in its 1993 Report on the Situation of Human Rights in Peru indicated that “the violations of the right to life are frequently preceded by mistreatment and torture, generally aimed at forcing the victims to make self-incriminating confessions, to get those victims to provide information on subversive groups, or to create the kind of fear among the people that will deter them from collaborating with such groups.”⁴⁸ Also, in its 1996 Annual Report, it indicated that “some judgments are based exclusively on confessions extracted during police interrogations, by the use of torture.”⁴⁹

b) In 1995, the United Nations Committee against Torture expressed its concern owing to “the large number of complaints from both non-governmental organizations and international agencies or commissions indicating that torture is being used extensively in connection with the investigation of acts of terrorism and that those responsible are going unpunished.” In 1998 and 2000, the Committee again expressed its concern owing to “the frequent and numerous allegations of torture.”⁵⁰ Also, in 2001, it indicated that “the large number of complaints of torture, which have not been refuted by the information provided by the authorities, and the similarity of the cases, in particular the circumstances under which persons are subjected to torture and its objectives and methods, indicate that torture is not an occasional occurrence but has been systematically used as a method of investigation.” It also indicated that “[a]spects such as the extension of the armed forces’ powers of detention, the length of pre-trial detention, incommunicado detention in police custody, the weakening of the role of the Public Prosecutor’s Office in conducting police investigations and ensuring respect for the rights of detainees, the probative value given to police reports, the limitations on the *habeas corpus* procedure and on legal assistance to detainees, and the poor medical follow-up of persons detained are matters of particular concern to the Committee members and should be the subject of corrective legislation. The existence of the 1998 legislation leads the Committee members to conclude that torture has been occurring with the authorities’ acquiescence.”⁵¹

c) In its 2003 report, the CVR underscored that torture and cruel, inhuman or degrading treatment or punishment had become an instrument in the fight against insurgency, and that its purpose was to extract information from detainees suspected of belonging to a subversive organization, either to organize operations against that group or as input for criminal proceedings by self-incrimination or accusations against others. The CVR concluded that “torture and other cruel, inhuman or degrading treatment or punishment constituted a systematic and generalized practice in the context of the fight against insurgency.” It indicated that torture was frequent on police premises, such as the DINCOTE headquarters,

⁴⁷ Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, para. 46.l), and *Case of Cantoral Benavides v. Peru. Merits. Judgment of August 18, 2000. Series C No. 69, paras. 63.t) and 93.*

⁴⁸ IACHR, Report on the Situation of Human Rights in Peru, OEA/Ser. L/V/II.83, Doc. 31, March 12, 1993, Section I. Background, C. Human rights problems identified by the Commission (evidence file, folio 1896).

⁴⁹ IACHR, Human rights developments the region, Peru, Section II (evidence file, folio 1904).

⁵⁰ United Nations. Office of the United Nations High Commissioner for Human Rights, *Compilación de observaciones finales del Comité contra la Torture sobre países de América Latina y el Caribe (1988-2005)*; Report on the fifty-fifth session, Supplement No. 44 (A/55/44), 20 June 2000, p. 212; Report on the fifty-third session, Supplement No. 44 (A/53/44), 16 September 1998, p. 215, and Report on the fiftieth session, Supplement No. 44 (A/50/44), 26 July 1995, p. 217 (evidence file, folios 1940, 1943 and 1945).

⁵¹ United Nations. Committee against Torture. Summary account of the results of the proceedings concerning the inquiry on Peru under Article 20: 05/2001. A/56/44, paras. 163 and 164 (evidence file, folios 2557 and 2558).

where it was used as a method of investigation.⁵² In particular, the CVR established that the actions taken by the State included a pattern of detentions consisting, first, in the violent arrest of the victim accompanied by the search of his or her home using the same violent methods. The individual arrested was blindfolded or their face was covered totally. The person was then taken to a police or military post, or to a place of confinement, which might or might not be a legal detention center, where their fate was decided. On the way, they were subjected to torture and other cruel, inhuman or degrading treatment. As reasons for the increase of torture, the CVR identified the declarations of a state of emergency; the excessive powers granted to the Police and Armed Forces, including the possibility of keeping detainees incommunicado, which in many cases “extended to conversations with their lawyer,” and the actions of the agents of justice.

d) In his 2004 report, the Ombudsman emphasized that sexual violence was used against men and women, and the assailant’s objective was to obtain information or to intimidate, to punish (for acts that had really or presumably been committed) or to humiliate the victims. Thus, the sexual violence perpetrated in the context of the anti-insurgency efforts in Peru constituted a form of torture or degrading treatment prohibited by international human rights law, international humanitarian law, and domestic law.⁵³

A.4. The practice of rape and other forms of sexual violence against women at the time of the facts

62. According to the CVR’s report, during the conflict in Peru numerous acts of sexual violence were perpetrated against women by State agents and members of subversive groups and, although there were cases of sexual violence against men, it was mostly women who were victims of such acts, which “allows [the CVR] to speak of ‘gender-based violence’ during the armed conflict in Peru, because the sexual violence affected women merely because they were women.” Specifically, with regard to acts of rape, the CVR concluded that around 83% of these could be attributed to the State, and around 11% to the subversive groups (Shining Path and the MRTA).

63. Regarding the State’s actions, the CVR concluded that sexual violence “was a generalized or systematic practice” that was “surreptitiously tolerated, but in some cases openly permitted by the immediate superiors in certain circles.”⁵⁴ It took place during military raids, but also within certain establishments of the Army and of the Police Forces. According to the CVR’s conclusions, sexual violence against women affected a significant number of women detained owing to their real or presumed personal involvement in the conflict. It also affected those women whose partners were real or supposed members of the subversive groups. Even women who were searching for family members and/or reporting cases of the violation of their human rights were victims of types of sexual violence, as a punishment or reprisal. In light of the information gathered, the CVR concluded that rape was a reiterated and persistent practice that occurred in the context of the above-mentioned sexual violence. Similarly, expert witness María Jennie Dador stated that “at the time the reported facts occurred [...] there was a pattern of sexual violence and rape against women which was a systematic practice when they were detained and confined in the detention centers of the country’s different departments, including Lima.”⁵⁵

⁵² Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 86.2, and *Case of J. v. Peru, supra*, para. 58.

⁵³ Cf. Ombudsman’s Report No. 80, “*Violencia Política en el Perú: 1980-1996. Un acercamiento desde la perspectiva de género*,” February 2004 (evidence file, folio 4356).

⁵⁴ Cf. *Case of J. v. Peru, supra*, para. 68.

⁵⁵ Affidavit made by expert witness María Jennie Dador on March 25, 2014 (merits file, folio 988).

64. The CVR determined that, in addition to the acts of sexual violence that were committed, there were cases that clearly revealed the State agents' exercise of power over the population and especially over women, and that these cases reaffirm the hypothesis of "the existence of a generalized context of sexual violence, inserted in a broad context of discrimination against women, who are considered vulnerable and whose body is used by the perpetrator without any apparent reason or strict relationship to the internal armed conflict."

65. Furthermore, regarding sexual violence in State establishments, it indicated that the testimonies received referred to different forms of sexual violence; namely, sexual abuse, sexual blackmail, sexual harassment or inappropriate touching, as well as forced nudity, insults, threats of rape with objects, penetration by the male organ and, in some cases, introduction of objects into the vagina and the anus. Similarly, it referred to testimonies that gave accounts of collective and repeated rapes against a single woman, and electric shocks to the breasts and genitals. According to the CVR, the sexual violence began immediately after the arrest, as well as during the transfer between the different State entities. In this regard, it indicated that women who were detained "were subjected to improper touching by anyone who came near them," and "sexual abuse, fondling [and] threats of rape" were usual. The CVR explained that, in cases of detention by the Police Forces, the faces of the women were covered with their clothes so that they could not identify their captors and, in the places of detention, they were blindfolded and placed against the wall so that they could not see their assailants. Based on numerous testimonies received, the CVR referred, in particular, to the Lima headquarters of the DINCOTE, which had been identified "as a place in which sexual violence occurred repeatedly." According to the testimonies, "[t]he ill-treatment began at the time of the arrest, during which the perpetrators identified themselves as members of the DINCOTE [... and] continued during the transfer to those headquarters." In addition, the CVR reported that the sexual violence took place, "in addition to in the DINCOTE offices, on the beach and at night."

66. Nevertheless, the CVR acknowledged that "the cases in which a woman [was] subjected to any of these practices were not reported" and that "the domestic criminal laws did not help a woman victim of sexual violence to denounce these facts, owing to the cumbersome procedures involved, as well as the victim's humiliation and shame." The CVR also concluded that the sexual violence was surrounded by a context of impunity, both when the acts occurred, and when the victims decided to accuse their attackers. Specifically, it indicated that, at the time of the facts "the prosecutors required by law to determine the existence of abuses and to denounce them to the courts disregarded the complaints of detainees and even signed their statements without having been present when they were made, so that they were 'unable to guarantee the physical and mental integrity of the detainee.'" While, "[i]n the cases in which they were present, many deponents testified before the [CVR] that the prosecutor, instead of acting as the protector of their rights, was an authority who went unnoticed and, in many cases, ratified those illegal practices." Moreover, at the time of the arrest, "the victims or their family members were ordered to sign the records." The CVR also referred to "numerous testimonies that reveal the complicity of the forensic doctors who attended the women after they had been victims of sexual violence" and underlined:

the questionable role of some forensic doctors. Most of the victims stated that the forensic examinations performed by these medical professionals were not rigorous; in other words, they carried out medical examinations as a mere formality [...]. The professional misconduct of forensic doctors has particularly serious consequences in cases of sexual violence, because they condemn the crime to impunity.

A.5 Conclusions

67. Based on the different reports mentioned above and, in particular, the report of the CVR, the Court concludes that, over the period from 1980 to 2000:

a) Torture and other cruel, inhuman or degrading treatment or punishment constituted a systematic and generalized practice and was used as an instrument in the fight against insurgency during the criminal investigations into crimes of treason and terrorism in order to extract information from detainees suspected of belonging to a subversive organization, either in order to organize operations against that group or as input for criminal proceedings through self-incrimination or accusations against others.

b) In particular, numerous acts were perpetrated that constituted a generalized and aberrant practice of rape (including the introduction of objects into the vagina and/or the anus and repeated collective rapes of the same woman), and other forms of sexual violence (sexual abuse, sexual blackmail, sexual harassment or fondling, forced nudity, insults, threats of rape with objects, and electric shocks to the breasts and genital region), mainly against women. That generalized context of sexual violence was inserted in a broader context of discrimination against women, who were considered vulnerable and whose body was used by the perpetrator without any apparent reason or strict relationship to the conflict.

c) The information available indicates that the main perpetrators of these acts were State officials or individuals who acted with their authorization and/or acquiescence; however, the illegal armed groups such as the Communist Party of Peru - Shining Path and the Túpac Amaru Revolutionary Movement (MRTA) can also be held responsible.

d) These practices were facilitated by the permanent use of states of emergency during which the constitutional guarantees of personal liberty and security, the inviolability of the home, and freedom of association and movement throughout the territory were suspended.

e) Following the coup d'état of April 5, 1992, and until the end of the dictatorship in November 2000, this generalized context of massive human rights violations took place under a dictatorship that had suspended the effects of the Constitution.

68. This context permits the Court to analyze the facts alleged in this case taking into account the existence of a generalized and systematic practice of torture and sexual violence against women in Peru, rather than in an isolated manner, in order to understand the evidence and establish the facts. Likewise, this context will be taken into account, when appropriate, to establish measures of reparation, specifically with regard to guarantees of non-repetition. Lastly, this context will be used in order to assess whether it is in order to apply specific standards concerning the obligation to investigate in this case (*infra* paras. 119, 139, 148, 179, 185, 195, 214, 225, 242, 297 and 309).⁵⁶

B) The proven facts concerning Gladys Carol Espinoza Gonzáles

69. Gladys Carol Espinoza Gonzáles was born in Lima, Peru, on June 3, 1953. She is the daughter of Teodora Gonzáles and Fausto Espinoza León⁵⁷ and the sister of Manuel Espinoza Gonzáles. From 1977 to 1982 she studied at the Faculty of International Relations and International Law of the State University of Kiev, Ukraine, Union of Soviet Socialist Republics, and concluded the specialty of International Law with a master's degree: Master of Law (LLM).⁵⁸

B.1. The arrest of Gladys Carol Espinoza Gonzáles and the time she spent at the headquarters of the DIVISE and the DINCOTE

⁵⁶ Cf. *mutatis mutandi*, *Case of La Cantuta v. Peru*, *supra*, para. 157, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 127.

⁵⁷ Cf. Preliminary statement of Gladys Carol Espinoza Gonzáles of June 5, 1993 (evidence file, folio 7304).

⁵⁸ Cf. University studies in International Law with a master's degree (Master of Laws (LLM)) from the Faculty of International Relations and International Law of the State University of Kiev, Union of Soviet Socialist Republics, awarded on June 22, 1982 (evidence file, folios 1465 to 1467).

70. *Arrest.* Gladys Carol Espinoza Gonzáles was intercepted, together with her partner Rafael Edwin Salgado Castilla,⁵⁹ on April 17, 1993, in Lima, on the 21st block of Avenida Brazil (*Ovalo Brasil*), by members of the Abduction Investigation Division (hereinafter “the DIVISE”) of the Peruvian National Police (hereinafter “the PNP”), who had mounted an operation known as “*Oriente*” in order to find the perpetrators of the abduction of the businessman, Antonio Furukawa Obara that had presumably occurred on February 1, 1993. When they were intercepted, Rafael Salgado was riding a motorcycle with a Gladys Espinoza riding behind him. They were both placed in a vehicle and taken to the DIVISE headquarters located on the seventh floor of the 15 de Septiembre Building in Avenida España, Lima.⁶⁰ It is an undisputed fact, verified in the evidence, that at the time of her arrest, Gladys Espinoza identified herself as Victoria Romero Salazar and, later on, she clarified her identity.⁶¹

71. *Injuries suffered and the causes.* It is a proven fact, undisputed by the State, that Gladys Espinoza and Rafael Salgado were injured during their interception and arrest by DIVISE agents on April 17, 1993. There are two versions about the cause of these injuries. According to the Commission and the representatives, Gladys Espinoza was arrested violently, and was insulted, beaten and threatened, without the State explaining the strict need and proportionality of this in light of the standards that regulate the use of force. Gladys Espinoza herself has indicated in several statements that, at the time of her arrest, she was beaten and threatened. In contrast, the reports of the DIVISE and the DINCOTE indicate that the police intervention involved a pursuit and a collision between the vehicle of the PNP agents and the motorcycle on which the presumed victim was riding, as well as strong resistance, and that, as a result, both individuals ended up with injuries to different parts of their body (*infra* para. 179). The State recalled that, in police operations against terrorist organizations, it was reasonable that the arrest would be resisted and that, consequently, there would be a struggle between the agents and the persons arrested. The Court will make the corresponding factual and legal determinations in Chapter VIII.2 which relates to the alleged violations of the personal integrity of Gladys Espinoza.

72. *Personal search and transfer to the DINCOTE.* The same day, and in the presence of the investigating agent in one of the DIVISE offices, Gladys Espinoza and Rafael Salgado were searched and various items belonging to them were confiscated.⁶² In addition, the report recording the circumstances of the arrest was prepared.⁶³ Rafael Salgado was severely injured during the interception and the arrest and died at the DIVISE headquarters the same day.⁶⁴ Meanwhile, the following day, Gladys Espinoza was transferred to the DINCOTE.⁶⁵

⁵⁹ Cf. Psychological appraisal report No. 003737-2004-PSC of February 9 and 10, 2004, issued by the Institute of Forensic Medicine (evidence file, folios 1453 to 1455); Statement of Gladys Espinoza of March 2010 (evidence file, folios 1457 and 1458); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1548), and Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1557).

⁶⁰ Cf. *Informe Final de la Comisión de la Verdad y Reconciliación*, Volume VII, Chapter 2.72, p. 838; Report No. 259-DINTO-DINCOTE of June 3, 1993 (evidence file, folios 1469 to 1470); Report No. 2074-DR-DINCOTE of May 27, 1993 (evidence file, folios 1501 to 1503), and Attestation No. 108-D3-DINCOTE of May 15, 1993 (evidence file, folio 5775).

⁶¹ Cf. Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7304).

⁶² Cf. Record of personal search and confiscation of April 17, 1993 (evidence file, folios 5977 and 5978).

⁶³ Cf. Report No.002-IC-DIVISE of April 17, 1993 (evidence file, folios 5830 and 5831).

⁶⁴ Cf. Report No. 259-DINTO-DINCOTE of June 3, 1993 (evidence file, folios 1469 to 1470), and Attestation No. 108-D3-DINCOTE of May 15, 1993 (evidence file, folios 5783, 5784 and 5795). In this regard, in the *Informe Final de la Comisión de la Verdad y Reconciliación*, Volume VII, Chapter 2.72, p. 842, it was concluded that “[s]ufficient evidence exists to support the proposed hypothesis concerning the facts that have been reported, according to which Rafael Salgado Castilla suffered numerous acts of torture during his arrest and detention and that, as a result of this, he died at the DIVISE headquarters, and that these acts can be attributed to the police agents who took the detainee to these police premises, interrogated him, and kept him in custody.”

⁶⁵ Cf. Report No. 2074-DR-DINCOTE of May 27, 1993 (evidence file, folios 1501 to 1503), and Attestation No. 108-D3-DINCOTE of May 15, 1993 (evidence file, folios 5775, 5789 and 5799).

73. *Medical verification of injuries and hematomas.* While at the DINCOTE headquarters, Gladys Espinoza “was provided with medical care and treatment,” both by the DINCOTE infirmary and in the Central Hospital of the PNP.⁶⁶ Specifically, the case file reveals that, during that time, at least five reports and certifications were issued on examinations carried out on Gladys Espinoza. These reports certified the presence of injuries and hematomas on different parts of her body (*infra paras.* 251 and 253).

74. *Other evidence of injuries.* Also, as recorded in the statements made by Gladys Espinoza, and also by her mother, Teodora Gonzáles, on April 23, 1993, a police agent advised the latter that her daughter had been detained and that she was in very poor health but, at the DINCOTE headquarters, they denied that she was detained there and did not allow her mother to see her until three weeks later. On that occasion, and only for a very short time, Teodora Gonzáles and her son Manuel Espinoza verified her condition and, according to the latter, she had been “severely beaten.”⁶⁷ Also, during the public hearing, Lily Cuba (who was also detained at the DINCOTE) indicated that she could see that Gladys Espinoza had “cuts on her head,” “open wounds” and “blows to all parts of her body.”⁶⁸

75. *Request for the intervention of a forensic doctor.* On April 26, 1993, Teodora Gonzáles, Gladys Espinoza’s mother, submitted a communication to the 14th Special Prosecutor for Terrorism in which she requested that “a forensic doctor verify the life and health of [her daughter],” because, on April 23, a police agent had advised her that her daughter’s “condition was serious.”⁶⁹ Also, on April 28, 1993, Francisco Soberon Garrido, General Coordinator of APRODEH, denounced before the Special Prosecutor of the Ombudsman’s Office⁷⁰ and before the Prosecutor General, Public Prosecution Service,⁷¹ that, on April 27, 1993, Gladys Espinoza “had been subjected to sexual abuse at Headquarters by the police agents in charge of the investigation, in addition to being subjected to physical ill-treatment, consisting in unnatural acts, and having had a blunt object (such as a broom handle) introduced into her vagina, as well as blows to the head until she bled; this abuse and ill-treatment did not only start yesterday, but has continued since the day they killed [...] Rafael Salgado Castillo.” Therefore, he asked that “the necessary measures be taken to avoid another death or that the harm to the physical integrity of Gladys Carol Espinoza Gonzáles becomes irreparable.”

76. *Brief submitted to a military judge.* On May 17, 1993, the Military Prosecutor of the Permanent Court-Martial of the Peruvian Air Force (hereinafter “FAP”) filed a complaint before the Investigating Judge of the FAP Permanent Court-Martial against Gladys Espinoza for the crime of treason.⁷² In a brief of May 27, 1993, the Special Military Judge of the Judicial Area of

⁶⁶ Cf. Report No. 2074-DR-DINCOTE of May 27, 1993 (evidence file, folios 1501 to 1503).

⁶⁷ Cf. Complaint filed by Teodora Gonzáles before the 14th Special Prosecutor for Terrorism on April 26, 1993 (evidence file, folio 1534); Affidavit made by Manuel Espinoza on March 25, 2014 (merits file, folios 912 and 913); Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 906); Statement made by Gladys Espinoza in March 2010 (evidence file, folios 1459 and 1460); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folios 1546 to 1555), and Forensic report No. 003821-V of January 22, 2004, prepared by experts from the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folios 1557 to 1563).

⁶⁸ Cf. Testimony of Lily Cuba during the public hearing held on April 4, 2014.

⁶⁹ Cf. Complaint filed by Teodora Gonzáles before the 14th Special Prosecutor for Terrorism on April 26, 1993 (evidence file, folio 1534).

⁷⁰ Cf. Complaint filed on April 28, 1993, before the Special Prosecutor of the Ombudsman’s office (evidence file, folios 1536 to 1538).

⁷¹ Cf. Complaint filed on April 28, 1993, before the Prosecutor General, Public Prosecution Service (evidence file, folios 1540 to 1542).

⁷² Cf. Note No. 6394-DINCOTE of May 17, 1993 (evidence file, folio 5991), and Attestation No. 108-D3-DINCOTE of May 15, 1993 (evidence file, folio 5775).

the Peruvian Air Force (hereinafter “the Special Military Judge”) was informed of the alleged perpetration of the crime of treason by Gladys Espinoza with a request to extend the term of her detention.⁷³

77. *Statements by Gladys Espinoza.* Gladys Espinoza’s statements were taken on April 28⁷⁴ and May 7⁷⁵ and 10,⁷⁶ 1993, in the presence of the investigating agent of one of the DINCOTE offices, among other individuals who were present. In these statements she maintained that she had been a victim of acts of violence, rape and torture at the time of her arrest and at the DIVISE headquarters (*infra* paras. 157 to 159). On June 1, 1993, the Special Military Judge decided to open a preliminary investigation into the crime of treason and issued an arrest warrant establishing that the initial detention be served at the DINCOTE headquarters.⁷⁷ Subsequently, on June 5, 1993,⁷⁸ Ms. Espinoza gave a preliminary statement in a DINCOTE office before the Special Military Judge, in which she repeated that she had been the victim of acts of violence during her detention at the DIVISE and the DINCOTE headquarters (*infra* paras. 157 to 159).

78. *Life sentence for “treason.”* On June 25, 1993, at the DINCOTE headquarters and in the presence of Gladys Espinoza, the judgment was read that had been handed down that day by the Special Military Investigating Judge, and in which he established, among other matters, that “she forms part of the MRTA leadership as a member of a ‘Special Force’ for carrying out abductions, extortion and attacks,” and convicted her, as perpetrator of the crime of treason, to life imprisonment, indicating that “she [should serve this punishment] in a Maximum Security Prison administered by the National Penitentiary Institute, with permanent solitary confinement during the first year and then with forced labor for as long as the incarceration last[ed].”⁷⁹

B.2. The transfer to different prisons and her continuing incarceration

79. *The transfer to different prisons.* On July 30, 1993, Gladys Espinoza was transferred from the DINCOTE to the Chorrillos Women’s Maximum Security Prison. On January 17, 1996, she entered the Yanamayo Prison. On May 10, 2001, Gladys Espinoza was transferred to the Aucallama Huaral Prison⁸⁰ and, on December 16, 2003, she was transferred to the Chorrillos Women’s Maximum Security Prison,⁸¹ where she is confined at the present time.⁸² The Commission and the representatives allege that the detention conditions of Gladys Espinoza during her incarceration in the Yanamayo Prison violated her personal integrity; they also allege that, during an inspection carried out on August 5, 1999,⁸³ she was subjected to acts of torture.

⁷³ Cf. Report No. 2074-DR-DINCOTE of May 27, 1993 (evidence file, folios 1501 to 1503).

⁷⁴ Cf. Police statement by Gladys Espinoza before the DINCOTE of April 28, 1993 (evidence file, folios 8269 to 8278).

⁷⁵ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folios 5804 to 5807).

⁷⁶ Cf. Statement by Gladys Espinoza of May 10, 1993 (evidence file, folios 5808 to 5812).

⁷⁷ Cf. Order to open a preliminary investigation of June 1, 1993 (evidence file, folio 5993).

⁷⁸ Cf. Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folios 7304 to 7308).

⁷⁹ Cf. Judgment of June 25, 1993, Case file No. 037-93-TP, handed down by the Special Military Investigating Judge of the Judicial Area of the Peruvian Air Force No. 1215 (evidence file, folios 7353 to 7357).

⁸⁰ Cf. Certification of criminal record of Gladys Carol Espinoza Gonzáles issued by the National Penitentiary Institute on May 7, 2012 (evidence file, folios 8155 and 8156), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 906).

⁸¹ Cf. Prison record of Gladys Espinoza issued by the National Penitentiary Institute on May 9, 2012 (evidence file, folio 8156).

⁸² Cf. Affidavit made by Manuel Espinoza Gonzáles on March 25, 2014 (merits file, folio 912).

⁸³ Order to open an investigation issued by the Provincial Prosecutor, Fanny Escajadillo, of the office of the Third Supra-national Prosecutor, of April 16, 2012 (evidence file, folios 8016 to 8024).

The incident that occurred in that prison will be assessed in Chapter VIII.2 which relates to the alleged violations of the personal integrity of Gladys Espinoza.

80. *Declaration of the nullity of the military proceedings.* On February 17, 2003, the Superior Criminal Chamber of the Supreme Court nullified all the measures taken in the criminal proceedings instituted before the military jurisdiction for the crime of treason. Accordingly, the Provincial Prosecutor filed a complaint and opened an investigation in the ordinary jurisdiction against Gladys Espinoza as the presumed perpetrator of the crime against public peace – terrorism.

81. *Proceedings in the ordinary jurisdiction.* During the criminal proceedings instituted for the perpetration of the crime against public peace - terrorism, Gladys Espinoza made a statement before the Second Special Criminal Court for Crimes of Terrorism on August 28, 2003.⁸⁴ In addition, she presented briefs dated December 16, 2003,⁸⁵ and March 15, 2004,⁸⁶ addressed to the President of the National Terrorism Chamber. On this occasion she reported that she had been the victim of acts of violence during her detention, as well as acts of violence, rape and torture while on the premises of the DIVISE and the DINCOTE (*infra* para. 265). Also, on December 10, 2003, she presented a brief to the President of the National Terrorism Chamber, in which she asked, among other matters, to undergo a forensic and psychological appraisal in order to determine “whether [she had] been the victim of torture.”⁸⁷ Consequently, the “Protocol for the forensic examination to detect injuries resulting from torture on live persons” was performed on Gladys Espinoza, and this only resulted in a psychological appraisal report of February 13, 2004,⁸⁸ and two forensic reports of January 22 and February 20, 2004.⁸⁹ On March 1, 2004, the National Terrorism Chamber delivered judgment convicting Gladys Espinoza of the crime against public peace – terrorism and imposed 15 years’ imprisonment on her, to end on April 17, 2008.⁹⁰

82. *Nullity and amendment of the judgment.* On November 24, 2004, the Permanent Criminal Chamber of the Supreme Court of Justice declared the nullity of this last judgment and the decision imposing 15 years’ imprisonment on Gladys Espinoza, amended this, and imposed 25 years’ imprisonment to end on April 17, 2018.⁹¹ As indicated (*supra* para. 6), the presumed victim continues to be incarcerated in the Chorrillos Women’s Maximum Security Prison, serving this latest sentence.

B.3. The alleged acts of violence, in particular sexual violence, perpetrated against Gladys Espinoza

83. Some of the essential facts of this case relate to the allegations of numerous acts of violence and, in particular, of rape and other forms of sexual violence, perpetrated against

⁸⁴ Cf. Preliminary statement of Gladys Espinoza of August 28, 2003 (evidence file, folios 7423 to 7427).

⁸⁵ Cf. Brief of December 16, 2003 (evidence file, folios 1091 to 1099).

⁸⁶ Cf. Brief of March 15, 2004 (evidence file, folio 10485).

⁸⁷ Cf. Brief of Gladys Espinoza of December 10, 2003, addressed to the President of the National Terrorism Chamber (evidence file, folios 10062 to 10065).

⁸⁸ Cf. Psychological appraisal report No 003737-2004-PSC of February 9 and 10, 2004, issued by the Institute of Forensic Medicine (evidence file, folios 1453 to 1455).

⁸⁹ Cf. Forensic report No. 003821-V of January 22, 2004, issued by the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folios 1557 to 1563), and Forensic report No. 009598-V of February 20, 2004, issued by the Institute of Forensic Medicine (evidence file, folios 1573 and 1574).

⁹⁰ Cf. Judgment of March 1, 2004, delivered by the National Terrorism Chamber (evidence file, folios 1513 to 1530).

⁹¹ Cf. Final judgment issued by the Permanent Criminal Chamber of the Supreme Court of November 24, 2004 (evidence file, folios 6154 to 6159).

Gladys Espinoza in various places and on different occasions. The determination of whether these facts have been proved will be made in Chapter VIII.2.

B.4. Investigation into the alleged acts of violence, in particular sexual violence, perpetrated against Gladys Carol Espinoza Gonzáles (Third Supra-provincial Criminal Prosecutor, Case file No. 08-2012)

84. *Absence of investigations until the report of the Inter-American Commission.* Despite the numerous denunciations starting in 1993, no investigation was conducted into the alleged acts of violence and, in particular of sexual violence, perpetrated against Gladys Espinoza. It was only recently, when the Inter-American Commission notified its final report to the State on June 8, 2011, that the process was set in motion that led to the investigation by the Third Supra-provincial Criminal Prosecutor of Lima. Thus, on October 19, 2011, the Minister of Justice requested the Prosecutor General to comply with the recommendations made by the Inter-American Commission in its Report on Admissibility and Merits in the case of Gladys Espinoza.⁹² Thereafter, various communications were exchanged between the Supra-national Special Public Attorney, the senior prosecutor Coordinator of the National Criminal Superior Prosecution Unit and Supra-provincial Criminal Prosecution Units, and the Prosecutor General's Office⁹³ and, finally, on February 1, 2012, the Prosecutor General's Office, decided "[t]o expand the territorial jurisdiction, at the national level, of the Supra-provincial Criminal Prosecutor to assume the investigation of the case of 'Gladys Carol Espinoza Gonzáles.'" ⁹⁴ Consequently, on February 28, 2012, the Third Supra-provincial Criminal Prosecutor was requested to assume the investigation of the case, and copies of the criminal proceedings instituted against Gladys Espinoza for terrorism, No. 509-2003, were forwarded to her.⁹⁵

85. *Opening of the investigation.* The prosecutor assigned to the case began preliminary investigation No. 08-2012 for crimes against the personal and sexual liberty, and the torture of Gladys Espinoza, based on the following facts: (i) those that occurred between April 17 and June 24, 1993 (abduction, arbitrary detention, torture and rape), and (ii) those that took place during her incarceration in the Yanamayo Maximum Security Prison between January 17, 1996, and April 17, 2001, and the incident that occurred on August 5, 1999 (torture).⁹⁶ On June 15, 2012, the case was assigned to a new prosecutor who continued to head the investigation until a criminal complaint was filed before the judge of the case.⁹⁷

86. *Lines of investigation.* Three lines of investigation were opened. The first line was aimed at identifying the individuals or police agents who had intercepted Gladys Espinoza in April 1993. The second line was designed, on the one hand, to identify the police agents who were in charge of the investigation opened against Gladys Espinoza for the crime of terrorism by the DINCOTE

⁹² Cf. Note N. 444-2011-JUS/DM of the Minister of Justice to the Prosecutor General of October 18, 2011 (evidence file, folio 6968).

⁹³ Cf. Note No.2199-2011-JUS/PPES of the Supra-national Special Public Attorney to the senior prosecutor Coordinator of the National Criminal Superior Prosecution Unit and Supra-provincial Criminal Prosecution Units of November 8, 2011 (evidence file, folio 6966), and Note No. 1669-2011-FSPNC-MP-FN of the senior prosecutor Coordinator of the National Criminal Superior Prosecution Unit and Supra-provincial Criminal Prosecution Units to the Prosecutor General of December 2, 2011 (evidence file, folio 6959).

⁹⁴ Prosecution decision No. 327-2012-MP-FN of the Prosecutor General's Office of February 1, 2012 (evidence file, folio 8015).

⁹⁵ Cf. Note No. 275-2012-FSPNC-MP-FN of the senior prosecutor Coordinator of the National Criminal Superior Prosecution Unit and Supra-provincial Criminal Prosecution Units to the Third Supra-provincial Criminal Prosecutor (evidence file, folio 8012).

⁹⁶ Cf. Order to open an investigation issued by the Provincial Prosecutor, Fanny Daphne Escajadillo Lock, of the Third Supra-provincial Criminal Prosecution Unit, of April 16, 2012 (evidence file, folios 8016 to 8024).

⁹⁷ Cf. Order issued by the Provincial Prosecutor Yony Efrain Soto Jiménez of the Third Supra-provincial Criminal Prosecution Unit of June 27, 2012 (evidence file, folio 8189).

and, on the other, to identify the police personnel who were in charge of the DINCOTE Detainee Oversight Office. The purpose of the third line was to identify the police agents or officials who interfered with Gladys Espinoza in the Yanamayo Prison during an inspection.⁹⁸

B.4.1. Lines of investigation relating to the facts that occurred between April 17 and June 24, 1993

87. On April 27, 2012, the Third Supra-provincial Criminal Prosecutor asked the Criminal Investigation Directorate of the National Police (DIRINCRI) and the Human Resources Directorate of the National Police, to provide information, as applicable, on the police agents who were working in the DIVISE from April 16 to 19, 1993, and in the DINCOTE from April 18 to May 25, 1993.⁹⁹ In response, on November 11, 2013, after various communications had been exchanged between the different internal units of the Peruvian National Police, the names of the agents of the Peruvian National Police who were on duty in the DIREJCOTE Detainees Oversight Office over the period April 17 to June 23, 1993, including their rank, were forwarded to the Prosecutor.¹⁰⁰ Also, on April 27, 2012, the Prosecutor asked the Human Resources Directorate of the Peruvian National Police to forward the personnel files of several police agents.¹⁰¹ In response, on May 9 and 21, 2012, the PNP remitted the said personnel files.¹⁰² Following a request of the Prosecutor, the PNP Human Resources Directorate forwarded color photographs of these police agents.¹⁰³ On January 10, 2013, Gladys Espinoza was asked to undertake an identification procedure based on the photographs.¹⁰⁴ In addition, on October 18, 2013, the PNP Human Resources Directorate was asked to forward the personnel files of several police agents.¹⁰⁵ In response, on January 21, 2014, the Personnel Report and provisional information sheet of these officers were provided.¹⁰⁶

88. From 2012 to 2014, the Prosecutor ordered the reception of preliminary statements from various agents of the Peruvian National Police and, following the corresponding notifications, the

⁹⁸ Cf. Testimony of Yony Efraín Soto Jiménez during the public hearing held on April 4, 2014.

⁹⁹ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Criminal Investigation Directorate of the National Police of April 27, 2012 (evidence file, folio 8086); Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Human Resources Directorate of the National Police of April 27, 2012 (evidence file, folio 8092), and Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Human Resources Directorate of the National Police (evidence file, folio 8093).

¹⁰⁰ Cf. Note No. 1690-2013-DIREJCOTEPNP-OFIADM/UNIREHUM of the Head of Administration of the DIREJCOTE to the Third Supra-provincial Criminal Prosecutor of November 11, 2013 (evidence file, folios 11732 to 11742). Even though, on May 8 and 24, 2012, the DIRINCRI and the DIRCOTE advised that there were no files containing this information, it was provided by the PNP Human Resources Unit. Cf. Note No. 2900-2012-DIRINCRI-PNP/OFIADM-UNIREHUM issued by the Human Resources Unit of the DIRINCRI on May 8, 2012 (evidence file, folio 8097), and Note No. 873-2012-DIRCOTEPNP-OFAD/UNIREHUM of the Head of Administration of the DIRCOTE to the Third Supra-provincial Criminal Prosecutor of May 24, 2012 (evidence file, folio 8172).

¹⁰¹ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the PNP Human Resources Directorate of April 27, 2012 (evidence file, folio 8094).

¹⁰² Cf. Note No. 139-2012-DIRREHUMPNP-DIVADLEG-DEPLEG-SECCLEG-30.ACT.PHA of the Human Resources Directorate of the National Police to the Third Supra-provincial Criminal Prosecutor of May 9, 2012 (evidence file, folios 8098 to 8117), and Note No. 1019-2012-DIRREHUM-PNP/DIVALEG-DEPLEG-SEC-LEG.ACT of the PNP Human Resources Directorate to the Third Supra-provincial Criminal Prosecutor of May 21, 2012 (evidence file, folios 8145 to 8153).

¹⁰³ Cf. Report No. 2954-2012-DIRREHUM-PNP/OFITEL-UNINFO-BD of the PNP Human Resources Directorate to the Third Supra-provincial Criminal Prosecutor of October 29, 2012 (evidence file, folios 8717 to 8730).

¹⁰⁴ Cf. Photographic identification procedure carried out before the Deputy Provincial Prosecutor of the Third Supra-provincial Criminal Prosecution Unit on January 10, 2013 (evidence file, folios 8821 and 8822).

¹⁰⁵ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the PNP Human Resources Directorate of October 18, 2013 (evidence file, folio 11438).

¹⁰⁶ Cf. Note No. 114-2014-DIREJEPER-PNP/SEC of the Personnel Executive Directorate of the Police to the Third Supra-provincial Criminal Prosecutor of January 21, 2014 (evidence file, folios 12291 to 12303).

testimony of at least 58 individuals was received¹⁰⁷ and 10 individuals did not come forward to testify.¹⁰⁸

89. Also, following requests by the prosecutors assigned to the case, the following information, *inter alia*, was received:

- a) On May 9, 2012, the PNP advised that no attestation existed concerning the death of Rafael Salgado Castilla. In this regard, the communications that were exchanged reveal that the files only contained information as of 1994, because the previous documentation had been incinerated, and the last incineration was on February 27, 2001;¹⁰⁹
- b) On May 31,¹¹⁰ August 8¹¹¹ and 15¹¹² and October 3, 2012,¹¹³ and March 15¹¹⁴ and August 2, 2013,¹¹⁵ different internal unit of the PNP National Hospital advised that they had no record of treating Gladys Espinoza on April 17, 18 and 19, 1993, or that a medical file had been opened for her. Also, on December 5, 2012,¹¹⁶ and August 29, 2013,¹¹⁷ several units of the PNP National Hospital advised that they had no medical records for Gladys Espinoza and explained that they only kept medical records in the passive files for 15 years, following their transfer from the active to the passive files. Information was also provided that documents archived in a temporary file, such as that of the National Hospital emergencies, were only kept for 10 years at the most;
- c) On August 3, 2012, the First Special Criminal Chamber provided Case file No. 26944-2007, under which criminal proceedings were underway against three PNP agents for the crimes of homicide and abuse of authority perpetrated against Rafael Salgado;¹¹⁸

¹⁰⁷ Cf. Preliminary statements received in the criminal investigation (evidence file, folios 8641 to 8643; 8645 to 8649; 8705 to 8712; 11602 to 11605; 8736 to 8744; 11606 to 11609; 8745 to 8753; 8823 to 8832; 8840 to 8849; 8850 to 8855; 8859 to 8868; 8892 to 8904; 9019 to 9024; 9031 to 9037; 10772 to 10779; 10797 to 10808; 10849 to 10855; 10858 to 10863; 10865 to 10871; 10873 to 10882; 10899 to 10909; 11510 to 11514; 10913 to 10917; 10920 to 10923; 10928 to 10933; 11007 to 11016; 11515 to 11518; 11077 to 11083; 11087 to 11094; 11305 to 11311; 11312 to 11317; 11478 to 11480; 11398; 11482 to 11484; 11488 to 11491; 11492 to 11496; 11498 to 11505; 11561 to 11564; 11569 to 11580; 11592 to 11599; 11582 to 11586; 11587 to 11590; 11612 to 11614; 11630 to 11633; 11727 to 11731; 11745 to 11752; 11767 to 11770; 11777 to 11780; 11811 to 11814; 11971 to 11979; 11980 to 11989; 11991 to 11999; 12010 to 12018; 12048 to 12051; 12216 to 12224; 12225 to 12228; 12230 to 12232, and 12279 to 12284).

¹⁰⁸ Cf. Records of those who did not come forward to testify (evidence file, folios 8653, 8697, 8762, 8936, 8960, 12031, 8973, 10840, 11003 and 12079).

¹⁰⁹ Cf. Note No. 651-2012-DIRINCRI-PNP/DIVINHOM-SEC of the Peruvian National Police to the Third Supra-provincial Criminal Prosecutor of May 9, 2012 (evidence file, folios 8126 and 8127).

¹¹⁰ Cf. Report No.33-2013-DIRSAN.PNP/DIREOSSHN.PNP."LNS".OFIARM.U.ARCH of the National Hospital to the Third Criminal Prosecutor of May 31, 2013 (evidence file, folios 11018 to 11019).

¹¹¹ Cf. Note No. 660-2012-DIRSAL.PNP.DIREJOSS.HN.LNS.PNP.DIVARCRI.DEPEME.SEC of the Emergency Department of the National Hospital LNS.PNP to the Supra-provincial Third Criminal Prosecutor of August 8, 2012 (evidence file, folio 8597).

¹¹² Cf. Note No. 474-2012-DIRSAL.PNP/DIREJOSS-HN.LNS.S of the National Hospital LNS.PNP to the Third Supra-provincial Criminal Prosecutor of August 15, 2012 (evidence file, folio 8595).

¹¹³ Cf. Note No. 600-2012-DIRSAL.PNP/DIREJOSS-HN.LNS.Sec of the National Hospital LNS.PNP to the Third Supra-provincial Criminal Prosecutor of October 3, 2012 (evidence file, folio 8603).

¹¹⁴ Cf. Note No.139-2013-DIRSAN.PNP/DIREJOSS-HN.PNP.LNS of the National Hospital LNS. PNP to the Third Supra-provincial Criminal Prosecutor of March 15, 2013 (evidence file, folios 8923 and 8924).

¹¹⁵ Cf. Note No. 355-2013-DIRSAN-PNP/DIREOSS-HN-PNP"LNS"-OFIARM-AIM of the National Hospital LNS.PNP to the Third Supra-provincial Criminal Prosecutor of August 2, 2013 (evidence file, folio 11105).

¹¹⁶ Cf. Note No. 758-2012/DIRSAL.PNP.DIREJOSS/HN."LNS".SEC of the National Hospital LNS.PNP to the Third Supra-provincial Criminal Prosecutor of December 5, 2012 (evidence file, folios 8798 and 8800).

¹¹⁷ Cf. Note No. 490-2013-DIRSAN.PNP/DIREJOSS- HN LNS Sec of the National Hospital LNS.PNP to the Third Supra-provincial Criminal Prosecutor of August 29, 2013 (evidence file, folio 11199).

¹¹⁸ Cf. Note No. 26944-2007-1°SPPRC-JVC of the First Special Criminal Chamber for proceedings involving incarcerated prisoners to the Third Supra-provincial Criminal Prosecutor of August 3, 2012 (evidence file, folio 8242).

- d) On September 21, 2012, the Institute of Forensic Medicine forwarded a copy of Medical certificate N. 16111- L of April 19, 1993, relating to Gladys Espinoza;¹¹⁹
- e) On December 2, 2013,¹²⁰ the President of the Military and Police Jurisdiction forwarded a certified copy of documents relating to Case File No. 190-V-94 against PNP personnel for the crime of the homicide of Rafael Salgado;
- f) On December 5, 2012,¹²¹ the National Civil Registry forwarded the death certificate of Rafael Salgado Castilla;
- g) On September 12, 2013, the DIRCOTE advised that there was no document identified by the Prosecution as "Note N. 6467-OCD-DINCOTE issued in May 1993," ordering that Gladys Espinoza undergo an examination of sexual integrity;¹²²
- h) After the Second Supra-provincial Criminal Court had received a request from the Prosecutor,¹²³ it forwarded the certified copies of Case File No. 90-03 (No. 509-03), relating to the criminal proceedings instituted against Gladys Espinoza for Terrorism/Treason on October 24, 2012;¹²⁴
- i) El October 15, 2013, the Information Center for the Collective Memory and Human Rights of the Ombudsman's office forwarded copies of the statements received by the CVR in the case of Rafael Salgado Castilla;¹²⁵
- j) On November 6, 2013, the Information Center for the Collective Memory of the Ombudsman's office advised that it did not have two testimonies that had been requested by the prosecutor. It also attached a copy of a report on the case of "The torture and murder of Rafael Salgado Castillo (1992)" that the CVR had presented to the Prosecutor General's Office so that it could be investigated, and which mentions the statements made by the two persons whose testimony had been requested,¹²⁶ and
- k) On December 2 and 16, 2013, the Counter-terrorism Executive Directorate forwarded a copy of pages 90 and 91 to 103, respectively, of the Detainees Logbook (record of the entry and departure of detainees of the Detainees Oversight Office of the DIRCOTE-PNP) with entries from August 27, 1992, to December 9, 1996.¹²⁷

90. In a decision of April 16, 2012,¹²⁸ the prosecutor ordered that the "Protocol for the forensic examination to detect injuries resulting from torture on live persons" be performed on Gladys Espinoza in coordination with the Institute of Forensic Medicine and Science of the Public Prosecution Service (hereinafter "Institute of Forensic Medicine"). However, in a decision of June 11, 2012,¹²⁹ the prosecutor noted, first, the existence of the 2004 medical examinations, which

¹¹⁹ Cf. Note No. 276583-12-MP-FN-IML/DICLIFOR of the Institute of Forensic Medicine to the Third Supra-provincial Criminal Prosecutor of September 21, 2014 (evidence file, folio 8602).

¹²⁰ Cf. Note No. 513-2013-FMP-SG/AG of the Secretary General of the Military and Police Jurisdiction to the Third Supra-provincial Criminal Prosecutor of December 2, 2013 (evidence file, folios 11838 to 11939).

¹²¹ Cf. Note No. 014499-2012/GRI/SGARF/RENIEC of the National Civil Registry to the Third Supra-provincial Criminal Prosecutor of December 5, 2012 (evidence file, folios 8780 and 8781).

¹²² Note No. 3459-2013-DIRCOTE/SG.2 of the DIREJCOTE General Secretariat to the Third Supra-provincial Criminal Prosecutor of September 12, 2013 (evidence file, folios 11221 and 11222).

¹²³ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Supra-provincial Criminal Court of October 24, 2012 (helpful evidence file, folio 8617).

¹²⁴ Cf. File No. 90-03 of the Second Criminal Court for Terrorist Offenses (evidence file, folios 9122 to 11016).

¹²⁵ Cf. Note No. 216-2013-DP/ADHPD-CIMC of the Information Center for the Collective Memory and Human Rights to the Third Supra-provincial Criminal Prosecutor of October 15, 2013 (evidence file, folios 11442 to 11473).

¹²⁶ Cf. Note No. 230-2013-DP/ADHPD-CIMC of the Information Center for the Collective Memory and Human Rights to the Third Supra-provincial Criminal Prosecutor of November 6, 2012 (evidence file, folios 11648 to 11721).

¹²⁷ Cf. Note No. 4302-2013-DIRCOTE/SG.2 of the Counter-terrorism Executive Directorate to the Third Supra-provincial Criminal Prosecutor of December 2, 2013 (evidence file, folios 11941 to 11943) and Note No. 4504-2013-DIRCOTE/SG.2 of the Counter-terrorism Executive Directorate to the Third Supra-provincial Criminal Prosecutor of December 16, 2013 (evidence file, folios 12055 to 12069).

¹²⁸ Cf. Decision of the Prosecutor of April 16, 2012 (evidence file, folio 8022).

¹²⁹ Cf. Decision of the Prosecutor of June 11, 2012 (evidence file, folio 8173).

indicated that they corresponded to the “Protocol for the forensic examination to detect injuries resulting from torture on live persons” and, second, the existence of forensic reports prepared in 1993 (*supra* para. 73 and *infra* para. 245). Consequently, the prosecutor asked the Institute of Forensic Medicine to advise whether it was necessary to perform other medical examinations on Gladys Espinoza or, in any case, to advise on the documents or actions required to issue a ruling so as not to duplicate the examinations that had already been performed and thus avoid unnecessary delays. In a decision of October 5, 2012, the prosecutor reiterated these requests.¹³⁰ There is no record in the case file of an answer from the Institute of Forensic Medicine. The prosecutor also conducted the following investigative procedures:

- a) On October 16, 2012, he asked the Forensic Clinical Division of the Criminalistics Unit of the Institute of Forensic Medicine to perform the medical examination known as the “Protocol for the forensic examination to detect injuries resulting from torture on live persons” on Gladys Espinoza.¹³¹ Accordingly, on October 24,¹³² and December 13, 2012,¹³³ the prosecutor was advised of the names of the doctors who had been assigned to perform this evaluation. Following several communications and the coordination of efforts to carry out this evaluation of Gladys Espinoza in the Chorrillos Women’s Prison, including access for the doctors and the necessary items,¹³⁴ on March 21, 2013, the prosecutor was advised that the evaluation had not been performed because this case of torture required a digital and an analogical camera, a film camera and two laptops.¹³⁵ Once the internal arrangements had been made within the Institute of Forensic Medicine,¹³⁶ on October 2, 2013, the Prosecutor was advised of the names of the doctors who would perform the evaluation, the dates of which it would be carried out, and the devices to be used.¹³⁷
- b) On December 19, 2012,¹³⁸ and March 11, 2013,¹³⁹ the prosecutor asked the Forensic Clinical Division of the Institute of Forensic Medicine to issue a report on forensic report No. 0-1816-H of May 18, 1993 (*infra* para. 166), which had concluded by indicating, “deflowering not recent; indications compatible with recent unnatural act.” This was in order to understand “the time frame considered when indicating a ‘recent unnatural act.’” In response, the Forensic Clinical Division sent the prosecutor a forensic report

¹³⁰ Cf. Decision of the prosecutor of October 5, 2012 (evidence file, folios 8607 and 8608).

¹³¹ Cf. Note No. 08-2008-3FPS-MP-FN of the Third Criminal Prosecutor to the Institute of Forensic Medicine of October 16, 2012 (evidence file, folio 8615).

¹³² Cf. Note No. 313-2012-MP-FN-IML-JN-GEGRIM/DICLIFOR/PSQ of the Institute of Forensic Medicine to the Third Supra-provincial Criminal Prosecutor of October 24, 2012 (evidence file, folio 8625).

¹³³ Cf. Note No. 397-2012-MP-FN-IML-JN-GEGRIM/DICLIFOR/PSQ of the Institute of Forensic Medicine to the Third Supra-provincial Criminal Prosecutor of December 13, 2012 (evidence file, folio 8783).

¹³⁴ Cf. Note No. 08-2008-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Chorrillos Women’s Prison of November 7, 2012 (evidence file, folio 8636); Note No. 27-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the National Penitentiary Institute of December 18, 2012 (evidence file, folio 8801), and Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of March 11, 2013 (evidence file, folio 8922).

¹³⁵ Cf. Report of the Assistant Provincial Prosecutor of the Third Supra-provincial Criminal Prosecution Unit of March 21, 2013 (evidence file, folio 8941).

¹³⁶ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of March 22, 2013 (evidence file, folios 8945 to 8946), and Decision of the Prosecutor of May 9, 2013 (evidence file, folio 10788).

¹³⁷ Cf. Note No. 1080-2013-MP-FN-IML-JN-GEGRIM/DICLIFOR/PSQ of the Institute of Forensic Medicine to the Third Supra-provincial Criminal Prosecutor of October 4, 2013 (evidence file, folio 11388).

¹³⁸ Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of December 19, 2012 (evidence file, folio 8805).

¹³⁹ Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of March 11, 2013 (evidence file, folio 8921).

dated March 15, 2013, in which it indicated that “[t]he concept of a recent unnatural act refers to an act within ten days of the date of the examination.”¹⁴⁰ On August 13, 2013, the Institute of Forensic Medicine was asked to advise whether the forensic doctors who had prepared Forensic report No. 1816-H of May 18, 1993, J.A.M. and E.Y.P., continued to work in that institution.¹⁴¹ In response, on August 16, 2013, the National Head of the Institute of Forensic Medicine confirmed that the said doctors worked in the Forensic Clinical Division.¹⁴² It is on record that, following the notification of these two doctors,¹⁴³ on August 28, 2013, only J.A.M. ratified this medical record.¹⁴⁴ There is no information concerning E.Y.P. in this regard.

- c) On June 28¹⁴⁵ and August 13, 2013,¹⁴⁶ the Prosecutor asked the Forensic Clinical Division of the Institute of Forensic Medicine to prepared “a consolidated version of the contents” of the medical certificates and other documents drawn up in 1993 and 2004 (*infra* paras. 169 to 172), and to provide an opinion on the “Protocol for the forensic examination to detect injuries resulting from torture on live persons”.

91. It is also on record that after the procedures described in subparagraphs (a), (b) and (c) of the preceding paragraph had been carried out, and after the prosecutor had made the request numerous times, on January 7, 2014, the Institute of Forensic Medicine prepared a “Protocol for investigating torture or cruel, inhuman or degrading treatment” with regard to Gladys Espinoza, based on the evaluations made of her on August 20, October 17 and December 2, 2013, and also the medical certificates prepared in 1993 and 2004 (*supra* para. 73 and *infra* para. 245). The Prosecutor received this Protocol on January 14, 2014.¹⁴⁷ In this Protocol it was concluded that: “1.A. There is a strong relationship; the injuries (scars) may have been caused by the traumas described [by the presumed victim], and by very few other sources; B. In the anal and genital region, it is typical, this is the condition that is normally found with this type of trauma,”¹⁴⁸ referring to injuries resulting from torture.

B.4.2. Investigation of the acts that took place during the confinement of Gladys Espinoza in the Yanamayo Maximum Security Prison, Puno, between January 17, 1996, and April 17, 2001, and the incident that occurred on August 5, 1999

92. The case file reveals that on April 27,¹⁴⁹ May 7,¹⁵⁰ October 18¹⁵¹ and December 26, 2012,¹⁵² the prosecutor made the following requests to the President of the Board of Prosecutors

¹⁴⁰ Forensic report No. 017003-PF-HC of the Institute of Forensic Medicine to the Third Supra-provincial Criminal Prosecutor of March 15, 2013 (evidence file, folios 8968 and 8969).

¹⁴¹ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of August 13, 2013 (evidence file, folio 11135).

¹⁴² Cf. Note No. 304 -2013-MP-FN-IML/JN of the Institute of Forensic Medicine to the Third Supra-provincial Criminal Prosecutor of August 16, 2013 (evidence file, folio 11151).

¹⁴³ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of August 20, 2013 (evidence file, folio 11174).

¹⁴⁴ Cf. Ratification of medical certificate by J.A.M. on August 28, 2013 (evidence file, folios 11183 to 11186).

¹⁴⁵ Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of June 28, 2013 (evidence file, folios 10969 to 10987).

¹⁴⁶ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Institute of Forensic Medicine of August 13, 2013 (evidence file, folio 11136).

¹⁴⁷ Cf. Protocol for investigating torture or cruel, inhuman or degrading treatment of January 14, 2014 (evidence file, folios 12233 to 12276).

¹⁴⁸ Protocol for investigating torture or cruel, inhuman or degrading treatment of January 14, 2014 (evidence file, folio 12259).

¹⁴⁹ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Board of Prosecutors of Puno of April 27, 2012 (evidence file, folio 8087).

of the Judicial District of Puno: (a) on the first three dates, he requested copies of reports issued by the prosecutors who intervened in the inspection that took place on August 5, 1999, at the Yanamayo Maximum Security Prison in Puno; (b) on the fourth date, he asked that the head of the Peripheral Central Archive of the Public Prosecution Service of Puno be requested to forward certified copies of the reports issued by the prosecutors who intervened in the inspection that took place in that prison on August 5, 1999. On November 16¹⁵³ and 27,¹⁵⁴ 2012, and January 25, 2013,¹⁵⁵ the senior prosecutor of the Board of Prosecutors of Puno sent the following replies, respectively: (a) he asked the prosecutor to indicate the number of the report he was requesting, the prosecutors who had signed it, and their current location, and advised that he had requested the Deconcentrated Archive and the Prosecution Units of the Public Prosecution Service of the Judicial District of Puno to forward the information requested, "if it was available in their offices"; (b) he advised that, with the entry into force of the new Code of Criminal Procedure in October 2009, all the documentation prepared before that date had been sent to the Peripheral Central Archive of the Public Prosecution Service of Puno, and not to the Board of Senior Prosecutors of the Judicial District of Puno, and (c) he indicated that the said documentation had not been located and only one document had been found relating to the inspection of August 5, 1999, entitled "Record of Inspection," which he forwarded. There is no record that any further measures were taken in this regard.

93. On April 27, 2012, the prosecutor asked: (a) the Peruvian Ombudsman for certified copies of the annexes and/or documents in his archives related to the events described in the Report on the Yanamayo Prison of August 25, 1999,¹⁵⁶ and (b) the Director of the National Penitentiary Institute, for information on the inspection that took place on August 5, 1999, in the Yanamayo Maximum Security Prison in Puno, as well as for information on the criminal record and the prisons where Gladys Espinoza and the four women who were with her during this inspection could be found.¹⁵⁷ In reply, on May 11, 2012, the Ombudsman advised that the supervisory visit to the Yanamayo Prison had been made by the Peruvian Ombudsman at the time and other officials, and therefore no record had been made and no documentation had been received.¹⁵⁸ Meanwhile, on May 21¹⁵⁹ and 24,¹⁶⁰ 2012, the National Penitentiary Institute advised the prosecutor that it did not have the information requested, because it had only been responsible for the Yanamayo Prison since 2005 and the National Police was in charge of all the documentation prior to that date. It also forwarded the criminal record of the five women.

¹⁵⁰ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Board of Prosecutors of Puno of May 7, 2012 (evidence file, folio 8177).

¹⁵¹ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Board of Prosecutors of Puno of October 18, 2012 (evidence file, folio 8616).

¹⁵² Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Board of Prosecutors of Puno of December 26, 2013 (evidence file, folio 8809).

¹⁵³ Note No. 10643-2012-MP-PJFS-DJ-Puno of the Board of Prosecutors of Puno to the Third Supra-provincial Criminal Prosecutor, of November 16, 2012 (evidence file, folios 8689 and 8690).

¹⁵⁴ Cf. Note No. 11122-2012-MP-PFSP-DJ-Puno of the Board of Prosecutors of Puno to the Third Supra-provincial Criminal Prosecutor, of November 27, 2012 (evidence file, folios 8773 to 8778).

¹⁵⁵ Cf. Note No. 184-293-MP-PJFS-DJ-Puno of the Board of Prosecutors of Puno to the Third Supra-provincial Criminal Prosecutor, of January 25, 2013 (evidence file, folios 8880 to 8885).

¹⁵⁶ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Ombudsman of April 27, 2012 (evidence file, folio 8088).

¹⁵⁷ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the National Penitentiary Institute of April 27, 2012 (evidence file, folios 8090 and 8091).

¹⁵⁸ Cf. Note No. 0137-2012-DP/ADHPD-PAPP of the Ombudsman to the Third Supra-provincial Criminal Prosecutor of May 11, 2012 (evidence file, folio 8142).

¹⁵⁹ Cf. Note No. 379-2012-INPE/24.07 of the National Penitentiary Institute to the Third Supra-provincial Criminal Prosecutor of May 21, 2012 (evidence file, folio 8144).

¹⁶⁰ Cf. Note No. 05692-2012-INPE/13-AJ of the National Penitentiary Institute to the Third Supra-provincial Criminal Prosecutor of May 24, 2012 (evidence file, folios 8154 to 8171).

94. On July 26, 2013,¹⁶¹ the prosecutor asked the Board of Senior Prosecutors of Puno for the file of the investigation into the ill-treatment of one of the five women who were with Gladys Espinoza based on the incident that occurred on August 5, 1999, during the inspection made in the Yanamayo Prison. In reply, on August 14¹⁶² and September 13,¹⁶³ 2013, the Board of Prosecutors of Puno advised the Provincial Prosecutor that, with regard to the acts of violence that took place in the said prison, it only had a record of a complaint concerning the ill-treatment of one of the five women who was with Gladys Espinoza, and forwarded copies of the corresponding case file.

95. It is on record that, during 2012 and 2013, testimony was received from two prosecutors,¹⁶⁴ eight police agents of the Peruvian National Police,¹⁶⁵ and two female prisoners¹⁶⁶ who were in the Yanamayo Prison on August 5, 1999.

B.4.3. Conclusions of the investigation

96. *Ruling on merits.* In a decision of March 31, 2014, the prosecutor of the Third Supra-provincial Criminal Prosecution Unit issued a ruling on merits in which he decided to bring charges “for the presumed crime of abduction, for the presumed crime of rape and torture, in the case of the events that occurred in 1999, and to archive the crime of torture that took place in 1993 because, at that time Peru had no criminal law with regard to such events,”¹⁶⁷ and ruled as follows:

1. TO ARCHIVE the proceedings with regard to the complaint based on the offense against public administration: abuse of authority, established in article 376 of the Criminal Code to the detriment of the State;
2. TO ARCHIVE the proceedings with regard to the complaint based on the crime [...] against humanity: torture, established in article 321 of the Criminal Code, to the detriment of Gladys Carol Espinoza Gonzáles for the acts that occurred in 1993, based on strict respect for the principle of legality that regulates criminal law, classifying these acts in paragraph (1) of article 152 of the Criminal Code;
3. TO BRING CRIMINAL CHARGES against [eighteen persons] as presumed co-perpetrators of the crime against liberty: abduction contained in the first paragraph of article 152 of the Criminal Code, contained in the first paragraph of the definition of the basic offense; and [eight persons] will be charged with the aggravating circumstances contained in paragraph (1) of article 152, classifying this act as a crime against humanity under international criminal law;
4. TO BRING CRIMINAL CHARGES against [one person], as presumed perpetrator by improper omission of the crime against sexual liberty: rape, contained in article 170 of the Criminal Code, to the detriment of Gladys Carol Espinoza Gonzáles; classifying this act as a crime against humanity under international criminal law;
5. TO BRING CRIMINAL CHARGES against [one person] as presumed perpetrator by improper omission of the crime against humanity: torture, contained in the first paragraph of article 321 of the Criminal Code, to the detriment of Gladys Carol Espinoza Gonzáles.¹⁶⁸

97. *Complementary decision.* In a decision of April 3, 2014, the prosecutor of the Third Supra-provincial Criminal Prosecution Unit decided:

¹⁶¹ Cf. Note No. 08-2012-3FPS-MP-FN of the Third Supra-provincial Criminal Prosecution Unit to the Board of Senior Prosecutors of Puno, of July 26, 2013 (evidence file, folio 11057).

¹⁶² Cf. Note No. 6783-2013-MP-PJFS-DF-Puno of the Board of Senior Prosecutors of Puno to the Third Supra-provincial Criminal Prosecutor, of August 14, 2013 (evidence file, folios 11110 to 11124).

¹⁶³ Cf. Note No. 7743-2013-MP-PJFS-DF-Puno of the Board of Senior Prosecutors of Puno to the Third Supra-provincial Criminal Prosecutor, of September 13, 2013 (evidence file, folios 11225 to 11297).

¹⁶⁴ Cf. Statements of prosecutors (evidence file, folios 11305 to 11311, and 11312 to 11317).

¹⁶⁵ Cf. Statements of eight police agents (evidence file, folios 9031 to 9037; 10772 to 10779; 10994 to 11001; 10849 to 10855; 10858 to 10863; 10865 to 10871; 10913 to 10917, and 11087 to 11094).

¹⁶⁶ Cf. Statements of two female prisoners (evidence file, folios 8198 to 8204, and 10928 to 10933).

¹⁶⁷ Testimony of Yony Efraín Soto Jiménez during the public hearing held on April 4, 2014.

¹⁶⁸ Ruling on merits of March 31, 2014, by the Third Supra-provincial Criminal Prosecutor in the case of Gladys Carol Espinoza Gonzáles (evidence file, folios 12530 and 12531).

1. TO INCORPORATE [this decision] into the operative paragraphs of the decision of March 31, [...] thus, establishing the criminal proceedings for the aggravated crime of abduction contained in paragraph (1) of article 152 of the Criminal Code against [two persons]; and,
2. TO EXCLUDE [one person] from the criminal proceedings for the crime of abduction: basic definition contained in article 152 of the Criminal Code.¹⁶⁹

B.4.4. Criminal complaint and its processing

98. *Criminal complaint.* On April 30, 2014, the prosecutor of the Third Supra-provincial Criminal Prosecution Unit filed a criminal complaint before the sitting National Criminal Court of Lima, as follows:¹⁷⁰

- a) Against seventeen individuals as presumed co-perpetrators of the crime “against liberty: abduction” contained in the first paragraph of article 152 of the Criminal Code (basic definition) in the original text. Of these only ten people were also accused of the aggravating factor contained in subparagraph (1) of this article, with the additional classification of the crime of abduction contained in article 152 of “crime against humanity” under international criminal law.
- b) Against one person as presumed perpetrator by omission of the crime of “rape” defined and penalized in article 170 of the Criminal Code, also classifying this as a “crime against humanity,” to the detriment of Gladys Carol Espinoza Gonzáles.
- c) Against one person as presumed perpetrator by omission of the crime “against humanity: torture” contained in the first paragraph of article 321 of the Criminal Code, to the detriment of Gladys Carol Espinoza Gonzáles.

99. *Indictment.* On May 20, 2014, the First National Criminal Court issued the indictment instituting the criminal action as follows:

Against: [seven persons] as presumed co-perpetrators of the crime against liberty: abduction contained in the first paragraph of article 152 of the Criminal Code - basic definition (original text) to the detriment of Gladys Carol Espinoza Gonzáles; against: [ten persons], as presumed co-perpetrators of the crime against liberty: abduction contained in the first paragraph of article 152, subparagraph (1) of the Criminal Code (original text), to the detriment of Gladys Carol Espinoza Gonzáles; against: [one person] as presumed perpetrator by improper omission (perpetration by omission) of the crime of rape contained in article 170 of the Criminal Code, to the detriment of Gladys Carol Espinoza Gonzáles; and against: [one person] as presumed perpetrator by improper omission (perpetration by omission) of the crime against humanity: torture, contained in the first paragraph of Article 321 of the Criminal Code, to the detriment of Gladys Carol Espinoza Gonzáles.¹⁷¹

100. Lastly, in this indictment, the judge of the case ordered several judicial procedures to be carried out “for the due clarification of the acts that had been denounced.”

VIII MERITS

101. It has been argued that the proven facts in the case constitute violations of several rights and obligations recognized in the American Convention and the Inter-American Convention to Prevent and Punish Torture, in relation to the obligation to respect and to ensure rights:

- a) Right to personal liberty (section VIII.1);

¹⁶⁹ Expansion of the ruling on merits of the Third Supra-provincial Criminal Prosecution Unit of April 3, 2014 (evidence file, folio 12536).

¹⁷⁰ Cf. Criminal complaint filed by the prosecutor of the Third Supra-provincial Criminal Prosecution Unit on April 30, 2014 (evidence file, folios 12537 to 12539).

¹⁷¹ Indictment issued by the First National Criminal Court on May 20, 2014 (evidence file, folios 12617 and 12618).

- b) Rights to humane treatment, to privacy, and not to be subjected to torture (section VIII.2);
- c) Sexual violence and the obligation not to discriminate against women (section VIII.3);
- d) Rights to judicial guarantees and to judicial protection (section VIII.4), and
- e) Right to personal integrity of the next of kin of the victims (section VIII.5).

Before examining these alleged violations, it should be recalled that, under the provisions of Articles 33(b)¹⁷² and 62(3)¹⁷³ of the American Convention, it is only incumbent on the Court to rule on the conformity of the State's actions with regard to the provisions of this treaty. Thus the Court indicates, as it has in other cases,¹⁷⁴ that it is not a criminal court that analyzes the criminal responsibility of the individual.

VIII.1. RIGHT TO PERSONAL LIBERTY, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE RIGHTS

102. The Commission and the representatives alleged violations of Article 7¹⁷⁵ of the American Convention, in relation to Article 1(1) of this instrument, owing to the facts relating to the arrest and preventive deprivation of liberty of Gladys Espinoza. In this chapter the Court will set out the arguments of the Commission and of the parties, and will proceed to examine the alleged violations of this article.

A) Arguments of the parties and of the Commission

103. The Commission argued that the following violations of the right to personal liberty had been committed:

a) Violation of the constitutional norms in force at the time of the facts and of the guarantees established in Article 7(2) and 7(3) of the Convention, because Gladys Espinoza was arrested by agents of the Abduction Investigation Division (DIVISE) in the absence of a court order and without any evidence to indicate that she was *in flagrante delicto*. During the public

¹⁷² Article 33 of the Convention establishes that: "[t]he following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention: a. the Inter-American Commission on Human Rights [...], and b. the Inter-American Court of Human Rights [...]."

¹⁷³ Article 62(3) of the Convention stipulates that: "[t]he 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, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

¹⁷⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 134, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits and reparations*. Judgment of August 27, 2014. Series C No. 281, para. 243.

¹⁷⁵ Article 7 of the Convention establishes that: "1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. [...]"

hearing, the Commission argued that, as in the *Case of J. v. Peru*, the State had “raised the issue of [a state of] emergency for the first time” before the Court; thus, while the petition was being processed, it was unaware that the State’s justification for the way in which the arrest had been carried out was a state of emergency. It also indicated that this gave rise to the possibility of a situation of estoppel, because the Commission had adopted a substantive and procedural position in the Merits Report, based on the fact that the State’s arguments had made no reference to a state of emergency. It also argued that, when the State cites a state of emergency, it has the burden of proving why it was necessary to apply the restrictions that were in force under the state of emergency, and it has not done so in this case. Consequently, the Commission considered that the restrictions concerning the ability to make an arrest without a court order and in the absence of a situation of *in flagrante delicto*, and for longer than provided for by law should be analyzed in detail and individually in keeping with the specific case, and should not be dismissed owing to the generic existence of a state of emergency. It also indicated that the generic citing of “permanent *flagrante delicto*” should be considered exceptional and respect the guarantees required in cases of detention. It also stressed that the State had not presented any kind of documentary evidence to support its argument, but rather based itself on documents prepared after the victim’s arrest. Lastly, in its final written observations, the Commission considered that the victim’s arrest was unlawful.

b) Non-compliance with the guarantees established in Article 7(4) of the Convention, because the DIVISE agents who arrested the presumed victim did not record her detention. In those circumstances, the Commission concluded that the presumed victim had not been notified promptly of the reasons for her detention. It added that the State had not presented any record that proved compliance with the said guarantees, but had merely identified a document dated after the presumed victim’s arrest in which she indicated that she had been informed of the reasons for her detention. In this regard, it observed that the victim’s statement in that document did not specify when she was notified of the reasons for her detention. In addition, the Commission argued that the detention was arbitrary because the State had not argued that it was strictly necessary and proportionate for the State agents to make the arrest using blows, insults and threats, taking into consideration the standards that regulate the use of force.

c) Non-compliance with the provisions of Article 7(5) of the Convention, and also Article 7(3), because the detention of Gladys Espinoza became arbitrary, contrary to this instrument, because, following her arrest on April 17, 1993, she remained incommunicado for several days and was only brought before a judicial authority of the military jurisdiction on June 24, 1993, eighty days after her arrest. The Commission also indicated that Peru had not explained why, in Gladys Espinoza’s case, the guarantee of judicial control had been suspended, and emphasized that the State’s argument that Gladys Espinoza González was brought before a judge within 30 days “has no relevance for the analysis of the case” because, in numerous judgments and even in the *Case of J. v. Peru*, “the Court has maintained that the absence of judicial control, even for the 15 days established by domestic law at that time, violates the right established in Article 7(5) of the American Convention.” Lastly, the Commission argued that, from the time of the presumed victim’s arrest until November 25 that year, article 6 of Decree Law No. 25,659 prohibited the presentation of an application for *habeas corpus* in favor of individuals involved in proceedings for terrorism or treason, which is contrary to Article 7(6) of the Convention.

104. The representatives presented similar arguments to those of the Commission and added that the arrest of Gladys Espinoza and the detention regime to which she was subjected were characterized by numerous irregularities that constituted gross violations of the guarantees established in Article 7 of the Convention. They indicated that these violations took place in a context that, at the time, was characterized by the generalization of arbitrary detentions and investigations of individuals accused of terrorism, which is relevant to the analysis, above all, because it was sought to shield the actions of the State agents during the detention of Gladys

Espinoza behind the existence of “emergency” laws to combat terrorism that permitted the suspension of fundamental rights established in the Constitution. They also alleged that:

a) The State had violated Article 7(2) of the Convention to the detriment of Gladys Espinoza, because her detention was incompatible with the laws that regulated the deprivation of liberty, or with the exceptional requirements and purpose of emergency laws. They argued that the emergency laws and the actions of the State agents did not comply with the requirements of exceptionality and the need for supervision established by Article 27 of the Convention. Specifically, they indicated that Gladys Espinoza was arrested without a court order and in the absence of evidence that she was *in flagrante delicto*, and the DIVISE agents, who used violence and blows and threats, demonstrated clearly the absence of the guarantees of legal protection that are the purpose of Article 7(2) of the Convention. They indicated that although, at that time, the well-known “emergency laws” permitted the arrest of those suspected of the crime of treason without a prior court order, the suspension of any of the guarantees established by Article 7 of the Convention must always be exceptional and must be maintained only to the extent required by, and for the time strictly limited to, the exigencies of the situation. They also indicated that the concept of *flagrante delicto* was not included in the criminal procedural norms of Peru until 2003, with the enactment of Law 27,934 which regulated *flagrante delicto* for the first time; consequently, the requirement that the reasons for, and the conditions of, the deprivation of liberty be established by domestic law as specifically as possible was violated. Furthermore, they noted that the way in which the arrest was made, without a court order or any record, was indicative of the clandestine nature of the operation and the intention of the State agents to prevent an examination of how the emergency laws were applied in the case of Gladys Espinoza. Added to this, the unlawfulness of the detention was revealed by the fact that the presumed victim remained deprived of liberty for 80 days without access to a judge to review the lawfulness of her detention, and without observing even the basic legal requirements.

b) The State had violated Article 7(4) of the Convention to the detriment of the presumed victim by failing to advise her promptly of the reasons for her detention and the charges against her, and for having prevented access to this information by her family members and lawyers who could have helped her obtain prompt access to measures of legal protection.

c) The State had violated Article 7(5) of the Convention, because Gladys Espinoza was kept *incommunicado*, without her family being informed of her whereabouts or being able to visit her until more than 20 days after her arrest. Also, the presumed victim remained detained on police premises and without access to a judge for 80 days, from April 17 to June 24, 1993, when she was transferred to the Chorillos Maximum Security Women’s Prison. Her first appearance before a judge took place on June 24, 1993, before the Special Military Court of the Judicial District of the Peruvian Air Force; in other words, before a military judge. In addition, they argued that, since the presumed victim’s detention was unlawful and arbitrary from the onset, the time that she remained detained was manifestly unreasonable under the Convention. Lastly, the representatives agreed with the Commission regarding the alleged violation of Article 7(6) of the Convention.

105. The State’s arguments were as follows:

a) Regarding the arrest, it affirmed that it had respected the constitutional norms in force at the time of the events, as well as the rights established in Articles 7(2) and 7(3), in relation to Article 1(1), of the Convention. It indicated that, when Gladys Espinoza was arrested, the Department of Lima and the Constitutional Province of Callao were under emergency rule; in other words, they had been declared in a state of emergency, decreed on March 23, 1993. According to Peru, under the state of emergency “the constitutional guarantees established in article 2, paragraphs 7 (inviolability of the home), 9 (freedom of movement in national

territory), 10 (freedom of association), and 20(g) (arrest without a court order or by the judicial authorities *in flagrante delicto*) of the Constitution.” It also indicated that the arrest was in keeping with the provisions of Article 7 of the Convention, and that the state of emergency and suspension of guarantees was extremely relevant in this case. On this point, it rejected the Commission’s argument concerning a situation of estoppel related to the allegation of a state of emergency, because the State “has not changed its position, but ha[d] merely presented an additional and complementary argument on the same facts to strengthen its position.” Furthermore, in its answering brief, the State argued that Gladys Espinoza had been arrested by DIVISE agents, with sufficient evidence that there was a situation of *flagrante delicto*, as the result of police surveillance and intelligence work and for an ongoing offense, terrorism. Also, in its final written arguments, although it repeated that the arrest was made in a situation of *flagrante delicto*, it explained that it had presented the argument of a state of emergency in its answering brief, and that it had not varied its position. Thus, it maintained that, at the time of the presumed victim’s arrest, an individual could be deprived of liberty without the existence of a court order or *flagrante delicto* provided that the principles of reasonableness and proportionality were respected and that, “there should be no discussion as to whether or not *flagrante delicto* existed,” recalling that the terrorist group carried out abductions as part of its activities, and this fact relates to the purpose of the suspension of guarantees.

b) Regarding the force and violence of the arrest, in its final written arguments, the State recalled that, during police operations against terrorist organizations, it was reasonable that the arrest could be resisted and, consequently, that there could be a skirmish between the agents and the persons arrested, without this leading to the conclusion that an act of violence entailing an arbitrary detention had occurred. In addition, the State asserted that it had not violated Article 7(4) of the Convention, because the presumed victim had been informed promptly of the reasons for her detention, and explained that the notification of arrest of April 18, 1993, had expressly informed her of the reasons for her detention. Furthermore, in the police statement made by the presumed victim on May 7, 1993, she had indicated that she agreed that she had been informed in writing of the reasons for her detention. The State also argued that, when an arrest is made *in flagrante delicto*, the requirement of a written notification is an accessory measure because the person arrested knows the reasons for the intervention by the authorities. Regarding the Commission’s argument that the police record of the arrest was not shown to the presumed victim, the State indicated that it was common practice that those arrested for terrorism refused to sign the arrest records, especially when, as a result of the operations, they were found in possession of terrorist material.

c) Regarding Article 7(3) and 7(5), the State indicated that it had complied with the provisions of Article 7(5) of the Convention, and that the arrest of the presumed victim had not been arbitrary according to Article 7(3) of this instrument. In this regard, it affirmed that, following her arrest, the presumed victim had been brought before a judicial authority on May 17, 1993, and not on June 24, 1993, so that the allegation of the Commission and the representatives that she had been brought before a judge 80 days after being arrested was not true.

d) Lastly, the State argued that the Court’s ruling on the incompatibility of Decree Law No. 25,659 with the Convention was unnecessary, since that norm had been annulled more than 20 years ago and that it had already been analyzed in previous cases heard by the Court against the Peruvian State, adding that, on its own initiative, the State had taken note of the error committed, and had rectified it.

B) Considerations of the Court

106. The Court has established in its case law that Article 7 of the American Convention includes two types of very different regulations, one general and the other specific. The general regulation can be found in the first paragraph: “[e]very person has the right to personal liberty

and security." While the specific regulation is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)), to be informed of the reasons for the detention and the charges that have been brought (Article 7(4)), to judicial control of the deprivation of liberty (Article 7(5)), and to a decision by the court on the lawfulness of the detention (Article 7(6)).¹⁷⁶ Any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof.¹⁷⁷ On this point, it should be indicated that the Commission argued that the arrest of Gladys Espinoza was arbitrary, because the State authorities had used insults, blows and threats when making it, and without the State providing an explanation on the strict necessity and proportionality for this in light of the standards that regulate the use of force. In reply, the State argued that resistance to arrest and, consequently, a skirmish between the agents and the persons arrested, cannot lead to the conclusion that an act of violence entailing an arbitrary detention had occurred (*supra* paras. 103.b and 105.b). Since the Court has examined the use of force against persons arrested under Article 5 of the American Convention, it will make the corresponding factual and legal determinations in Chapter VIII.2, which analyzes the alleged violations of the personal integrity of Gladys Espinoza.

107. The Court will now examine the alleged violations of Article 7 of the Convention to the detriment of Gladys Espinoza in the following order:

a) Article 7(2) of the American Convention (right not to be deprived of liberty unlawfully) in relation to Article 1(1) of this instrument, in which it will analyze the alleged unlawfulness of the arrest because it was made without a court order and without grounds for *flagrante delicto*, as well as because of the alleged absence of an adequate record of the arrest;

b) Article 7(4) of the American Convention (right to be informed of the reasons for the detention) in relation to Article 1(1) of this instrument, in which it will analyze the alleged absence of information on the reasons for the detention and notification of the charges;

c) Article 7(5) and 7(3) of the American Convention (right to judicial control of the detention and right not to be deprived of liberty arbitrarily) in relation to Article 1(1) of this instrument, in which it will analyze the alleged absence of judicial control of the detention, and

d) Article 7(6) of the American Convention (right to recourse to a competent judge or court for a decision on the lawfulness of the arrest or detention) in relation to Article 1(1) of this instrument, in which it will analyze the alleged impossibility of exercising the remedy of *habeas corpus*.

B.1. Article 7(2) of the American Convention (right not to be deprived of liberty unlawfully) in relation to Article 1(1) of this instrument

108. Article 7(2) of the American Convention establishes that "[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto." The Commission and the representatives affirmed that the arrest of Gladys Espinoza was unlawful because it was made without a court order and without grounds for *flagrante delicto*, thus violating the relevant domestic norms (*supra* para. 103.a and 104.a). The State affirmed that these requirements were not necessary because there was a state of emergency and suspension of guarantees; it also indicated that, during the presumed victim's arrest sufficient evidence

¹⁷⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 51, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 346.

¹⁷⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 54, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 346.

existed to constitute a situation of *flagrante delicto* in relation to an offense of continuing execution, terrorism. However, in its final arguments, the State withdrew its arguments concerning the presumed *flagrante delicto*, affirming that, at the time of the events surrounding the presumed victim's arrest, a state of emergency and suspension of guarantees was in force that enabled the State to deprive a person of liberty without a court order or grounds for *flagrante delicto*, provided that the principles of reasonableness and proportionality were respected and that "there should be no discussion as to whether or not *flagrante delicto* existed," because "the terrorist group carried out abductions," and this fact was related to the purpose of the suspension of guarantees (*supra* para. 105.a). Considering that Peru has withdrawn this argument, the Court need only rule on the arguments relating to the suspension of guarantees.

109. The Court has indicated that, since Article 7(2) of the Convention refers to the Constitution and laws established "pursuant thereto," the analysis of its observance entails the examination of compliance with the requirements established as specifically as possible and "beforehand" in those laws with regard to the "grounds" and "conditions" for the deprivation of physical liberty. If the formal and substantial aspects of domestic law are not respected when depriving a person of their liberty, the detention will be unlawful and contrary to the American Convention¹⁷⁸ in light of Article 7(2).

110. However, first, it is necessary to examine the Commission's objection that a situation of estoppel had been constituted because the State had not submitted its argument concerning the suspension of guarantees during the procedure before the Commission, but only recently during the proceedings before the Court, and because it was not mentioned in the Commission's report (*supra* para. 103.a). In this regard, although the Commission did not refer directly to a suspension of guarantees, it is clear that the elements which it established did raise this issue, which is part of the factual framework of the case. Paragraphs 76, 77 and 106 of the said report reveal that the State had described and recognized the existence of "emergency legislation against terrorism" in force at the time of the facts of the case. Furthermore, the Commission referred to the establishment of the so-called "Emergency and National Reconstruction Government" and to the existence of the "anti-terrorist laws adopted in 1992." Therefore, the Court determines that a situation of estoppel has not been constituted, and will take into account the arguments on the suspension of guarantees.

111. On previous occasions, the Court has heard cases against Peru in which the existence of a suspension of guarantees or the application of Supreme Decrees 25,475, 25,744 and 25,659 has been alleged. In those cases, no general question was raised on the alleged suspension of guarantees in relation to the scope of the alleged violation of the right to be arrested only by order of the court or *in flagrante delicto*.¹⁷⁹ However, this question has been raised in the instant case. The Commission and the representatives have argued that it is not sufficient to allege "the generic existence of a state of emergency," because the detention of Gladys Espinoza was not compatible with the requirements of lawfulness, exceptionality and necessity, and the temporal

¹⁷⁸ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 57, and *Case of J. v. Peru*, *supra*, para. 126.

¹⁷⁹ Cf. *Case of Neira Alegria et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20; *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33; *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52; *Case of Durand and Ugarte v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 89; *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69; *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110; *Case of De la Cruz Flores v. Peru. Merits, reparations and costs*. Judgment of November 18, 2004. Series C No. 115; *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137; *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275.

nature of a suspension of guarantees (*supra* para. 103.a and 104.a). Consequently, the Court must analyze this matter.

B.1.1. Domestic legal framework at the time of the facts

112. The Peruvian Constitution enacted in 1979 and in force at the time of the facts of this case, established in Article 2, paragraphs 7, 9, 10, 20.g and 20.i, that everyone had the right:

7. To the inviolability of the home. No one may enter the home or conduct investigations or searches without the authorization of the person who lives there or by court order, except in a case of *flagrante delicto* or imminent danger of its perpetration. The exceptions based on health or serious risks are regulated by law.

[...]

9. To choose freely the place of residence, to move about national territory and to leave it and enter it, with the exception of restrictions for health reasons.

Not to be repatriated or deported from the place of residence unless this is by court order or by application of the law concerning aliens.

10. To associate peacefully without weapons. Meetings in private places or those that are open to the public do not require prior notice. Meetings that are called in public places and streets require prior notice to the authority, which may prohibit them only on proven grounds of public safety and health.

[...]

20. To personal liberty and security.

[...]

g) No one may be arrested unless it is by a written and reasoned order of a judge or by the police authorities *in flagrante delicto*. In any case, the person detained must be brought before the respective court within 24 hours or in relation to the distance.

An exception to this is made in cases of terrorism, espionage, and illegal drug trafficking in which the police authorities may execute the preventive detention of those presumably involved for no more than 15 calendar days, and must advise the Public Prosecution Service and the judge, who may assume jurisdiction before the expiry of this time limit.

h) Everyone shall be informed immediately and in writing of the grounds or reasons for their arrest. They have the right to communicate with, and be assisted by, legal counsel of their own choosing as soon as they are summoned or detained by the authorities.

i) No one may be kept *incommunicado* unless this is essential in order to clarify an offense, and in the manner and for the time established by law. The authorities are obliged to indicate promptly the place where the person detained is being kept, and will be held responsible if they do not do so.¹⁸⁰

113. In addition, Article 231 (a) of that Constitution established that:

The President of the Republic, with the agreement of the Council of Ministers, decrees the states of emergency that are established in this article, for a specific time, in all or part of the territory, and after advising Congress or the Permanent Commission:

a. State of emergency, in case of disturbance of the peace or internal order, of catastrophe or grave circumstances that affect the life of the Nation. In this eventuality, the President may suspend the constitutional guarantees relating to freedom of association and the inviolability of the home, freedom of association and of movement in the territory, that are established in paragraphs 7, 9 and 10 of article 2 and in paragraph 20(g) of the same article 2. Under no circumstances may the penalty of banishment be imposed. The term of the state of emergency may not exceed sixty days. The extension requires a new decree. During states of emergency the Armed Forces assume the control of internal order when decided by the President of the Republic.

114. It should be noted at the time of the detention of Gladys Espinoza a decree published on March 23, 1993, was in force¹⁸¹ in the Department of Lima and the Constitutional Province of Callao, which extended the state of emergency and suspended the constitutional guarantees established in paragraphs 7, 9, 10 and 20(g) of article 2, rights to the inviolability of the home, to movement, to association, to be arrested only by court order or *in flagrante delicto*, and to be brought before a judge within the maximum established time frame, as follows:

¹⁸⁰ Constitution of Peru of July 12, 1979, Available at: <http://www.congreso.gob.pe/comisiones/1999/simplificacion/const/1979.htm>

¹⁸¹ Cf. Supreme Decree No. 019-93-DE/CCPPAA, published on March 23, 1993, extending the state of emergency in the Department of Lima and the Constitutional Province of Callao (evidence file, folio 5995).

Article 1. To extend the state of emergency for sixty (60) days as of March 23, 1993, in the Department of Lima and the Constitutional Province of Callao.

Article 2. To this end, to suspend the guarantees established in paragraphs 7), 9), 10) and 20-g) of article 2 of the Peruvian Constitution.

Article 3. The Armed Forces shall assume control of internal order pursuant to the provisions of Law No. 24,150, expanded and amended by Legislative Decree No. 749.

115. Decrees 25,475 and 25,744 issued by the Emergency and National Reconstruction Government were also in force, establishing the norms applicable to the punishment, police investigation, preliminary proceedings and trial for crimes of terrorism and treason.¹⁸² As relevant to this case, these norms established that the DINCOTE was the entity responsible for preventing, investigating, proving, and combating the subversive activities of terrorism and treason, and that, in the investigation of such crimes, the Peruvian National Police must observe strictly the provisions of the relevant legal norms and, specifically, the following:

(i) Assume the police investigation of crimes at the national level, instructing its personnel to intervene without any restriction that might be established in its institutional regulations. In places where the Peruvian National Police does not have a post, the capture and detention of those implicated in these crimes shall correspond to the Armed Forces, who shall bring them immediately before the nearest police station for the corresponding investigations (Article 12.a of Decree 25,475).

(ii) In the case of crimes of terrorism, detain those presumably implicated for no more than 15 natural days, giving written notice to the Public Prosecution Service and the corresponding criminal judge within 24 hours (Article 12.c of Decree 25,475).

(iii) In the case of crimes of treason, the Peruvian National Police may execute the preventive detention of those presumably implicated for no more than 15 days, informing the sitting judicial authority of the exclusive military jurisdiction. To ensure the success of the investigation, this time frame may be extended for a similar period at the duly justified request of the Peruvian National Police (Article 12.a of Decree 25,744).

(iv) When circumstances requires it, and when the complexity of the investigation demands it, in order to ensure the clarification of the facts that are being investigated, the absolute incommunicado of the detainees may be ordered for the maximum time allowed by law, with the full knowledge of the Public Prosecution Service and the respective jurisdictional authority (Article 12.d of Decree 25,475).

Order, the transfer of the detainee or detainees when necessary in order to clarify the facts that are being investigated. This procedure shall also be followed as a safety measure when the detainee is revealed to be dangerous. In both cases with full knowledge of the Provincial Prosecutor and the respective criminal judge (Article 12.e of Decree 25,475).

B.1.2. The suspension of guarantees and its limits

116. The Commission and the representatives argued that it was not sufficient to allege “the generic existence of a state of emergency,” because the detention of Gladys Espinoza had not been compatible with the legal, exceptional, necessary and temporal requirements of a suspension of guarantees (*supra* para. 111).

117. Article 27(1) of the Convention refers to several situations. The measures adopted in any of these emergencies should be adapted to “the exigencies of the situation,” and it is clear that what is permissible in one of them, may not be permissible in the others. The lawfulness of the measures adopted to deal with each of the special situations referred to in Article 27(1) will thus depend on the nature, intensity, complexity and particular context of the emergency, as well as on the proportionality and reasonableness of the measures adopted to deal with it.¹⁸³ In this regard, although the Court has indicated that the State has the right and the obligation to ensure its security and to maintain public order, its powers are not unlimited, because it has the duty, at all times, to apply measures that are in keeping with the law and respectful of the

¹⁸² Cf. Decree Law No. 25,475 of May 5, 1992, articles 13 and 20 (evidence file, folios 6012 to 6015), and Decree Law No. 25,744 of September 21, 1992, articles 1 and 2 (evidence file, folios 6017 and 6018).

¹⁸³ Cf. *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 22, and *Case of J. v. Peru*, *supra*, para. 139.

fundamental rights of all those subject to its jurisdiction.¹⁸⁴ Consequently, Article 27(1)¹⁸⁵ of the Convention permits the suspension of the obligations that it establishes, “to the extent and for the period of time strictly required by the exigencies of the situation” in question. The measures adopted should not violate other international obligations of the State Party, and should “not involve any discrimination on grounds of race, color, sex, language, religion or social origin.”¹⁸⁶ This means that the prerogative must also be exercised and interpreted in keeping with the provisions of Article 29(a) of the Convention,¹⁸⁷ exceptionally and in restrictive terms. In addition, Article 27(3) establishes the duty of States to “immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.”

118. First, the Court notes that the body of evidence in this case reveals that in a note of July 12, 1993, the Permanent Representative of Peru before the Organization of American States (OAS) had forwarded only to the Executive Secretariat of the Inter-American Commission, “copy of the Supreme Decrees promulgated by the Government of Peru between January 19 and June 19 [1993].”¹⁸⁸ Consequently, the Court has no evidence to analyze whether the State complied with the said duty to advise that it had suspended guarantees, through the OAS Secretary General.

119. In addition, as already indicated, the detention of Gladys Espinoza took place in the context of a conflict between armed groups and agents of the Police and Military Forces, and the implementation in Peru of a decree, applicable to the geographical area, which extended the state of emergency that had been decreed and suspended certain constitutional guarantees, including the right to be arrested only by court order or *in flagrante delicto* (article 2, paragraph 20.g, *supra* paras. 112 and 114). The Court notes that the Convention permits the suspension of guarantees only in case of war, public danger, or other emergency that threatens the independence or security of a State Party,¹⁸⁹ and that the Convention does not prohibit suspending this right temporally while complying with certain safeguards.¹⁹⁰

¹⁸⁴ Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 174, and *Case of J. v. Peru, supra*, para. 124.

¹⁸⁵ Article 27 of the Convention on suspension of guarantees establishes that: “1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin. 2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights. 3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.”

¹⁸⁶ Cf. *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, *supra*, para. 19, and *Case of J. v. Peru, supra*, para. 139.

¹⁸⁷ The relevant part of Article 29 of the Convention establishes that: “[n]o provision of this Convention shall be interpreted as: (a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.”

¹⁸⁸ Nota 7-5-M/211, issued on July 12, 1993, by which the Permanent Representative of Peru before the OAS notified the Executive Secretariat of the Inter-American Commission of the issue of Supreme Decree No. 019-93-DE/CCFFAA of March 22, 1993 (evidence file, folio 5997).

¹⁸⁹ Cf. *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, *supra*, para. 19, and *Case of J. v. Peru, supra*, para. 138.

¹⁹⁰ Cf. *Case of J. v. Peru, supra*, para. 140, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 120.

120. Despite the foregoing, the Court has pointed out that the suspension of guarantees should not exceed what is strictly necessary and that any action by the public authorities that exceeds those limits, which must be precisely set out in the provisions that decree a state of emergency, is unlawful.¹⁹¹ Thus, the limitations imposed on the actions taken by the State respond to the generic need that, in any state of emergency, appropriate measures subsist to control the measures ordered, so as to ensure that they are reasonably adapted to the needs of the situation and do not exceed the strict limits imposed by, or derived from, the Convention.¹⁹² Indeed, the suspension of guarantees constitutes an exceptional situation, under which it is lawful for the Government to apply certain measures that restrict rights and freedoms, which, under normal conditions, are prohibited or subject to more rigorous requirements. This does not mean, however, that the suspension of guarantees entails the temporary suspension of the rule of law or that it authorizes the Government to act in a way that is contrary to the lawfulness that it must always observe. When guarantees have been suspended, some of the legal limits to the actions of the public authorities may differ from those in force under normal conditions, but should not be considered inexistent, nor should it be understood, consequently, that the Government is invested with absolute powers that exceed the conditions under which this exceptional legality is authorized.¹⁹³

121. The case file reveals that, at the time of Gladys Espinoza's arrest, the state of emergency had been extended which suspended, among other matters, the right to be arrested only by court order or *in flagrante delicto* (*supra* para. 119). Also, the procedural norms applicable to the police investigation, the preliminary proceedings, and the trial of crimes of terrorism and treason decreed on May 5 and September 21, 1992, were in force (*supra* para. 115). On this point, the representatives and the Commission did not argue that, at the time of the facts of this case, the situation in Peru did not require the suspension of the said rights. Nevertheless, the Court observes that, although the right to be detained only by court order or *in flagrante delicto* was suspended, the said procedural norms allowed a person presumably implicated in the crime of terrorism to be kept in preventive detention for no more than 15 calendar days, which could be extended for a similar period, without the person being brought before a judicial authority (*supra* para. 112). Also, "the remedy of *habeas corpus* [was inadmissible] in the case of detainees implicated in or being prosecuted for the crime of terrorism covered by Decree Law No. 25,475." The Court considers that the possible effects on Gladys Espinoza, owing to the application of the said norms, must be analyzed in light of the guarantees established in Article 7(3), 7(5) and 7(6) of the Convention, and will therefore analyze them in the following subsections.

B.1.3. Absence of an appropriate record of the detention

122. The Commission and the representatives argued the absence of an appropriate record of the detention of Gladys Espinoza (*supra* paras. 103.b and 104.a). The Court has considered that any detention, regardless of the reason for it or its duration, must be duly recorded in the pertinent document, clearly indicating, at least, the reasons for the arrest, who made it, the time of the arrest, and the time of the release, as well as a record that the competent judge was advised, in order to protect against any unlawful or arbitrary interference with physical liberty.¹⁹⁴

¹⁹¹ Cf. *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), *supra*, para. 38, and *Case of J. v. Peru*, *supra*, para. 139.

¹⁹² Cf. *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 21, and *Case of J. v. Peru*, *supra*, para. 139.

¹⁹³ Cf. *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), *supra*, para. 24, and *Case of J. v. Peru*, *supra*, para. 137.

¹⁹⁴ Cf. *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 76, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 347.

The Court has established that this obligation also exists in police detention centers.¹⁹⁵ The Court notes that this obligation is included in a domestic norm that was not suspended (article 2, paragraph 20(i), *supra* para. 112).

123. The body of evidence reveals that the entry of Gladys Carol Espinoza Gonzáles is recorded on page 90 of the Detainee Register of the Peruvian National Police attached to the Ministry of the Interior, covering the period from August 27, 1992, to December 9, 1996. This document shows that her entry was only registered at 1.10 a.m. on April 19, 1993.¹⁹⁶ In other words, although the arrest was made on April 17, 1993, the entry was only registered two days later, and without the reasons for the arrest being clearly indicated, or who made the arrest, or the time of the arrest. Therefore, the Court finds that the failure to record the detention of Gladys Carol Espinoza Gonzáles appropriately constitutes a violation of the right recognized in Article 7(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Carol Espinoza Gonzáles.

B.2. Article 7(4) of the American Convention (right to be informed of the reasons for the detention), in relation to Article 1(1) of this instrument

124. The Commission and the representatives argued that Gladys Espinoza was not informed promptly of the reasons for her arrest and detention or the charge against her (*supra* paras. 103.b and 104.b). Article 7(4) of the American Convention refers to two guarantees for the person who is being arrested: (i) oral or written information on the reasons for the detention, and (ii) notification, which must be in writing, of the charges.¹⁹⁷ The information on the “reasons” for the detention must be provided “promptly,” and this constitutes a mechanism to avoid unlawful and arbitrary detentions from the very moment of the deprivation of liberty and, also, ensures the individual’s right of defense.¹⁹⁸ The Court has indicated that the agent who makes the arrest must advise the person detained, in a simple language free of technicalities, of the essential facts and legal grounds on which the arrest is based, and that Article 7(4) of the Convention is not satisfied by merely a mention of the legal grounds.¹⁹⁹ If the person is not informed appropriately of the reasons for the detention, including the facts and their legal grounds, they do not know the charges against which they must defend themselves and, at the same time, judicial control becomes illusory.²⁰⁰ The Court notes that this obligation is included in a domestic norm that was not suspended (article 2, paragraph 20(h), *supra* para. 112).

125. Gladys Espinoza was arrested on April 17, 1993, and there is no evidence to prove that she was informed, orally or in writing, of the reasons for the detention in keeping with the above-mentioned standards (*supra* para. 124). The only evidence that the Court has is the preliminary statement of June 5, 1993, given at the DINCOTE headquarters and before the Special Military Judge, in which Gladys Espinoza explained that:

¹⁹⁵ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 132, and *Case of J. v. Peru, supra*, para. 152.

¹⁹⁶ Cf. Note No. 4302 -2013-DIRCOTE/SG.2 of the Peruvian National Police to the Third Criminal Prosecutor of November 17, 2013 (evidence file, folios 11941 to 11943).

¹⁹⁷ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 106, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 369.

¹⁹⁸ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 82, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 165.

¹⁹⁹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 71, and *Case of J. v. Peru, supra*, para. 149.

²⁰⁰ Cf. *Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 109, and *Case of J. v. Peru, supra*, para. 149.

[She] was detained on April 17 this year at around 4 p.m., when riding on a motorcycle with Rafael Salgado Castillo, at an intersection on Avenida Brazil, and [she did] not know why [she] was captured, but found out the following day during the police interrogation, when [she] was asked for an alias that, at this time, [she does] not remember; it appears that they were looking for a man who had been abducted and accused Rafael Salgado, [and she explained that] during the investigation they told [her] in this regard that a Japanese man had been abducted; they told [her] that she was implicated in this.²⁰¹

126. In this regard, the Court understands that it was during an interrogation and in the context of the police investigation that Gladys Espinoza became aware of the reasons for her detention, although it is not certain of the specific moment or the circumstances in which this occurred. Therefore, the State failed to comply with the treaty-based obligation to provide oral or written information on the reasons for the arrest.

127. Furthermore, the evidence reveals that the day after her arrest; that is, on April 18, 1993, Gladys Espinoza signed a form identified as "notification of arrest" which merely indicated that: "You are hereby informed that you are detained in this Police Station in order to clarify a crime of terrorism."²⁰² In this regard, it is on record that, on May 7, 1993, and in the presence of the Investigating Agent in one of the DINCOTE offices, Gladys Espinoza stated: "yes, I have been informed in writing of the reasons for my detention."²⁰³ In this regard, the Court has indicated that, when the violation of Article 7(4) of the Convention is alleged, it is necessary to analyze the facts under domestic law as well as under the provisions of the Convention.²⁰⁴ Thus, although, in accordance with the domestic norm that was not suspended (article 2, paragraph 20(h), *supra* para. 112) and the standards of the Convention (*supra* para. 124), Gladys Espinoza should have been notified promptly and in writing of the reasons for her detention, including the charges, the facts and their legal grounds, in a simple language free of technicalities, this did not happen, because it was only on the day following her arrest and detention that she was notified merely that she was being detained in order to clarify a crime of terrorism.

128. In view of the fact that she was not informed of the reasons for the detention or notified of the charges against her, pursuant to the provisions of the Convention, the Court finds that the State violated Article 7(4) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Carol Espinoza Gonzáles.

B.3. Article 7(5) and 7(3) of the American Convention (right to judicial control of the detention and right not to be deprived of liberty arbitrarily), in relation to Article 1(1) of this instrument

129. The Commission and the representatives affirmed that Gladys Espinoza had remained incommunicado for several days and was brought before a judge of the military jurisdiction 80 days after her arrest (*supra* paras. 103.c and 104.c). The initial phrase of Article 7(5) of the Convention establishes that the detention of a person must be submitted to judicial review promptly. The Court has indicated that in order to meet the requirement of Article 7(5) "to be brought promptly before a judge or other officer authorized by law to exercise judicial power," the person detained must appear in person before the competent authority, who must hear the detainee personally and assess all the explanations he or she provides, in order to decide

²⁰¹ Preliminary statement of Gladys Espinoza before the military judge on June 5, 1993 (evidence file, folios 9401 and 9402).

²⁰² Notification of detention dated April 18, 1993 (evidence file, folio 5803).

²⁰³ Statement by Gladys Espinoza of May 7, 1993 (evidence file, folios 5804 to 5807).

²⁰⁴ *Cf. Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, para. 60, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 369.

whether to release him or her or to maintain the deprivation of liberty.²⁰⁵ Prompt judicial control is a measure aimed at avoiding arbitrary or unlawful detentions, taking into account that, under the rule of law, it is for the judge to ensure the rights of the detainee, to authorize the adoption of precautionary or coercive measures when strictly necessary and, in general, to ensure that the detainee is treated in a way that is consequent with the presumption of innocence.²⁰⁶ The prompt judicial review of the detention is especially relevant when applied to captures made without a court order.²⁰⁷ Even though this right was suspended (article 2, paragraph 20(g), *supra* para. 112), this suspension cannot be considered absolute and, therefore, the Court must examine the proportionality of what happened in this case.²⁰⁸

130. It is an undisputed fact that, in the context of the fight against terrorism, the State issued Decree Laws No. 25,475 and No. 25,744 of May 5 and September 27, 1992, in relation to the crimes of terrorism and treason. Article 12(c) of the former established that a person presumably implicated in the crime of terrorism could be kept in preventive detention for no more than 15 calendar days, with the obligation of informing the Public Prosecution Service and the criminal judge within 24 hours. According to article 2(a) of Decree Law No. 25,744, this 15-day period could be extended for a similar term without the person being brought before a judge (*supra* para. 115). On previous occasions, the Court has indicated that this type of provisions is contrary to the Convention,²⁰⁹ in the sense that “[a]nyone detained or retained must be brought promptly before a judge or other officer authorized by law to exercise judicial power.”

131. Regardless of whether *in flagrante delicto* existed in this case (*supra* para. 108), the Court notes that the evidence provided in this case is not consistent as regards the time during which the detention of Gladys Espinoza lacked judicial control; in other words, until June 24, 1993, as argued by the Commission and the representatives, or until May 17, 1993, as indicated by the State (*supra* paras. 103.c, 104.c and 105.c). On the one hand, Gladys Espinoza has stated that her first appearance occurred on June 24, 1993, when she was brought before the Special Military Court;²¹⁰ on the other hand, during the proceedings instituted against Gladys Espinoza for the crime of treason there is no reliable evidence of when the State complied with the obligation of the judicial control of the detention. In this regard, it should be considered: first, that in a note of the DINCOTE of May 17, 1993, namely, 30 days after the detention of Gladys Espinoza, the Military Prosecutor filed a complaint before the Investigating Judge of the Court Martial for the crime of treason against her (*supra* para. 76). This note indicated that she was “made available as a detainee.” However, the Court understands that making a person available is not necessarily the same as bringing a person before the competent authority in keeping with the above-mentioned standards (*supra* para. 130). Second, although on June 1, 1993, the Military Investigating Judge of the case decided to open the pre-trial proceedings for the crime of treason and issued a detention order, there is no evidence that, on that occasion, Gladys Espinoza was brought before a judge (*supra* para. 77). Third, on June 5, 1993, Gladys Espinoza gave a preliminary statement before the Special Military Judge and then, on June 25,

²⁰⁵ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 118, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 109.

²⁰⁶ Cf. *Case of Bulacio v. Argentina, supra*, para. 129, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 371.

²⁰⁷ Cf. *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 88, and *Case of J. v. Peru, supra*, para. 143.

²⁰⁸ Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, paras. 109 to 111, and *Case of J. v. Peru, supra*, para. 143.

²⁰⁹ Cf. *Case of Castillo Petruzzi et al. v. Peru, supra*, para. 110; *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 73, and *Case of J. v. Peru, supra*, para. 144.

²¹⁰ Cf. Statement made by Gladys Espinoza to representatives of APRODEH and CEJIL in the Chorrillos Women's Prison on September 22, 2009 (evidence file, folios 1459 and 1460).

1993, the judgment delivered that day by the Military Investigating Judge was read in the DINCOTE offices in Ms. Espinoza's presence (*supra* paras. 77 and 78).

132. In sum, the Court has insufficient evidence to establish how long Gladys Espinoza's detention lasted without judicial control. Therefore, for the purposes of this judgment, the Court will consider that Gladys Espinoza remained at least 30 days without being brought before a judge. In the *cases of Castillo Petruzzi et al. and Cantoral Benavides*, the Court found that the laws of Peru, according to which a person presumably implicated in the crime of treason could be kept in preventive detention for a period of 15 days, extendible for a similar term, without being brought before a judge, was contrary to Article 7(5) of the Convention, and considered that the period of approximately 36 days that elapsed between the arrest and the date on which the victims were brought before the courts was excessive and contrary to the Convention.²¹¹ In addition, in the *Case of J. v. Peru*, the Court considered that, even in a context of suspension of guarantees, it was not proportionate that the victim, who had been arrested without a court order, remained detained at least 15 days without any form of judicial control, because she was presumably implicated in the crime of terrorism.²¹²

133. In view of the fact that, in this case, it has been proved that Gladys Espinoza, who was accused of being implicated in the crime of treason and who was subjected to the norms in force at the time of the facts (*supra* para. 115), was not brought before a judge for at least 30 days, it is appropriate to apply the conclusions reached in the cases indicated in the preceding paragraph. Moreover, although neither of the parties questioned whether the supervisory judge offered the necessary guarantees of competence, independence and impartiality, the Court has indicated that the fact that the victim was brought before a military criminal judge, does not meet the requirements of Article 7(5) of the Convention.²¹³ Consequently, the Court finds that this detention, without judicial control pursuant to the standards of the Convention, was contrary to Article 7(5) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Carol Espinoza Gonzáles.

134. In other cases, the Court has indicated that prolonging detention without the person being brought before the competent authority makes it arbitrary.²¹⁴ Consequently, the Court considers that once the period of detention had been extended, given the failure to bring the detainee before a supervisory judge promptly and, subsequently, owing to the continuation of the deprivation of liberty by order of the military judge, it became an arbitrary detention. Therefore, the Court declares the violation of Article 7(3), in relation to Article 1(1) of the American Convention, to the detriment of Gladys Carol Espinoza Gonzáles.

B.4. Article 7(6) of the American Convention (right to recourse to a competent judge or court for a decision on the lawfulness of the arrest or detention), in relation to Article 1(1) of this instrument

135. The Commission and the representatives argued the violation of Article 7(6) of the Convention to the detriment of Gladys Espinoza because it was prohibited to present an application for *habeas corpus* in favor of individuals involved in proceedings for terrorism or treason (*supra* paras. 103.c and 104.c). Article 7(6) of the Convention protects the right of anyone deprived of liberty to recourse to a competent judge or court for a decision on the

²¹¹ Cf. *Cases of Castillo Petruzzi et al. v. Peru*, *supra*, paras. 110 and 111, and *Cantoral Benavides v. Peru*, *supra*, para. 73.

²¹² Cf. *Case of J. v. Peru*, *supra*, para. 144.

²¹³ Cf. *Case of Cantoral Benavides v. Peru*, *supra*, para. 75.

²¹⁴ Cf. *Case of Cabrera García and Montiel Flores v. Mexico*, *supra*, para. 102, and *Case of J. v. Peru*, *supra*, para. 144.

lawfulness of the arrest or detention, so that the latter can decide, promptly, on the lawfulness of the deprivation of liberty and, if appropriate, order their release.²¹⁵ The Court has emphasized that the authority who must decide on the lawfulness of the arrest or detention must be a judge or a court. The Convention is thereby ensuring that the control of the deprivation of liberty must be judicial.²¹⁶ In addition, it has stated that this control "must not only exist formally by law, but must be effective; in other words, comply with the purpose of obtaining a prompt decision on the lawfulness of the arrest or detention."²¹⁷

136. As the State has acknowledged, following the entry into force of Decree Law 25,659 in August 1992, "applications for *habeas corpus* were inadmissible for detainees accused of, or being prosecuted for, the crime of terrorism established in Decree Law No. 25,475."²¹⁸ The Court notes that the right to contest the lawfulness of the detention before a judge must be guaranteed for the whole time that an individual is deprived of liberty. Gladys Carol Espinoza Gonzáles was unable to benefit from the remedy of *habeas corpus* if she had wished, because the said legal provision contrary to the Convention was in force throughout her detention. Therefore, as it has in other cases,²¹⁹ the Court finds that, following the entry into force of Decree Law No. 25,659, the State violated Article 7(6) of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of Gladys Carol Espinoza Gonzáles.

B.5. Conclusion

137. Based on the above, the Court finds that the State is internationally responsible for the violation, to the detriment of Gladys Carol Espinoza Gonzáles, of the following paragraphs of Article 7, in relation to Article 1(1) of the American Convention: (a) Article 7(1) and 7(2) of the Convention, owing to the failure to record the detention of Gladys Carol Espinoza Gonzáles appropriately; (b) Article 7(1) and 7(4) of the Convention, because she was not advised of the reasons for her arrest and detention or notified of the charges against her in accordance with the standards established in the Convention; (c) Article 7(1), 7(3) and 7(5) of the Convention, owing to the absence of judicial control of the detention for at least 30 days, which meant that the detention became arbitrary, and (d) Article 7(1) and 7(6) of the Convention, in relation to Article 2 thereof, owing to the impossibility of filing an application for *habeas corpus* of any other action for protection while Decree Law 25,659 was in force.

VIII.2. RIGHT TO HUMANE TREATMENT AND TO PRIVACY, AND OBLIGATION TO PREVENT AND PUNISH TORTURE

138. Both the Commission and the representatives of Gladys Espinoza argued violations of the right to humane treatment, as well as failure to comply with the obligation to prevent and punish torture, owing to: (i) the alleged acts of torture, ill-treatment and sexual violence presumably perpetrated against her at the time of her arrest and during her detention on the premises of the DIVISE and the DINCOTE in April and May 1993; (ii) the regime for execution of the sentence and the overall detention conditions to which she was subject in the Yanamayo Prison, and (iii) the alleged torture of which she was a victim on August 5, 1999, in that prison.

²¹⁵ Cf. *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), *supra*, para. 33, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 375.

²¹⁶ Cf. *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*, *supra*, para. 128, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 376.

²¹⁷ Cf. *Case of Acosta Calderón v. Ecuador*, *supra*, para. 97, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 376.

²¹⁸ Cf. Decree Law No. 25,659 of August 7, 1992 (evidence file, folio 1971).

²¹⁹ Cf. *mutatis mutandis*, *Case of Loayza Tamayo v. Peru. Merits*, *supra*, paras. 52, 54 and 55; *Case of Castillo Petruzzi et al. v. Peru*, *supra*, paras. 182 to 188; *Case of Cantoral Benavides v. Peru*, *supra*, paras. 166 to 170; *Case of García Asto and Ramírez Rojas v. Peru*, *supra*, paras. 114 and 115, and *Case of J. Vs Peru*, *supra*, para. 171.

Based on the acts of sexual violence that Ms. Espinoza allegedly suffered on the premises of the DIVISE and the DINCOTE, they also argued the violation of the right to privacy (honor and dignity). In addition, the representatives argued that Article 7 of the Convention of Belém do Pará had been violated to the detriment of Gladys Espinoza. The State, for its part, contested the facts relating to Ms. Espinoza's detention and affirmed that all the facts mentioned were being investigated.

139. In order to analyze the factual and legal disputes described by the Commission and the parties, first, the Court will recall the general standards set out in its case law with regard to humane treatment and the prohibition of using torture against those who are in the State's custody. Subsequently, the Court will refer to the arguments that have been submitted in the order indicated in the preceding paragraph, taking into account the context of gender-based violence and the torture of women who were being investigated for supposedly committing acts of terrorism, that has already been established (*supra* paras. 60 to 67).

A) General standards relating to personal integrity and the torture of detainees

140. Article 5(1) of the Convention recognizes, in general terms, the right to personal integrity, of both a physical and mental, and also a moral nature. Meanwhile, Article 5(2) establishes, specifically, the absolute prohibition to subject someone to torture or cruel, inhuman or degrading treatment or punishment, as well as the right of all persons deprived of their liberty to be treated with respect for the inherent dignity of the human person.²²⁰ The Court understands that any violation of Article 5(2) of the American Convention necessarily entails the violation of Article 5(1) thereof.²²¹

141. The Court has established that torture and cruel, inhuman or degrading treatment or punishment are strictly prohibited by international human rights law.²²² The prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable, even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, states of emergency, or internal unrest or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes.²²³ Nowadays, this prohibition is part of international *jus cogens*.²²⁴ Both universal²²⁵ and regional treaties²²⁶ establish this prohibition and the non-derogable right not to

²²⁰ Cf. *Case of Yvon Neptune v. Haiti*, *supra*, para. 129, and *Case of J. v. Peru*, *supra*, para. 303. The principles contained in Article 5(2) of the Convention are also included in Articles 7 and 10(1) of the International Covenant on Civil and Political Rights, which establish, respectively, that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," and that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The first and sixth principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment establish the same, respectively. For its part, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes that: "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment." Cf. International Covenant on Civil and Political Rights, Articles 7 and 10(1); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 1 and 6, and European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3.

²²¹ Cf. *Case of Yvon Neptune v. Haiti*, *supra*, para. 129, and *Case of J. v. Peru*, *supra*, para. 303.

²²² Cf. *Case of Cantoral Benavides v. Peru. Merits*, *supra*, para. 95, and *Case of J. v. Peru*, *supra*, para. 304.

²²³ Cf. *Case of Lori Berenson Mejía v. Peru*, *supra*, para. 100, and *Case of J. v. Peru*, *supra*, para. 304.

²²⁴ Cf. *Case of Caesar v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of March 11, 2005. Series C No. 123, para. 100, and *Case of J. v. Peru*, *supra*, para. 304.

²²⁵ Cf. International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 10.

be subjected to any form of torture. Also, numerous international instruments recognize this right and reiterate the same prohibition,²²⁷ including international humanitarian law.²²⁸

142. In addition, the Court has indicated that the violation of the right to physical and mental integrity has different connotations of degree, and ranges from torture to other kinds of abuse or cruel, inhuman or degrading treatment, the physical and mental aftereffects of which vary in intensity in accordance with factors that are endogenous and exogenous to the individual (such as, duration of the treatment, age, sex, health, context, and vulnerability) that must be analyzed in each specific situation.²²⁹ In other words, the personal characteristics of a presumed victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether their personal integrity was violated, because these characteristics may change the individual's perception of the reality and, consequently, increase the suffering and the feeling of humiliation when they are subjected to certain treatments.²³⁰

143. In order to define what should be understood as "torture" in light of Article 5(2) of the American Convention, the Court's case law establishes that an act constitutes torture when the ill-treatment: (i) is intentional; (ii) causes severe physical or mental suffering, and (iii) is committed with an objective or purpose.²³¹

B) The detention of Gladys Espinoza and the events that took place on the premises of the DIVISE and DINCOTE in April and May 1993

B.1. Arguments of the Commission and of the parties

144. The Commission argued that, when she was arrested on April 17, 1993, Gladys Espinoza was subjected by police officials to blows, abuse and threats that continued during her transfer to the DIVISE offices, and persisted throughout the time she remained there.²³² According to the Commission, on April 19, 1993, she was transferred to the DINCOTE headquarters, where she was initially kept incommunicado, without being allowed to see her family members or a lawyer, and she continued to be beaten and threatened. In addition, the Commission affirmed "that the acts of violence against Gladys Espinoza were committed deliberately, in order to humiliate her, to reduce her physical and psychological resistance, and to obtain information on her presumed

²²⁶ Cf. Inter-American Convention to Prevent and Punish Torture, articles 1 and 5; African Charter on Human and Peoples' Rights, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Convention of Belem do Pará, Article 4, and European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3.

²²⁷ Cf. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principles 1 and 6; Code of conduct for law enforcement officials, article 5; 1974 Declaration on the Protection of Women and Children in Emergency or Armed Conflict, article 4, and Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism, Guideline IV.

²²⁸ Cf. *inter alia*, Article 3 common to the four 1949 Geneva Conventions; Geneva Convention relative to the Treatment of Prisoners of War (Convention III), Articles 49, 52, 87, 89 and 97; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV), Articles 40, 51, 95, 96, 100 and 119; Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of the Victims of International Armed Conflicts (Protocol I), Article 75.2.a)ii), and Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of the Victims of Non-International Armed Conflicts (Protocol II), Article 4.2.a). See also, *Case of Fleury et al. v. Haiti*, *supra*, para. 71, and *Case of J. vs. Peru*, *supra*, para. 304.

²²⁹ Cf. *Case of Loayza Tamayo v. Peru. Merits*, *supra*, para. 57, and *Case of J. v. Peru*, *supra*, para. 362.

²³⁰ Cf. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 127, and *Case of J. v. Peru*, *supra*, para. 362.

²³¹ Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of J. vs. Peru*, *supra*, para. 364.

²³² The Commission affirmed that, while she was detained in the DIVISE and the DINCOTE in April and May 1993, the presumed victim was subjected to interrogations during which she was blindfolded, suspended by her arms, submerged in a tank with fetid water, and beaten on sensitive parts of her body, such as her head, face and back and the soles of her feet.

participation in unlawful activities.”²³³ These elements were sufficient to conclude that the presumed acts perpetrated by DIVISE and DINCOTE agents in April and May 1993 constituted torture. The Commission also argued that, while on the premises of the DIVISE and of the DINCOTE, Gladys Espinoza was a victim of forced nudity, ill-treatment, sexual touching, anal penetration with a wooden object, and vaginal penetration with her assailants’ hands, and was also forced to perform oral sex on one of them.²³⁴ Also, according to the Commission, Peru failed to order a criminal investigation to clarify these events and to punish those responsible. Furthermore, in its final written observations, the Commission indicated that the State had not adopted a consistent position during the proceedings before the Court because, in its answering brief, Peru had denied that such acts had occurred, while during the public hearing, it had merely affirmed that an investigation had been opened into these facts. Consequently, Peru failed to comply with the obligation to respect and to ensure the rights recognized in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument. It also considered that the State had violated Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture (ICPPT) and, owing to the alleged acts of sexual violence, Article 11(1) and 11(2) of the American Convention, all to the detriment of Gladys Espinoza.

145. The representatives argued that the detention of Gladys Espinoza was made without having followed any judicial procedure whatsoever, which constituted an initial violation of her physical integrity. They also affirmed that, at the time of her arrest and during her transfer to the DIVISE headquarters, the presumed victim was beaten, threatened and intimidated, all of which violated her personal integrity. In addition, they argued that, while Ms. Espinoza was on the premises of the DIVISE and the DINCOTE, she was the victim of different kinds of torture and cruel, inhuman and degrading treatment,²³⁵ as well as various forms of sexual violence perpetrated by State agents.²³⁶ In this regard, they affirmed that the State had systematically

²³³ According to the Commission, the continuing acts of violence had caused her to suffer from suffocation, fainting, convulsions, loss of consciousness and inability to feel pain, temporal and spatial disorientation, and such anxiety that she begged her assailants to kill her, and inflicted intense suffering on the victim, who subsequently developed a range of physical and mental afflictions.

²³⁴ During the public hearing, and in its final written observations, the Commission argued that, in this case, the evidence required in order to consider that the acts of sexual violence were proved had been verified, because: (i) the victim’s testimony has been consistent over time in the numerous statements she had made; (ii) the medical certificates issued weeks and months after her arrest, despite their defects, reveal the physical effects on the victim and show how her physical condition was worsening; (iii) the testimony of Lily Cuba and Gladys Carol Espinoza’s brother was consistent with the physical and mental condition of the presumed victim; (iv) the expert appraisal made by Dr. Carmen Wurst de Landázuri, who diagnosed the victim with post-traumatic stress syndrome and major depression, reveals a condition compatible with victims of sexual violence; (v) the context of the sexual violence that took place during the fight against terrorism; (vi) to date the criminal proceedings instituted for the acts of torture and sexual violence against the victim are at an initial stage, and (vii) all the elements that constitute torture are present in the acts of violence suffered by Ms. Espinoza, because these acts were committed deliberately by State agents, in order to humiliate her, punish her, reduce her physical resistance, and obtain information on her supposed links to the crimes of which she was accused, acts that had permanent physical and psychological effects on the presumed victim.

²³⁵ They indicated that, this ill-treatment included forced nudity, blows, insults and abuse, blows to the soles of the feet, hanging her by the hands, and other treatment, and being subjected to the technique of asphyxia in sewage water, known as the “submarine.”

²³⁶ The representatives stated that Gladys Espinoza was a victim of forced nudity, she suffered anal violation with a wooden object, vaginal penetration with the agents’ hands, and had been forced to perform oral sex by one of the agents who took part in the torture. In addition, she had been obliged to remain undressed, covered by a sheet, while they hit her, insulted her, interrogated her, fondled her hips and vulva, and pulled on her pubic hair and breasts. According to the representatives, this was corroborated by four medical reports resulting from the five examinations that she underwent during her detention, as well as by her statements and those of other witnesses, and the expert psychological appraisal of Ana Deutsch. They argued that the presumed acts of torture suffered by Ms. Espinoza were fully consistent with the *modus operandi* of the practice of torture that existed in Peru at the time of the facts, and that this should be analyzed also taking into consideration that Rafael Salgado, detained together with Ms. Espinoza, presumably died because of the torture he was subjected to in the DIVISE and that his autopsy revealed that he had been a victim of similar acts to those suffered by the presumed victim. They also indicated that, in this case, there were several reasons for the presumed torture, stressing that during the torture sessions, the State agents asked the presumed victim for information on names, places and individuals related to the abduction of the businessman Antonio

denied the occurrence of torture and never opened any kind of investigation in this regard, even though it bore the burden of proving what happened, because Ms. Espinoza was in the State's custody. Furthermore, they argued that the presumed incommunicado of Ms. Espinoza contributed to placing her in a situation of special vulnerability in relation to the agents who were assaulting her, constituting a form of cruel, inhuman or degrading treatment. Based on the foregoing, they asserted that the State had failed to comply with its obligation to respect and to ensure the right to humane treatment of Gladys Espinoza, in violation of Article 5 of the Convention, in relation to Article 1(1) of this instrument, and of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and 7 of the Convention of Belém do Pará.

146. The representatives also argued that, in this case, the State had violated the right to privacy of Gladys Espinoza "by committing a brutal act against her free exercise of her sexual autonomy and privacy." Thus, they argued that the State had violated Article 11(1) of the Convention, as well as Article 7 of the Convention of Belém do Pará, to the detriment of Gladys Carol Espinoza González.

147. The State indicated, first, that according to Police Attestation No. 108-D3-DINCOTE of May 15, 1993, on the day Gladys Espinoza and Rafael Salgado were arrested, the agents "proceeded to follow them, [...] and the vehicle in which the police agents were driving finally collided with [their] motorcycle [...], and [they were captured] following their strong resistance, with the use of the respective firearms." The State also indicated that, a criminal investigation was being conducted by the Public Prosecution Service in order to clarify the facts and to punish those presumably responsible for the supposed acts of torture and sexual violence that took place at the DIVISE and DINCOTE headquarters in April and May 1993. In this regard, in its final written arguments, it affirmed that "it is not a matter of this party failing to deny or contest that, from the time of her arrest, Gladys Carol Espinoza González was presumably subjected to numerous acts of ill-treatment, torture and rape. What the State has indicated [...] is that the [Public Prosecution Service] has been commissioned to investigate any acts that could constitute an offense [...] in order to determine whether these acts occurred and to identify those presumed to be responsible for them." In addition, Peru asserted that, "merely because the Final Report of the CVR says that, in certain agencies and areas of the country, or at certain periods of time, sexual abuse occurred, it cannot be concluded that this happened every time someone was detained for terrorism." The State did not refer to the arguments related to the incommunicado suffered by Ms. Espinoza González.

B.2. Considerations of the Court

148. To analyze the arguments of the Commission and of the parties, the Court will proceed, first, to establish the facts that occurred at the time of Gladys Espinoza's arrest and while she was at the DIVISE and the DINCOTE headquarters. To this end, the Court will take into account: (i) the Final Report of the "CVR"; (ii) the statements made by Gladys Espinoza between 1993 and 2014; (iii) the reports prepared by the DIVISE and the DINCOTE in 1993 on the circumstances in which Gladys Espinoza and Rafael Salgado were arrested; (iv) the medical certificates and/or psychological appraisals issued between 1993 and 2014, mostly by the State's forensic doctors, as well as the expert appraisal provided to the Court by the psychologist Ana Deutsch; (v) the testimony of Lily Cuba and Manuel Espinoza González before the Inter-American Court, and (vi) the alleged failure to investigate the said facts. All the above, taking into consideration the context in which the facts occurred, which has already been established by the Court (*supra* paras. 51 to 68). Once it has established the facts that occurred,

Furukawa, and that they also took her out into the street so that she would provide information on places related to MRTA activities. They also argued that, despite the time that has passed, Ms. Espinoza has continued to experience physical and psychological effects as a result of the presumed aggression she suffered.

the Court will proceed to determine their legal definition and, where appropriate, to determine whether the State violated the rights recognized in the American Convention and the ICPPT.

149. In this regard, the Court finds it relevant to recall the standards it has used for assessing the evidence in this type of case. Thus, regarding the statements made by presumed victims, the Court has considered that they usually abstain from denouncing acts or torture or ill-treatment out of fear, especially if they are detained in the place where these occurred,²³⁷ and that it is not reasonable to require the victims of torture to describe all the presumed ill-treatment they have suffered each time they make a statement.

150. In cases of alleged sexual violence, the Court has indicated that, generally, sexual assaults are characterized by occurring in the absence of anyone other than the victim and the assailant or assailants. Given the nature of this type of violence, the existence of graphic or documentary evidence cannot be expected and, consequently, the victim's statement constitutes fundamental proof of the fact.²³⁸ Also, when examining such statements, it must be borne in mind that sexual abuse corresponds to a type of offense that the victim does not usually report,²³⁹ owing to the stigma that frequently results from this type of complaint. The Court has also taken into account that the statements made by victims of sexual violence relate to an occasion that was very traumatic for them, and its impact may lead to a certain lack of precision when remembering it.²⁴⁰ Therefore, the Court has noted that the lack of precision in statements relating to sexual violence, or the mention of some of the alleged facts in only some of them, does not mean that such statements are false or that the facts recounted are untrue.²⁴¹

151. In addition, the Court recalls that the evidence obtained by medical examinations plays a crucial role in investigations involving detainees, and in cases in which they allege ill-treatment.²⁴² Thus, allegations of ill-treatment in police custody are extremely difficult to substantiate by the victim, if he or she was isolated from the external world, without access to doctors, lawyers, family or friends who could provide support and gather the necessary evidence.²⁴³ Therefore, the judicial authorities have the duty to ensure the rights of detainees, which entails obtaining and preserving any evidence that may substantiate the acts of torture, including medical examinations.²⁴⁴

152. It is also important to underline that, in cases in which supposed torture or ill-treatment is alleged, the time that passes before the corresponding medical appraisals is significant for the

²³⁷ Cf. *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 92, and *Case of J. v. Peru, supra*, para. 337.

²³⁸ Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 100, and *Case of J. v. Peru, supra*, para. 323.

²³⁹ Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 95, and *Case of J. v. Peru, supra*, para. 323.

²⁴⁰ Cf. *Case of J. v. Peru, supra*, para. 325. Similarly, see *Case of Fernández Ortega et al. v. Mexico, supra*, para. 105, and *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 91.

²⁴¹ Cf. *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 113, and *Case of J. v. Peru, supra*, para. 325.

²⁴² Cf. ECHR, *Korobov v. Ukraine*, No. 39598/03, Judgment of 21 July 2011, para. 69, *Salmanoğlu and Polattaş v. Turkey*, No. 15828/03, Judgment of 7 March 2009, para. 79, and *Case of J. v. Peru, supra*, para. 333.

²⁴³ Cf. *Case of J. v. Peru, supra*, para. 333. Also, ECHR, *Case of Aksoy v. Turkey*, No. 21987/93, Judgment of 18 December 1996, para. 97, and *Case of Eldar Imanov and Azhdar Imanov v. Russia*, No. 6887/02, Judgment of 16 December 2010, para. 113.

²⁴⁴ Cf. *Case of Bayarri v. Argentina, supra*, para. 92, and *Case of J. v. Peru, supra*, para. 333. See also, Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, New York and Geneva, 2001, para. 77, and *Case of Eldar Imanov and Azhdar Imanov v. Russia*, No. 6887/02, Judgment of 16 December 2010, para. 113.

reliable determination of the existence of the harm, especially when there are no witnesses other than the perpetrators and the victims themselves and, consequently, probative elements may be very limited. This reveals that, for an investigation into acts or torture to be effective, this must be conducted promptly.²⁴⁵ Therefore, failure to perform a medical examination of a person who is in the State's custody, or performing this without meeting the applicable standards, cannot be used to question the veracity of the presumed victim's allegations of ill-treatment.²⁴⁶ Also, the absence of physical signs does not mean that ill-treatment has not occurred, because such acts of violence against the individual frequently do not leave permanent marks or scars.²⁴⁷

153. Likewise, in cases in which sexual violence is alleged, the lack of medical evidence does not decrease the truth of the presumed victim's statement.²⁴⁸ In such cases, a medical examination will not necessarily reveal the occurrence of violence or rape, because not all cases of violence and/or rape cause physical injuries or ailments that can be verified by such examinations.²⁴⁹

154. The Court will analyze the characteristics of the statements that should be collected and the examinations that should be performed once the State became aware that someone has been subjected to acts of torture and/or sexual violence in Chapter VIII.4 on the alleged violation of the right to judicial guarantees and judicial protection to the detriment of Gladys Espinoza. However, as mentioned *supra*, in this chapter, the Court will assess the medical and psychological testimony and appraisals in the case file in order to determine what happened to the presumed victim.

B.2.1. The Final Report of the Truth and Reconciliation Commission (CVR)

155. In the chapter on "The torture and murder of Rafael Salgado Castilla (1992)," of its Final Report, the CVR affirms that Ms. Espinoza and Mr. Salgado were "[...] intercepted by agents of the [DIVISE], who had mounted an operation called '*Oriente*' in order to find those who had abducted the businessman, Antonio Furukawa Obara, [...]." The report added that "[a]t the time of the intervention, Rafael Salgado Castilla was riding a motorcycle with Glad[y]s Espinoza González on the back seat. At the corner of block 21 of Avenida Brazil (*Ovaló Brasil*), they stopped at a red traffic light and owing to the presence of two police agents who were directing the traffic, at which time they were intercepted by two armed police agents in civilian clothing, who obliged them to abandon the motorcycle. The version of the police agents in charge of

²⁴⁵ Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 164, para. 111, and *Case of J. v. Peru, supra*, para. 333. In this regard the Istanbul Protocol establishes that "[t]he timeliness of such medical examination is particularly important. A medical examination should be undertaken regardless of the length of time since the torture, but if it is alleged to have happened within the past six weeks, such an examination should be arranged urgently before acute signs fade." Istanbul Protocol, *supra*, para. 104.

²⁴⁶ Cf. *Case of J. v. Peru, supra*, para. 333. Similarly, see EHCR, *Tekin v. Turkey*, No. 41556/98, Judgment of 9 June 1998, para. 41, *Türkan v. Turkey*, No. 33086/04, Judgment of 18 September 2008, para. 43, and *Korobov v. Ukraine*, No. 39598/03, Judgment of 21 July 2011, para. 68.

²⁴⁷ Cf. *Case of J. v. Peru, supra*, para. 329, and *Istanbul Protocol, supra*, para. 161.

²⁴⁸ Cf. *Case of J. v. Peru, supra*, para. 333, International Criminal Tribunal for Rwanda, *The Prosecutor v. Jean-Paul Akayesu*, Judgment of 2 September 1998, case No. ICTR-96-4-T, paras. 134 and 135; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Anto Furundzija*, Judgment of 10 December 1998, case No. IT-95-17/1-T, para. 271; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Tadić*, Appeal Judgment of 15 July 1999, case No. IT-94-1-A, para. 65; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo ("Celebici camp")*, Appeal Judgment of 20 February 2001, case No. IT-96-21, paras. 504 and 505. Similarly, article 96 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia and of the International Criminal Tribunal for Rwanda establish that "in cases of sexual assault, no corroboration of the victim's testimony shall be required."

²⁴⁹ Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 124, and *Case of J. v. Peru, supra*, para. 329. See also, EHCR, *M.C. v. Bulgaria*, No. 39272/98, Judgment of 4 December 2003, para. 166.

directing the traffic at that place denies that there was a collision with the motorcycle and, therefore, that Salgado Castilla had fallen off and hit the pavement, a fact that was asserted by the members of the DIVISE as the cause of the detainee's injuries."²⁵⁰ On this point, the Report of the CVR determined that "[t]he supposed collision between the vehicle driven by [a police agent] and the motorcycle on which Rafael Salgado was riding, is unconvincing, not only owing to the version of the witnesses that deny it, but because, in itself, it is unsustainable. A violent collision and a catastrophic fall such as the one described [...] would necessarily have resulted in serious bodily injuries to Rafael Salgado and probably loss of consciousness, considering that he was not wearing a protective helmet. In these conditions, Rafael Salgado could not have recovered from the fall immediately, stood up and fought with one of the police agents to try and wrest his weapon from him."²⁵¹

156. In this regard, the Court notes that the version of the CVR differs from the State's version that there was a collision between the motorcycle on which Ms. Espinoza was riding and a police vehicle.

B.2.2. The statements made by Gladys Carol Espinoza Gonzáles

157. The case file contains at least 10 statements in which Gladys Espinoza has described what happened at the time she was arrested and taken to the DIVISE headquarters and, subsequently to the DINCOTE. The presumed victim has stated: (i) on April 28, 1993, in the presence of the Investigating Officer of one of the DINCOTE offices;²⁵² (ii) on May 7, 1993, in the presence of the Investigating Officer of one of the DINCOTE offices, the representative of the FAP Permanent Military Prosecution Unit and her defense counsel;²⁵³ (iii) on June 5, 1993, also in the presence of a DINCOTE Investigating Officer;²⁵⁴ (iv) on October 14, 2002, before the CVR;²⁵⁵ (v) in interviews on February 9 and 10, 2004, which appear in the psychological appraisal report of February 13, 2004, prepared by psychologists of the Institute of Forensic Medicine of the Public Prosecution Service;²⁵⁶ (vi) during evaluations made on January 27 and February 9, 2004, which are recorded in the Forensic report of February 23, 2004, issued by experts of the Institute of Forensic Medicine of the Public Prosecution Service;²⁵⁷ (vii) in four interviews of Gladys Espinoza that appear in the report issued by the psychologist Carmen Wurst de Landázuri on October 5, 2008;²⁵⁸ (viii) in a private interview on September 22, 2009, while she was in the Chorrillos Women's Prison;²⁵⁹ (ix) in an account provided to a forensic physician, a psychiatrist and a psychologist, all of them women, under the application of the Protocol for the investigation of torture or cruel, inhuman or degrading treatment during the criminal proceedings instituted for the facts alleged in this case and received by the Supra-national

²⁵⁰ Cf. Final report of the CVR of Peru, Volume VII, Chapter 2. The torture and murder of Rafael Salgado Castilla (1992) (evidence file, folio 2455).

²⁵¹ Final report of the CVR of Peru, Volume VII, Chapter 2. The torture and murder of Rafael Salgado Castilla (1992) (evidence file, folio 2456).

²⁵² Cf. Police statement by Gladys Espinoza before the DINCOTE on April 28, 1993 (evidence file, folios 8269 to 8278).

²⁵³ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5804).

²⁵⁴ Cf. Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7304).

²⁵⁵ Cf. Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folios 1474 to 1480).

²⁵⁶ Cf. Interview of Gladys Espinoza on February 9 and 10, 2004, Psychological appraisal report No. 003737-2004-PSC, Institute of Forensic Medicine (evidence file, folios 1453 to 1455).

²⁵⁷ Cf. Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folios 1557 to 1563).

²⁵⁸ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folios 1544 to 1555).

²⁵⁹ Cf. Statement made by Gladys Espinoza in September 2009 (evidence file, folios 1459 and 1460).

Prosecutor of the Public Prosecution Service on January 14, 2014,²⁶⁰ and (x) in an affidavit made on March 26, 2014, and presented to the Court.²⁶¹

158. The description of the way in which she was arrested, together with Rafael Salgado, was consistent in all these statements. Gladys Espinoza repeatedly stated that, on April 17, 1993, while she was on a motorcycle with Rafael Salgado that was at a stop light on the way to the Jesús María district, she heard shots and was thrown off the motorcycle, beaten repeatedly by several unknown men, especially on the head with a metal object and, subsequently, taken to the DIVISE together with Rafael Salgado, who was covered in blood at that time. All her statements also mention that, during the transfer, Rafael Salgado was threatened and told that if he did not provide information on the whereabouts of Mr. Furukawa, “all 20 [men would] take advantage of her”; that is, of Ms. Espinoza.²⁶² Added to this, in all her statements, Ms. Espinoza indicated that she was threatened, indicating in two of them that these were death threats against her;²⁶³ in another statement that they threatened to kill her family,²⁶⁴ and in four statements that they threatened to “inject her with AIDS.”²⁶⁵ In four of her statements she also indicated that she shouted out her name when she was being arrested, because at that time, people were being disappeared.²⁶⁶ In the statement she made before the Court, Ms. Espinoza also indicated that, in the vehicle, she was placed “at the back with my hands tied, my feet tied, they bent my body forward, sitting with my face towards the floor of the car. I was suffocating, but they were not concerned.”²⁶⁷

159. In addition, with regard to what happened inside the DIVISE and the DINCOTE headquarters in April and May 1993, although there are differences in the way in which the facts were narrated, in all the said statements, Gladys Espinoza indicated that she had been a victim of acts of torture and/or acts of violence and rape. Thus, she stated that: (a) initially they were taken to a DIVISE garage, while she was blindfolded, where “[...] they threw them on the ground, and separated into two groups, one for [Gladys Espinoza] and the other for [Rafael

²⁶⁰ Cf. Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folios 12233 to 12259).

²⁶¹ Cf. Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folios 901 to 919).

²⁶² Cf. Police statement by Gladys Espinoza before the DINCOTE on April 28, 1993 (evidence file, folios 8269 to 8278); Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7304); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folios 1557 and 1558); Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folios 1474 to 1480); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folios 1546 and 1555), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment of January 7, 2014 (evidence file, folio 12259).

²⁶³ Cf. Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1559), and Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549).

²⁶⁴ Cf. Interview of Gladys Espinoza on February 9 and 10, 2004, Psychological appraisal report No. 003737-2004-PSC, Institute of Forensic Medicine (evidence file, folio 1453).

²⁶⁵ Cf. Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1558); Interview of Gladys Espinoza on February 9 and 10, 2004, Psychological appraisal report No. 003737-2004-PSC, Institute of Forensic Medicine (evidence file, folio 1453); Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12234), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 903).

²⁶⁶ Cf. Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1557); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549); Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folio 1478), and Interview of Gladys Espinoza on February 9 and 10, 2004, Psychological appraisal report No. 003737-2004-PSC, Institute of Forensic Medicine (evidence file, folio 1453).

²⁶⁷ Cf. Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 902).

Salgado], and she had no idea what was happening or who they were [...]";²⁶⁸ (b) she heard the cries of Rafael Salgado during his detention;²⁶⁹ (c) then, she was taken on a man's shoulder to a kind of terrace,²⁷⁰ "while many hands were fondling [her] body and [she] was beaten": (d) she was forcibly undressed at this stage; (e) she was "inappropriately fondled" and "they pulled on [her] breasts";²⁷¹ (f) they repeatedly jumped on her body;²⁷² (g) "[...] face down, they pulled [her] hair and with [her] hands behind her back, they immersed [her] in a bath [with fetid water] several times [...]";²⁷³ (h) "[...] they pushed [her] head into a recipient with water that [she thought...] was a cylinder about 5 or 6 times, and [she] realized that they were hitting the soles of [her] feet with a kind of wire rope [...]";²⁷⁴ (i) she was strung up by her hands;²⁷⁵ (j) "[...] they continued to abuse [her], tugging at her pubic hair, putting their hands into [her] private parts, insulting [her] with denigrating words [...]." ²⁷⁶ These penetrations took place in

²⁶⁸ Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5804). Similarly, see: *Cf.* Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7308); Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folio 1476); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 902).

²⁶⁹ *Cf.* Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5806); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549); Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 902), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12234).

²⁷⁰ *Cf.* Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805); Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folio 1479); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1558); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549); Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 902), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12235).

²⁷¹ Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549). Similarly, see: Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805); Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7308); Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folio 1479); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1558), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12235).

²⁷² *Cf.* Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folio 1479); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1558); Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 902), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12235).

²⁷³ Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805). Similarly, see: *Cf.* Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12235); Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7308), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 903).

²⁷⁴ Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805). Similarly, see: *Cf.* Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7308); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549); Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12236), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 903).

²⁷⁵ *Cf.* Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805); Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7308); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1559), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12237).

²⁷⁶ Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805). Similarly, see, Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1559); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549), and Protocol for the investigation of torture or cruel,

her vagina ²⁷⁷ and in her anus;²⁷⁸ (k) she was questioned about her relationship with Rafael Salgado and about the whereabouts of Mr. Furukawa,²⁷⁹ a businessman who apparently had been abducted by members of the MRTA (*supra* para. 70); (l) she was kept with her head covered or blindfolded;²⁸⁰ (m) they told her that “[...] there were 20 men there and they were all bastards and that [they were all ...] going to take advantage of me [...]”;²⁸¹ all of this while she was listening to the cries of Rafael Salgado and others;²⁸² (n) they threatened to kill her, make her disappear, kill her family, and infect her with “AIDS”;²⁸³ (o) she was taken to a hospital, where someone “began to put their hand in [her] vagina [... and] she sensed that he was masturbating, [...] it was the doctor,” and while she was in the hospital they placed needles in her feet.²⁸⁴ Subsequently, she was returned to her captors; (p) she fainted on several occasions²⁸⁵ and, in particular, when she heard that Rafael Salgado was dead;²⁸⁶ (q) they tried to put a penis in her mouth against her will, and she “reacted by throwing herself on one side

inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12236).

²⁷⁷ Cf. Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1559); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folios 1549 and 1550), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folios 12235 to 122357).

²⁷⁸ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 122356).

²⁷⁹ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5807); Statement made by Gladys Espinoza in September 2009 (evidence file, folio 1459), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 903).

²⁸⁰ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805); Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7308); Extracts from the statement of Gladys Espinoza of October 14, 2002 (evidence file, folio 1479); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1558); Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 902), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12234).

²⁸¹ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5806), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12234).

²⁸² Cf. Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 902), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folios 1234 to 1236).

²⁸³ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805); Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folio 7304); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1558); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12237).

²⁸⁴ Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri (evidence file, folio 1550). Similarly, see Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1559); Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folios 1234 to 1236), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 904).

²⁸⁵ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5806); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1548); Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folios 12236 and 12239), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folios 903 and 904).

²⁸⁶ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1550).

and shouting, they responded with insults and kicks [...]";²⁸⁷ (r) they place an object "like a piece of wood" in her anus;²⁸⁸ (s) she felt that she had left her body and gone beyond the limits of pain,²⁸⁹ and (t) she asked them to kill her.²⁹⁰

160. The Court also notes that, in the above-mentioned private statement of September 2009 (*supra* para. 157), Ms. Espinoza González indicated that "[i]n the DINCOTE [...] at first she was incommunicado, and later placed with other female detainees."²⁹¹

161. Regarding the statements made by Ms. Espinoza, the Court considers that, the main circumstances are consistent in all of them. Also, with regard to the acts described by the presumed victim, the Court observes that, in its final report, the CVR determined that, at the time of the facts, there was a consistent pattern to the torture inflicted by police agents: (i) physical exhaustion of the victims, obliging them to remain on foot or in uncomfortable positions for extended periods; (ii) deprivation of sight during their confinement, which resulted in temporal and spatial disorientation, as well as feelings of insecurity; (iii) insults and threats against the victim, their family members or other people close to them, and (iv) forced nudity. In addition, according to the CVR, the most usual means of physical torture were "punches and kicks to sensitive parts of the body, such as the abdomen, face and genitals. At time, blunt objects were used, such as broom handles, canes, rubber truncheons (to avoid leaving marks), and rifle butts. Many of the blows left scars, but other healed without leaving permanent evidence. The foregoing were accompanied by or preceded by other more sophisticated methods of torture." The CVR also referred to asphyxia as a method of torture that was used and, as one of the ways it was inflicted, submersion several times in a bath in liquid mixed with toxic substances such as detergent, bleach, kerosene, petrol, and water mixed with excrement and urine. Another torture technique consisted in hanging and stretching which resulted in severe pain in the muscles and articulations. The most common method was to tie the victims by the hands and then suspend them for long periods of time, which caused intense pain and terrible numbness in the victim, and which was generally accompanied by beatings, electric shocks and threats. Also, men and women were raped as another form of torture.²⁹² The Court has already referred to the types of sexual violence and rape perpetrated by members of the State's security forces at that time (*supra* paras. 62 to 66). In the Court's opinion, it is evident that the acts described by Ms. Espinoza González in her statements accord with this pattern described by the CVR.

B.2.3. The 1993 reports of the DIVISE and the DINCOTE on the detention of Gladys Espinoza and Rafael Salgado

²⁸⁷ Cf. Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1559); Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12236), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 903).

²⁸⁸ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1549), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12236).

²⁸⁹ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folios 1549 and 1553), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12236).

²⁹⁰ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1552); Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1559), and Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folios 12236 and 12237).

²⁹¹ Cf. Statement made by Gladys Espinoza in September 2009 (evidence file, folio 1460).

²⁹² Cf. *Informe Final de la Comisión de la Verdad y Reconciliación*, Volume VI, Chapter 1.4, pp. 240 and 242 to 247.

162. The case file contains three documents issued by DIVISE and DINCOTE agents concerning the circumstances of the detention of Gladys Espinoza and Rafael Salgado and the State established its version of what happened based on them (*supra* para. 147). Report No. 002-IC-DIVISE of April 17, 1993, issued by DIVISE officials, indicates that agents “proceeded to pursue [... Rafael Salgado and Gladys Espinoza,] and [...] the vehicle [...] collided with the motorcycle, [and] following strong resistance and the use of the respective weapons,” the agents were able to capture both of them. This report added that, “as a result of the violent collision of the said vehicles, the motorcyclist and his passenger suffered a catastrophic fall, which caused injuries to different parts of the body [...].”²⁹³ Attestation No. 108-D3-DINCOTE of May 15, 1993, and Report No. 259-DINTO-DINCOTE of June 3, 1993, both issued by the DINCOTE, ratify this description of the circumstances of the detention of Gladys Espinoza, and indicate the items seized at that time.²⁹⁴

163. In this regard, the Court considers that the possible existence of a collision between the vehicle of the police agents with the motorcycle on which Gladys Espinoza was riding does not exclude that she was subsequently beaten by these agents. Regarding the injuries suffered by Gladys Espinoza, these DIVISE and DINCOTE reports only refer, in general, to “injuries to different parts of the body” resulting from “a catastrophic fall,” without specifying their nature or severity.²⁹⁵ Consequently, the Court considers that the information contained in the said reports of the DIVISE and the DINCOTE does not disprove the facts alleged by the presumed victim.

B.2.4. Medical and psychological certificates issued between 1993 and 2014

164. In order to establish the facts, the Court finds it relevant to assess the medical and/or psychological certificates issued with regard to the presumed victim between 1993 and 2014.

165. Regarding what happened during her detention, first, the Court takes into account the certificate issued on April 22, 1993, by forensic doctors of the Criminalistics Directorate of the Peruvian National Police, with the medical assessment made of Gladys Espinoza on April 18, 1993, a day after her detention.²⁹⁶ This document identifies a series of injuries suffered by Gladys Espinoza on both arms and on her scalp, which are consistent with her account of her fall from the motorcycle and with the blow to her head before she was forced into a vehicle (*supra* para. 71).

166. In relation to her detention on the premises of the DIVISE and the DINCOTE, the case file contains the following medical and/or psychological reports and certificates issued in 1993 on examinations performed on Gladys Espinoza after the above-mentioned assessment of April 18 that year, which record various injuries: (i) the certificate issued on April 20, 1993, which records the medical examination performed on the presumed victim on April 19, 1993, by forensic doctors of the Institute of Forensic Medicine of Peru²⁹⁷ (ii) the medical report issued on April 26, 1993, identified as Note No. 235-SE.HC.PNP.604000.93, which describes the medical examination performed on Gladys Espinoza by the Emergency Service of the Hospital of the

²⁹³ Cf. Report No.002-IC-DIVISE of April 17, 1993 (merits file, folios 5830 and 5831)

²⁹⁴ Cf. Attestation No. 108-D3-DINCOTE of May 15, 1993 (merits file, folios 5783 and 5784); Report No. 259-DINTO-DINCOTE of June 3, 1993 (merits file, folios 1469 to 1470), and Statement by Gladys Espinoza of May 7, 1993 (evidence file, folio 5805).

²⁹⁵ Cf. Attestation No. 108-D3-DINCOTE of May 15, 1993 (merits file, folios 5783 and 5784), and Report No. 259-DINTO-DINCOTE of June 3, 1993 (merits file, folios 1469 and 1470).

²⁹⁶ Cf. Record of appraisal by forensic doctors No. 4775/93 of April 22, 1993 prepared by forensic doctors of the Criminalistics Directorate of the Peruvian National Police (evidence file, folio 1565).

²⁹⁷ Cf. Certificate of medical examination No. 16111-L of April 20, 1993 prepared by forensic doctors of the Institute of Forensic Medicine of Peru (evidence file, folio 1567).

Peruvian National Police on April 21, 1993;²⁹⁸ (iii) Psychological report No. 052-ODINFO-DINCOTE of April 26, 1993, prepared by psychologists of the Peruvian National Police,²⁹⁹ and (iv) Medical certificate No. 1816-H, issued by the Institute of Forensic Medicine of Peru on May 18, 1993, in which forensic doctors of the Institute of Forensic Medicine of Peru made a medical assessment of Gladys Espinoza.³⁰⁰

167. Based on these reports it can be observed that, on April 18, 1993, the presumed victim had injuries to her head and arms (*supra* para. 165). Subsequently, on April 19, 1993, Ms. Espinoza had a “sutured blunt trauma injury [...] in the right parietal region [...]; multiple bruises in remission at mid-1/3 right arm, lower 2/3 forearm arm, 1/3 left forearm, front of both legs. Ecchymosis on eyelid left eye, upper lip, rear of both buttocks, swelling left forehead.”³⁰¹ On April 21, 1993, Gladys Espinoza once again had different injuries from those recorded previously, and it was verified that she had suffered a “traumatic brain injury, multiple contusions.”³⁰² Lastly, as a result of the examination of May 18, 1993, it was concluded that Gladys Espinoza showed “deflowering not recent, and indications of a recent unnatural act,” because it had been verified that she had a “torn hymen at 3, 6 and 9 o’clock, old injuries” and “anus torn at 12 o’clock healing, and presence of hemorrhoids at 6 o’clock.”³⁰³ Thus, it can be seen clearly that the physical examinations of Gladys Espinoza revealed progressively, over the course of a month, numerous new injuries in different parts of her body at each examination, including her sexual organs. It should also be pointed out that the injuries recorded in these reports are consistent with what Gladys Espinoza has stated concerning the blows she received and, in particular, concerning the anal penetration (*supra* para. 159).

168. In addition, approximately 10 years later, on January 22, 2004, a psychological appraisal was made of Gladys Espinoza corresponding to the Forensic examination to detect injuries resulting from torture on live persons, when she was able to provide a statement and it was determined that she suffered from a “dissociative disorder” and “histrionic personality.”³⁰⁴ On February 13, 2004, the Psychological appraisal report of the Institute of Forensic Medicine of the Public Prosecution Service recorded that Gladys Espinoza “has a personality with dissociative and histrionic traits with a situational anxiety reaction.”³⁰⁵ The experts of the Forensic Institute of the Public Prosecution Service also issued Forensic report No. 009598-V corresponding to the Forensic examination to detect injuries resulting from torture of February 20, 2004, which reveals that Ms. Espinoza had “[s]car on the scalp, right and left parietal region, and numerous hyperchromic scars on rear thorax.”³⁰⁶

²⁹⁸ Cf. Report on medical examination No. 235-SE.HC.PNP.604000.93 of April 26, 1993, signed by the Head of the Emergency Service of the Hospital of the Peruvian National Police (evidence file, folio 1569).

²⁹⁹ Cf. Report No. 052-ODINFO-DINCOTE of April 26, 1993, prepared by psychologists of the Peruvian National Police (evidence file, folio 1576).

³⁰⁰ Cf. Medical certificate No. 1816-H of May 18, 1993, prepared by forensic doctors of the Institute of Forensic Medicine of Peru (evidence file, folio 1571).

³⁰¹ Cf. Certificate of medical examination No. 16111-L of April 20, 1993, prepared by forensic doctors of the Institute of Forensic Medicine of Peru (evidence file, folio 1567).

³⁰² Cf. Report on medical examination identified as Note 235-SE.HC.PNP.604000.93 of April 26, 1993, signed by the Head of the Emergency Service of the Hospital of the Peruvian National Police (evidence file, folio 1569).

³⁰³ Cf. Medical certificate No. 1816-H of May 18, 1993, prepared by forensic doctors of the Institute of Forensic Medicine of Peru (evidence file, folio 1571).

³⁰⁴ Cf. Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1563).

³⁰⁵ Cf. Psychological appraisal No. 003737-2004-PSC made on February 9 and 10, 2004 (evidence file, folio 1455).

³⁰⁶ Cf. Forensic report No. 009598-V of February 20, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folios 1573 and 1574).

169. In this regard, on October 5, 2008, the psychologist Carmen Wurst de Landázuri issued a report on the psychological and psychiatric appraisals made of Gladys Espinoza previously, in which she concluded that “[t]he clinical evaluation, supported by the medical examinations that appear in the case file, is conclusive in finding that Gladys has suffered torture and rape and that, this is not a case of simulation, as has been suggested in the appraisals made by the Public Prosecution Service.”³⁰⁷ The psychologist also indicated that “[t]he dates, the sequence of events, and the places during the detention are not recalled precisely by the person evaluated; this is understandable and only to be expected, because the methods of torture sought, in particular, to cause confusion and disorientation in the detainee; in addition, the protective system deployed by the person evaluated during the torture, which consisted in losing consciousness (fainting), and depersonalization (sensation of dividing oneself into two) [...] prevented her from recalled this information precisely [...]”³⁰⁸

170. Similarly, on January 7, 2014, the specialized team of the Forensic Clinical Examinations Division of the Institute of Forensic Medicine performed a Protocol for the investigation of torture or cruel, inhuman or degrading treatment which is recorded in Forensic report No. 76377-2013-DCH-T, in which it was concluded that: “1.a. There is a strong relationship; the injuries (scars) may have been caused by the traumas described [by the presumed victim], and by very few other causes; b. In the anal and genital region, this is typical; these are the signs that are normally found with this type of trauma,”³⁰⁹ referring to the trauma derived from torture.

171. Lastly, in an affidavit dated March 26, 2014, the psychologist Ana Deutsch submitted to the Court an expert opinion on a psychological appraisal made on Ms. Espinoza in July 2012, in which Ms. Deutsch determined that she “reveals chronic signs of post-traumatic stress (PTS) accompanied by symptoms of depression with a history of anxiety and panic disorder associated with her PTS. Her chronic symptoms are related to the traumatic experiences suffered at the time of her capture, aggravated by the prolonged incarceration and by the repetition of traumatic experiences and psychological abuse.” Ms. Deutsch added that Ms. Espinoza also suffers from major depression and panic attacks, and concluded that “she requires psychological treatment; the severity of the torture to which she was subjected has left far-reaching effects. Even though she has a strong personality and struggles not to let herself be overcome psychologically and to avoid total deterioration, the tortures were vicious, and it is impossible to overcome the effects [only] by her strength of will; she requires professional care.”³¹⁰

172. Based on all the above, the Court finds that the examinations and psychological appraisals conducted on Ms. Espinoza in 2003, 2004, 2008, 2012 and 2014, as well as those carried out in 1993 (*supra* paras. 165 to 171), are consistent with her allegations as regards what happened at the time of her arrest and on the premises of the DIVISE and the DINCOTE in April and May 1993.

B.2.5. Testimony of witnesses

173. The case file contains the testimony of Manuel Espinoza, the presumed victim’s brother, and of Lily Cuba, who was in the DINCOTE at the same time as Gladys Espinoza immediately after the torture presumably perpetrated against her.

³⁰⁷ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1552).

³⁰⁸ Cf. Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1548).

³⁰⁹ Cf. Protocol for the investigation of torture or cruel, inhuman or degrading treatment received on January 14, 2014, by the Supra-provincial Criminal Prosecutor (evidence file, folio 12259).

³¹⁰ Affidavit dated March 26, 2014, with the expert opinion of the psychologist Ana Deutsch (merits file, folios 934 and 940).

174. On the one hand, Manuel Espinoza states in his affidavit dated March 25, 2014, presented to this Court, that when he and his mother went to the DINCOTE headquarters, the authorities initially “[...] denied that she was detained there. Some days later, the detention was reported in the press and this persuaded them to insist on knowing the whereabouts of [his] sister.” He indicated that “two weeks after we found out about the arrest of Gladys, and not having any information about her whereabouts and since the authorities refused to help, [they] decided to go to APRODEH [in order to take ...] the steps required to find her.” Subsequently, only he and his mother were allowed to see her for five minutes, “but that was enough to be able to verify the deplorable state in [...] in which she was [...].” In this regard, he added that:

The whole of her body had been violently beaten, and she had bruises and injuries, some of them had even been sutured. I think that, initially, the DINCOTE denied that she was there because at the time they had already tortured and abused her and did not want us to see her with the recent injuries, but wanted to gain time while they healed. Gladys was in a state of shock and although she could recognize us, my mother and me, she could not stop crying, together with our mother who was examining her injuries one by one [...].³¹¹

175. Meanwhile, the witness Lily Cuba stated during the public hearing before the Court that, when she was in contact with Ms. Espinoza, the latter told her that “they had tortured her, they had beaten her [...]”; I was unable to see her, but later, at another time, I was able to help her bathe and she had injuries to her head, open wounds, her whole body had been beaten and bruised [...].³¹²

176. The Court noted that the testimony of these witnesses are consistent with the statements made by Gladys Espinoza between 1993 and 2014, the 1993 DINCOTE and DIVISE reports, and the psychological appraisals and physical examinations of Gladys Espinoza from 1993 to 2014. The Court underscores, in particular, that the testimony of Manuel Espinoza is consistent inasmuch as Gladys Espinoza was unable to communicate with her family during her detention in the DINCOTE, except for a very short time.

B.2.6. Assessment of the failure to investigate the facts

177. The Court has indicated that, in cases in which the victims allege that they have been tortured while in the custody of the State, the State is responsible, in its capacity of guarantor of the rights recognized in the Convention, for the observance of the right to personal integrity of every individual who is in its custody. Furthermore, in its case law, the Court has indicated that whenever a person is deprived of liberty in normal health and subsequently appears with health problems, the State must provide a satisfactory and convincing explanation of that situation.³¹³ Consequently, the presumption exists that the State is responsible for any injuries revealed by a person who has been in the custody of State agents.³¹⁴ In this situation, the State has the obligation to provide a satisfactory and convincing explanation of what happened and disprove the arguments concerning its responsibility, with satisfactory probative elements.³¹⁵

178. As will be established *infra*, in Chapter VIII.4 on the alleged violation of Ms. Espinoza’s rights to judicial guarantees and judicial protection, in the instant case the State has not conducted an effective investigation into what happened to Gladys Espinoza following her arrest on April 17, 1993, and while she was on the premises of the DIVISE and DINCOTE (*infra* para.

³¹¹ Affidavit made by Manuel Espinoza on March 25, 2014 (merits file, folios 912 and 913).

³¹² Testimony of Lily Elba Cuba Rivas before the Inter-American Court during the public hearing on April 4, 2014.

³¹³ Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra*, paras. 99 and 100, and *Case of J. v. Peru*, *supra*, para. 343.

³¹⁴ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 95 and 170, and *Case of J. v. Peru*, *supra*, para. 343.

³¹⁵ Cf. *Case of Juan Humberto Sánchez v. Honduras*, para. 111, and *Case of J. v. Peru*, *supra*, para. 343.

285). This absence of investigation prevents the State from presenting a satisfactory and convincing explanation of the alleged ill-treatment and disproving the arguments about its responsibility, with adequate probative elements.³¹⁶

B.2.7. Determination of the ill-treatment that occurred

179. Taking into account the context established by the Court as regards the practice of detentions, torture, cruel, inhuman and degrading treatment, as well as sexual violence and the rape of women, perpetrated by State agents as part of the counter-subversive struggle in Peru (*supra* paras. 60 to 66), the Court considers that, based on: (i) the final report of the CVR; (ii) the statements of Gladys Espinoza from 1993 to 2014; (iii) the above-mentioned reports prepared by the DIVISE and the DINCOTE in 1993; (iv) the aforementioned medical and/or psychological certificates and reports issued between 1993 and 2014; (v) the testimony of Manuel Espinoza Gonzáles and Lily Cuba, and (vi) the failure to investigate the facts of the case, it is sufficiently proved that, at the time of the initial arrest of Gladys Espinoza, she was on a motorcycle with Rafael Salgado, when, while shots were fired, she was physically assaulted by unknown State officials, and received a blow to the back of her head, among others, in order to force her into the vehicle in which she was taken to the DIVISE headquarters while she received death threats against herself and her family and threats of being infected with "AIDS," and while she heard that they threatened her companion that "the 20 men were going to take advantage of her" if he did not talk (*supra* para. 158).

180. In addition, the Court finds that it has been sufficiently proved that, during her time on the premises of the DIVISE and the DINCOTE in April and May 1993, Gladys Espinoza was blindfolded, interrogated concerning the abduction of a businessman, forcibly undressed, threatened that she and her family would be killed, that she would be disappeared, and that she would be infected with "AIDS," and physically abused on repeated occasions and in different ways, including by beating her whole body, even the soles of her feet, her back and head. In addition, she was tied up and suspended, and her head was submerged in fetid water. She also heard the cries of her partner, Rafael Salgado. Likewise, the Court finds it proved that Ms. Espinoza Gonzáles was subjected to inappropriate touching, vaginal and anal penetration with hands and, in the latter case, also with an object. Also her breasts and her pubic hair were pulled and one of her attackers tried to put his penis in her mouth.

181. The State has not contested that Ms. Espinoza Gonzáles remained incommunicado for some time in the DIVISE and the DINCOTE. In this regard, it is a proven fact that Teodora Gonzáles went to the DINCOTE for the first time because, on April 23, 1993, a police agent had told her that her daughter was there in a serious state of health (*supra* para. 74). The Court also recalls that, initially, the DINCOTE authorities denied that she was there, allowing them access to her two weeks later and only for a few minutes (*supra* para. 174). On May 7, 1993, Ms. Espinoza gave a statements in the presence of the Investigating Officer of one of the DINCOTE offices and of her lawyer (*supra* para. 127). It is also pertinent to point out that the CVR Final Report refers to the use of the practice of incommunicado during the armed conflict. In fact, the CVR, citing the National Human Rights Coordinator in her 1993-1994 Report on Torture indicated that "in application of the special anti-terrorist laws, almost all detainees had been kept incommunicado, restricting their right of defense and subject to the decision of the police themselves as regards the establishment of their legal situation; in other words, to which jurisdiction they should be subject (military or civil)."³¹⁷ Thus, the Court recalls that article 12.d of Decree Law No. 25,475, in force at the time of the facts in question, authorized the National Police to order the absolute incommunicado of detainees (*supra* para. 115). Consequently, the

³¹⁷

Cf. Informe Final de la Comisión de la Verdad y Reconciliación, Volume VI, Chapter 1.4, p. 222.

Court finds it proved that Gladys Carol Espinoza Gonzáles was unable to communicate with her family until approximately three weeks after her detention.

182. In addition, the Court recalls that Gladys Espinoza was arrested and detained without a court order and without judicial control for at least 30 days (*supra* para. 137). The conditions in which her arrest and detention were carried out lead to the conclusion that the facts that she alleges truly occurred. As it has on other occasions,³¹⁸ the Court observes that to reach a different conclusion would mean allowing the State to shield itself behind the negligence and ineffectiveness of the investigation, and the situation of impunity in which the facts of this case remain, in order to exempt itself from responsibility.

B.2.8. Legal definition of the facts

183. Having established the facts, the Court will proceed to provide a legal definition for what happened during the initial detention of Gladys Espinoza on April 17, 1993, and during the time she spent on the premises of the DIVISE and the DINCOTE in April and May 1993.

184. First, the Court has indicated that any use of force that is not strictly necessary owing to the behavior of the person detained constitutes an affront to human dignity, in violation of Article 5 of the American Convention.³¹⁹ In this case, the State has not proved that the force used when arresting Ms. Espinoza Gonzáles was necessary; therefore the Court finds that the State violated her right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument.

185. Second, the Court recalls that an international legal regime has been developed concerning the absolute prohibition of all forms of torture, both physical and psychological, and, with regard to the latter, it has been recognized that the threat and real danger that a person will be subjected to severe physical injuries causes, in certain circumstances, a moral anguish of such a degree that it may be considered "psychological torture."³²⁰ The Court finds it evident that, given the context of violence at the time by both the subversive groups and State agents (*supra* paras. 51 to 68), the fact that unknown men arrested Ms. Espinoza while firing their weapons and that they beat her on the head, among other actions, in order to force her into a vehicle together with her partner, who was bleeding, and where she received death threats against herself and her family, and that she would be "infected with AIDS," and heard that 20 men were going to "take advantage of her," necessarily caused her feelings of intense anguish, fear and vulnerability. Thus, these facts constitute, also, a violation of her physical integrity, a form of psychological torture, in violation of Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Gladys Espinoza.

186. Third, regarding the events that took place on the premises of the DIVISE and the DINCOTE, international human right law has established that incommunicado must be exceptional and that its use during detention may constitute an act that is contrary to human dignity,³²¹ because it may result in a situation of extreme psychological and moral suffering for the detainee.³²² Thus, starting with its first judgments, the Inter-American Court has considered that prolonged isolation and incommunicado represent, in themselves, forms of cruel and inhuman treatment, that are harmful to the mental and moral integrity of the individual and of

³¹⁸ Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 97, and *Case of J. v. Peru, supra*, para. 356.

³¹⁹ Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, para. 57, and *Case of J. v. Peru, supra*, para. 363.

³²⁰ Cf. *Case of Cantoral Benavides v. Peru, supra*, para. 102, and *Case of J. v. Peru, supra*, para. 364.

³²¹ Cf. *Case of Cantoral Benavides v. Peru. Merits, supra*, para. 82, and *Case of J. v. Peru, supra*, para. 376.

³²² Cf. *Case of Suárez Rosero v. Ecuador. Merits, supra*, para. 90, and *Case of J. v. Peru, supra*, para. 376.

the right of every detainee to the respect due to the dignity inherent in the human being.³²³ State must also ensure that those deprived of liberty may contact the members of their family.³²⁴ The Court recalls that incommunicado is an exceptional measure to ensure the results of an investigation, and that that it can only be applied if it is ordered in keeping with conditions that have been established previously by law.³²⁵

187. The Court considers that the fact that Ms. Espinoza had no access to her family for approximately three weeks constituted a prolonged period of incommunicado. In addition, the Court has already established that the detention of Ms. Espinoza González was unlawful (*supra* para. 137). In this regard, the Court has indicated that even if an unlawful detention has only lasted for a short time, this is sufficient for it to constitute a violation of mental and moral integrity, in accordance with the standards of international human rights law and, in these circumstances, it is possible to infer, even when there is no other evidence in this regard, that the treatment that the victim received during her time of incommunicado was inhuman and degrading.³²⁶ Therefore, this time of incommunicado constituted a violation of Article 5(2) and 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Espinoza.

188. Lastly, in order to establish whether the above-mentioned acts inflicted on Gladys Espinoza on the premises of the DIVISE and of the DINCOTE in April and May 1993, constituted acts of torture, the Court will determine whether these acts: (i) were intentional; (ii) caused severe physical or mental suffering, and (iii) were committed with an objective or purpose (*supra* paras. 179 to 182).

189. In view of its nature, repetition and duration over time, the Court finds it evident that the physical and psychological abuse suffered by Gladys Espinoza, including being beaten on all parts of her body, suspended by her hands and immersed in fetid water, and receiving death threats against herself and her family, was intentional. Regarding the severity of her suffering, the Court recalls that, in her statements, Ms. Espinoza indicated that she heard her partner crying out in pain, that she fainted on several occasions, that she felt that she was abandoning her body because she had “gone beyond the limits of pain,” and that she asked her captors to kill her (*supra* para. 159). In this regard, the Court notes that the psychologist Carmen Wurst identified the loss of consciousness and the depersonalization as protective systems deployed in the face of such acts (*supra* para. 169). Lastly, with regard to the objective, the said acts were perpetrated against Ms. Espinoza in the context of a situation in which the agents of the DIVISE and the DINCOTE interrogated her repeatedly concerning the whereabouts of Mr. Furukawa following his abduction (*supra* paras. 158 and 159). Without rejecting the possible existence of other objectives, the Court finds that, in this case, it has been proved that the physical and psychological violence inflicted had the specific objective of obtaining information on the MRTA and the presumed abduction mentioned above, as well as to punish her for not providing the information requested.

190. With regard to the acts of a sexual nature perpetrated against Ms. Espinoza while on the premises of the DIVISE and the DINCOTE, the Court recalls, as the Convention of Belém do Pará indicates, that violence against women not only constitutes a violation of human rights, but is “an offense against human dignity and a manifestation of the historically unequal power

³²³ Cf. *Case of Maritza Urrutia v. Guatemala*, *supra*, para. 87, and *Case of J. v. Peru*, *supra*, para. 376.

³²⁴ Cf. *Case of J. v. Peru*, *supra*, para. 376. See also, African Commission on Human and Peoples' Rights, *Law Office of Ghazi Suleiman v. Sudan*, Communications Nos. 222/98 and 229/99 (2003), para. 44.

³²⁵ Cf. *Case of Suárez Rosero v. Ecuador. Merits*, *supra*, para. 89, *Case of J. v. Peru*, *supra*, para. 378.

³²⁶ Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra*, para. 98, and *Case of Maritza Urrutia v. Guatemala*, *supra*, para. 87.

relations between women and men," that "pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations."³²⁷

191. In keeping with international case law and taking into account the provisions of the Convention of Belém do Pará, the Court has considered that sexual violence is constituted by acts of a sexual nature that, in addition to encompassing the physical invasion of the human body, may include acts that do not involve penetration or even any physical contact.³²⁸ Thus, in another case, the Court established that subjecting women to forced nudity while they were constantly observed by armed men who were apparently members of the State's security forces, constituted sexual violence.³²⁹

192. Also, pursuant to the jurisprudential and normative standards of both international criminal law and comparative criminal law, the Court has considered that rape does not necessarily entail vaginal sexual intercourse as considered traditionally. Rape should also be understood to include acts of vaginal or anal penetration using other parts of the perpetrator's body or objects, as well as oral penetration by the male organ.³³⁰ In this regard, the Court clarifies that, for an act to be considered rape, it is sufficient that penetration occurs, however slight this may be, in the terms described above.³³¹ Furthermore, it should be understood that vaginal penetration refers to penetration with any part of the perpetrator's body or any object, of any genital opening, including the labia majora or minora, as well as the vaginal orifice. This interpretation is in keeping with the concept that any type of penetration, however slight, is sufficient for an act to be considered rape. The Court understands that rape is a form of sexual violence.³³²

³²⁷ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Preamble.

³²⁸ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 306, and *Case of J. v. Peru*, *supra*, para. 358. See also, International Criminal Tribunal for Rwanda, *The Prosecutor v. Jean-Paul Akayesu*, case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 688.

³²⁹ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 306.

³³⁰ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 310, and *Case of J. v. Peru*, *supra*, para. 359.

³³¹ This is confirmed by the normative and case law of the International Criminal Court and of the *ad hoc* international criminal tribunals. The first element of the crime against humanity of rape (Rome Statute, Article 7(1)(g)) and of the war crime of rape (Rome Statute, Articles 8(2)(b)(xxii) and 8(2)(e)(vi)) is "The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body." *Elements of Crimes*, Available on the website of the ICC, <http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>. The case law of the *ad hoc* international criminal tribunals is consistent with this. Cf. International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Anto Furundzija*, Judgment of 10 December 1998, case No. IT-95-17/1-T, para. 185; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Kunarac and Others*, Judgment of 22 February 2001, case No. IT-96-23-T and IT-96-23/1-T, paras. 437 and 438; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Kunarac and Others*, Appeal judgment of 12 June 2002, case No. IT-96-23-T and IT-96-23/1-T, para. 127. Cf. Special Court for Sierra Leone, *The Prosecutor v. Issa Hassan Sesay and Others*, Judgment of 2 March 2009, case No. SCSL-04-15-T, paras. 145 and 146. This interpretation was also used by the CVR in its report that "understands rape to be a form of sexual violence that occurs when the perpetrator has invaded the body of a person by a conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. This invasion should occur by force, or by the threat of force or by coercion caused, for example, by the fear of violence, intimidation, detention, psychological oppression or abuse of power, against this or another person or taking advantage of a climate of coercion, or that has been carried out against a person who is unable to give their free consent." Cf. *Informe Final de la Comisión de la Verdad y Reconciliación*, Volume VI, Chapter 1.5, p. 265.

³³² Cf. *Case of J. v. Peru*, *supra*, para. 359. See, in this regard, Article 2 of the Convention of Belém do Pará, and International Criminal Tribunal for Rwanda, *The Prosecutor v. Jean-Paul Akayesu*, Judgment of 2 September 1998, case No. ICTR-96-4-T, para. 688. The Rome Statute of the International Criminal Court enumerates rape and other specific crimes and adds, in general, in the case of crimes against humanity, "any other form of sexual violence of

193. The Court has also recognized that rape is an extremely traumatic experience that has severe consequences and causes great physical and psychological damage, leaving the victim “physically and emotionally humiliated,” a situation that it is difficult to overcome with the passage of time, contrary to what happens in the case of other traumatic experiences.³³³ This reveals that rape inherently produces severe suffering for the victim, even when there is no evidence of physical injury or affliction. Indeed, the consequences of rape will not be bodily injuries or ailments in all cases. Women victims of rape also experience severe psychological, and even social, harm and aftereffects.

194. In the instant case, the Court has established that, during her detention in the DIVISE and the DINCOTE in April and May 1993, Gladys Espinoza was subjected to forced nudity and inappropriate touching, her breasts and pubic hair were pulled, and one of her assailants tried to put his penis in her mouth (*supra* para. 159). It is clear that, since they involved the presumed victim’s breasts and genital area, these acts constituted sexual violence. Regarding the “inappropriate touching” and the attempt to force her to have oral sex, the Court considers that these acts entailed the physical invasion of Gladys Espinoza’s body,³³⁴ taking into account that the victims of sexual violence tend to use unspecific terms when making their statements and not to provide graphic explanations of the anatomical characteristics of what happened.³³⁵ In this regard, the CVR indicated that “[t]he statements usually use unclear or ‘personal’ terms when describing the acts of sexual violence to which victims were subjected” and referred specifically to the use of the term “inappropriate touching” as one of the ways in which the victims described acts of sexual violence.³³⁶ The Court has also established that, during the said period, Ms. Espinoza experienced vaginal and anal penetration by hand and, in the latter case, also by an object (*supra* para. 159), which constituted acts of rape.

195. Lastly, the Court considers it pertinent to recall, as already established in this case, that one of the forms of the generalized practice of torture was the generalized practice of sexual violence against women, in particular by State agents, and against women who were presumably involved in the armed conflict (*supra* paras. 62 to 66). The Court also recalls that special mention was made of the DINCOTE as a place where rape was perpetrated frequently (*supra* para. 159). In this regard, the Court finds that what happened to Ms. Espinoza is consistent with this generalized practice. Since they took place in this context, the Court considers that the acts of sexual violence against Gladys Espinoza also constituted acts of torture the absolute prohibition of which, it reiterates, belongs nowadays to the domain of international *jus cogens* (*supra* para. 141).

196. Based on all the above, the Court decides that the acts perpetrated against Gladys Carol Espinoza Gonzáles on the premises of the DIVISE and the DINCOTE constituted acts of torture, in violation of the obligations contained in Article 5(2) and 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, and failure to comply with the obligations established in Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

comparable gravity” and, in the case of war crimes, “any other form of sexual violence also constituting a grave breach of the Geneva Conventions.” *Elements of Crimes* describes rape as a crime against humanity of rape and a war crime.

³³³ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 311, and *Case of Rosendo Cantú et al. v. Mexico*, *supra*, para. 114. Similarly, ECHR, *Case of Aydın v. Turkey*, No 23178/94. Judgment of 25 September 1997, para. 83.

³³⁴ In this regard, see, *Case of J. v. Peru*, *supra*, para. 347.

³³⁵ Cf. *Case of J. v. Peru*, *supra*, para. 360.

³³⁶ Cf. *Informe Final de la Comisión de la Verdad y Reconciliación*, Volume VI, Chapter 1.5, p. 364, and *Case of J. v. Peru*, *supra*, para. 347.

197. Furthermore, the Court has stipulated that although Article 11 of the American Convention is entitled “Right to Privacy” [Note: Protection of Honor and Dignity in the Spanish version], its contents include the protection of private life.³³⁷ The concept of private life includes sexual life among other protected areas.³³⁸ The Court finds that the rape and other forms of sexual violence perpetrated against Gladys Espinoza violated essential aspects and values of her private life, signified interference in her sexual life, and annulled her right to take decisions freely regarding who to have sexual relations with, losing control completely of her most personal and intimate decisions, and with regard to basic bodily functions.³³⁹ Consequently, owing to the sexual violence and rape that Gladys Espinoza suffered, the Court finds that the State also violated Article 11(1) and 11(2) of the American Convention, in relation to Article 1(1) of this instrument, to her detriment.

C) Detention conditions of Gladys Carol Espinoza Gonzáles in the Yanamayo Maximum Security Prison of Puno and the incident that occurred on August 5, 1999

C.1. Arguments of the Commission and of the parties

198. The Commission asserted that Gladys Espinoza served part of her sentence for the crime of treason while articles 20 of Decree Law No. 25,475 and 3 of Decree Law No. 25,744 were in force, norms that established permanent solitary confinement during the first year of imprisonment, a maximum security regime throughout the prison term, access to the open air for 30 minutes a day, and a series of restrictions on visits. According to the Commission, this regime, added to the general detention conditions, violated the human dignity of those who were serving sentences for terrorism or treason. It has also been established that not only was the regime established in the said decree laws applied to Gladys Espinoza, but also that she was subjected to severe detention conditions at the Yanamayo Prison, in an inhospitable and exceedingly cold climate, with limited access to natural light, and without sufficient food or adequate medical care. In addition, the Commission indicated that Gladys Espinoza was not provided with a specialized neurological evaluation, in spite of having requested it and of a prison doctor having recommended this.

199. Furthermore the Commission affirmed that on August 5, 1999, agents of the National Special Operations Directorate of the Peruvian National Police (DINOES) conducted an inspection of the Yanamayo prison block where Ms. Espinoza was being held with excessive use of force. It added that the prison authorities and the members of the DINOES pitilessly attacked inmates of Yanamayo’s Block 1D, deliberately beating them in order to punish them. Despite the injuries recorded in the Ombudsman’s report of August 25, 1999, the prison authorities did not provide prompt medical care in order to protect the victim’s integrity. The injuries reported by the Ombudsman reveal that the supposed beating received by the presumed victim caused her very intense physical suffering. Lastly, according to the Commission, the presumed torture that occurred during the inspection did not result in a criminal investigation or the punishment of those responsible. Consequently, the Peruvian State failed to comply with the obligation to respect and to ensure the rights established in Article 5(1), 5(2) and 5(6) of the American Convention, in relation to Article 1(1) of this treaty, and failed to comply with the obligations established in Articles 1 and 6 of the ICPPT, all to the detriment of Gladys Espinoza.

³³⁷ Cf. *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006 Series C No. 148, para. 193, and *Case of J. v. Peru*, *supra*, para. 367.

³³⁸ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 129, and *Case of J. v. Peru*, *supra*, para. 367.

³³⁹ Cf. *Case of J. v. Peru*, *supra*, para. 367.

200. The representatives indicated that, starting in January 1996, the presumed victim was in solitary confinement, locked up for 23 hours a day, in a place that was inaccessible for her family and under difficult medical and nutritional conditions. As a result of the poor nutrition and the climatic conditions, Gladys Espinoza developed bronchopneumonia. During her imprisonment, she was also a victim of violent searches and beatings on numerous occasions. Regarding the incident that occurred on August 5, 1999, they alleged that, due to its severity, the violence presumably suffered by Gladys Espinoza constituted acts of torture under Article 2 of the ICPPT. Based on the foregoing, they argued that Peru had violated Article 5 of the Convention, in relation to Article 1(1) of this instrument, as well as Articles 1, 6 and 8 of the ICPPT and Article 7 of the Convention of Belém do Pará.

201. The State argued that although Gladys Espinoza served part of her sentence while article 20 of Decree Law No. 25,475 and article 3 of Decree Law No. 25,744 were in force, the provisions concerning imprisonment of the anti-terrorism laws issued in the 1990s had been the subject of an action on unconstitutionality by the Constitutional Court of Peru, and had been annulled. In other words, the prison conditions during the first half of the 1990s had been rectified by the State itself by eliminating this regime and adopting successive normative and administrative changes. It also argued that, on April 17, 2001, the presumed victim had been transferred from the Yanamayo Prison to the Aucayama Prison in Huaral, and was currently in the Chorrillos Women's Maximum Security Prison. The State also indicated that, the Public Prosecution Service had been conducting a criminal investigation in order to clarify the facts and to punish those presumably responsible for the supposed events that occurred on August 5, 1999.

C.2. Considerations of the Court

202. The Court will deal, first, with the detention conditions endured by Ms. Espinoza Gonzáles in the Yanamayo Maximum Security Prison of Puno and, then, will consider the incident that occurred during the inspection on August 5, 1999.

C.2.1. Detention conditions of Gladys Carol Espinoza Gonzáles in the Yanamayo Maximum Security Prison of Puno

203. It is a proven fact that Gladys Espinoza was incarcerated in the Yanamayo Maximum Security Prison of Puno from January 17, 1996, to May 10, 2001 (*supra* para. 79). During this time, Gladys Espinoza was subjected to a regime established for those prosecuted and/or sentenced for terrorism and treason.³⁴⁰ This prison is located at 3,800 meters above sea level, 15 minutes from Puno; there, Ms. Espinoza lived in the following conditions: she was subjected to a prison regime of solitary confinement for 23 hours a day, and only allowed out into the fresh air for one hour; there were continuous uprisings by the prisoners and violent searches by the State agents;³⁴¹ it was extremely cold and the inmates did not have sufficient clothing or coverings, or any type of heating; the water used for drinking, cooking, bathing and washing the clothes and bedclothes and in the washrooms was contaminated and very cold and scarce;³⁴² there were no lights in the cells; the corridors had florescent lighting every two cells, and skylights that restricted the entry of sunlight; the food was deficient, limited and unhealthy; health care requirements were provided by a single general physician, which did not allow the

³⁴⁰ Cf. Report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (evidence file, folios 1580 to 1588).

³⁴¹ Cf. Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 907); Statement made by Gladys Espinoza on March 2010 (evidence file, folios 1462 and 1463), and Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1561).

³⁴² Cf. Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 907). See also, *Case of Lori Berenson Mejía v. Peru*, *supra*, para. 87.74, *Case of García Asto and Case of Ramírez Rojas v. Peru*, *supra*, para. 224.

needs for specialized medical attention to be met, and there was a shortage of medicines; there were no educational, training or work programs; access to information was restricted; newspapers, magazines, radio and television were prohibited; the inmates had the right to a weekly visit by direct family members, but, since the prison was very remote, the inmates only received visits two or three times a year.³⁴³ Agents of the Peruvian National Police were in charge of the prison's internal and external security and members of the Peruvian Army also helped provide external security.³⁴⁴

204. It is on record that, while Gladys Espinoza was at the Yanamayo Prison, reports on her health were prepared on August 24³⁴⁵ and December 17, 1999.³⁴⁶ The former indicated that she was "in apparent general good health" and she was diagnosed as being "clinically health." The latter indicated that she had reported having "headaches, dizziness [and] nauseas"; she was diagnosed as having "vertiginous syndrome" and "allergic dermatitis," treatment was prescribed and it was recommended that she be evaluated by a neurologist, while it was recorded that she was "in apparent general good health." Gladys Espinoza has stated that, during the time she spent at the Yanamayo Prison she had bronchopneumonia, she was diagnosed with a brain injury, and advised to undergo a tomography (CT) scan and magnetic resonance imaging (MRI), which was never carried out, and owing to the intense headaches, dizziness and vertigos she took "Sildenafil, Tonopah and Graval (by injection)."³⁴⁷

205. The Court has established that, under Article 5(1) and 5(2) of the Convention, all those deprived of liberty have the right to live in detention conditions that are compatible with their personal dignity. In addition, the State must ensure the right to life and to personal integrity of those deprived of liberty because it occupies a special position of guarantor with regard to such persons, since the prison authorities have total control over them.³⁴⁸ Likewise, the Court has indicated that prolonged isolation and incommunicado are, in themselves, forms of cruel and inhuman treatment (*supra* para. 186).

206. The Court has also indicated that the State has the obligation to safeguard the health and well-being of prisoners, providing them, *inter alia*, with any medical care they require, and to ensure that the manner and method of deprivation of liberty do not exceed the inevitable level of suffering inherent in detention.³⁴⁹ Thus, the State has the duty to provide detainees with regular medical checkups and adequate care and treatment when this is required.³⁵⁰ Thus, the absence of appropriate medical care for a person who is deprived of liberty and in the State's custody may be considered a violation of Article 5(1) and 5(2) of the Convention depending on the particular circumstances of the specific person, such as their state of health or type of

³⁴³ Cf. Report of the Peruvian Ombudsman on the Yanamayo Prison, Puno of, August 25, 1999 (evidence file, folios 1580 to 1588), and Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folio 907).

³⁴⁴ Cf. Report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (evidence file, folios 1580 to 1588).

³⁴⁵ Cf. Report No. 143-99-INPE/DRAP-EPY-MIN of August 24, 1999 (evidence file, folio 1603).

³⁴⁶ Cf. Report No. 433-99-INPE-DRAP-EPMSY-MIN of December 17, 1999 (evidence file, folio 1578).

³⁴⁷ Cf. Affidavit made by Gladys Espinoza on March 26, 2014 (merits file, folios 907 and 908); Statement made by Gladys Espinoza in March 2010 (evidence file, folios 1462 and 1463); Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folio 1552), and Forensic report No. 003821-V of January 22, 2004, prepared by experts of the Institute of Forensic Medicine of the Public Prosecution Service (evidence file, folio 1561).

³⁴⁸ Cf. *Case of Neira Alegria et al. v. Peru. Merits, supra*, para. 60, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs. Judgment of May 19, 2011. Series C No. 226*, para. 42.

³⁴⁹ Cf. *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs. Judgment of September 2, 2004. Series C No. 112*, para. 159, and *Case of Vélez Loor v. Panama, supra*, para. 198.

³⁵⁰ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of September 7, 2004. Series C No. 114*, para. 156, and *Case of Vélez Loor v. Panama, supra*, para. 220.

ailment they suffer from, the time that passes without such care, the accumulative physical and mental effects³⁵¹ and, in some cases, the sex and age of the detainee.³⁵²

207. In the cases of *Lori Berenson Mejía*,³⁵³ *García Asto and Ramírez Rojas*³⁵⁴ and *Castillo Petruzzi et al.*,³⁵⁵ all against Peru, the Court established that the application of articles 20 of Decree Law No. 25,475 and 3 of Decree Law No. 25,744 to the victims by the military courts constituted cruel, inhuman and degrading treatment in violation of Article 5 of the American Convention, since they were kept in detention conditions under a regime of incommunicado, solitary confinement and restriction of family visits. It should be noted that the victims in these cases were at the Yanamayo Maximum Security Prison from January 17, 1996, to October 7, 1998, July 20, 1999, to September 21, 2001, and October 14 and 15, 1993, to May 30, 1999, respectively.

208. The Court notes that the period during which Gladys Espinoza remained at the Yanamayo Prison – that is, from January 17, 1996, to May 10, 2001 – overlaps the periods indicated in the said cases. Furthermore, it notes that articles 20 of Decree Law No. 25,475 and 3 of Decree Law No. 25,744 were applied to Gladys Espinoza, and that she was kept under the detention conditions described previously (*supra* paras. 203 to 214). Likewise, the Court has verified that, during the time Gladys Espinoza was at the Yanamayo Prison, she had at least two medical examinations. The reports reveal a progressive deterioration in her health and that, despite the fact that it was recommended that she be evaluated by a neurologist, there is no record that this was done (*supra* para. 204). Based on all the above, the Court finds that Gladys Espinoza was subjected to cruel, inhuman and degrading treatment and, therefore, the State is responsible for the violation of Article 5(2) and 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Carol Espinoza Gonzáles.

C.2.2. The incident during the inspection of August 5, 1999, in the Yanamayo Maximum Security Prison of Puno

209. On August 5, 1999, an inspection was made in the prison in the presence of the prosecutor of the Third Combined Provincial Prosecution Unit of Puno and agents of the Peruvian National Police, and also with the participation of members of the National Special Operations Directorate of the Peruvian National Police (DINOES-PNP). That day, using violence, the police agents injured five inmates on different parts of their bodies with blunt objects when two of them refused to hand over their radios. The inmates reported that the injured areas were the “pubic area, buttocks and forearms,” and there is no record that the prison authorities provided them with a medical examination or medical attention, with the exception of one of them who was examined by a doctor on August 11, 1999.³⁵⁶

210. The body of evidence reveals that, as asserted by the Commission and the representatives, without the State contesting this, on that occasion the police agents proceeded to attack the five inmates, kicking and punching them, hitting them with blunt objects, beating

³⁵¹ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, *supra*, para. 103, and *Case of Vélez Loor v. Panama*, *supra*, para. 220.

³⁵² Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 74, and *Case of Vera Vera et al. v. Ecuador*, *supra*, para. 44.

³⁵³ Cf. *Case of Lori Berenson Mejía v. Peru*, *supra*, para. 101.

³⁵⁴ Cf. *Case of García Asto and Ramírez Rojas v. Peru*, *supra*, para. 223.

³⁵⁵ Cf. *Case of Castillo Petruzzi et al. v. Peru*, *supra*, para. 198.

³⁵⁶ Report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (evidence file, folios 1581 and 1593); Statement made by Gladys Espinoza on March 2010 (evidence file, folios 1462 and 1463); Preliminary statement by N.G.C. (evidence file, folios 10928 to 10933), and Preliminary statement by M.L.C.M. (evidence file, folios 8198 to 8210).

them and sprinkling their faces with the powder used to make tear gas, while insulting them and swearing at them. Also, metal rods were fixed to Gladys Espinoza's neck and she was suspended in the air, fainted owing to the effects of the powder thrown at her face, and resulted with bruising to the legs and neck. The other four inmates were thrown on the floor and beaten in the genital region.³⁵⁷

211. Regarding the use of force in prisons, the Court has indicated that this should be defined by its exceptional nature; thus, force or coercive instruments may only be used when all other means of control have been used and have failed.³⁵⁸ Moreover, the State must ensure that inspections are carried out periodically and correctly, with the purpose of preventing violence and eliminating risks, and based on an adequate and effective control of the interior of the prison blocks by the prison guards, and the results of such inspections must be duly and promptly communicated to the competent authorities.³⁵⁹

212. It should be pointed out that, on previous occasions and with regard to the time of the armed conflict in Peru, the Court has already referred to the disproportionate use of force in prisons housing individuals implicated in proceedings for terrorism or treason,³⁶⁰ and has heard cases in which those accused of such crimes have been subjected to numerous violations of their human rights in the prisons in which they were detained.³⁶¹ In this regard, the CVR established that, in order to combat terrorists and subversive groups, the State implemented practices incompatible with the effective protection of the right to life and other rights in prisons, including extrajudicial executions and cruel and inhuman treatment, as well as the disproportionate use of force in problematic circumstances.³⁶²

213. First, the Court finds that sexual violence is never a permissible measure in the use of force by the security forces. Second, the facts of this case do not reveal the existence of a situation that would have justified the degree of force used against Ms. Espinoza (*supra* paras. 184 and 196). Indeed, it has not been verified that a situation of disorder existed in the prison and the State has not proved the existence of behavior by Ms. Espinoza that differs from that described, nor can it be understood that less harmful measures of control were used and failed. All this, added to the prison context in which the facts of this case are inserted (*supra* para. 203), allows the Court to conclude that the scale of the force used entailed a violation of Article 5(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Espinoza.

214. Thus, based on the description of the acts of violence suffered by Gladys Espinoza during the incident of August 5, 1999, in the context of this case, there can be no doubt that they were committed intentionally, that they caused severe suffering and physical repercussions, and that they were aimed at humiliating her and punishing her (*supra* para. 209). In these circumstances, these acts were forms of torture. Consequently, the Court decides that the State

³⁵⁷ Cf. Report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (evidence file, folios 1589 to 1601); Statement made by Gladys Espinoza on March 2010 (evidence file, folios 1462 and 1463); Preliminary statement by N.G.C. (evidence file, folios 10928 to 10933), and Preliminary statement by M.L.C.M. (evidence file, folios 8198 to 8210).

³⁵⁸ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 67. Similarly, see, *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237.

³⁵⁹ Cf. *Matter of the Mendoza Prisons. Provisional measures*. Order of the Inter-American Court of Human Rights of November 26, 2010, *considerandum* 52.

³⁶⁰ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 216, and *Case of Durand and Ugarte v. Peru. Reparations and costs*, *supra*, para. 68.

³⁶¹ Cf. *Case of Loayza Tamayo*, *supra*, para. 46, and *Case of J.*, *supra*, para. 374.

³⁶² Cf. *Informe Final de la Comisión de la Verdad y Reconciliación*, Volume V, Chapter 2.22, p. 697 to 721.

is responsible for the violation of the right to personal integrity, recognized in Article 5(2) and 5(1) of the American Convention, to the detriment of Gladys Carol Espinoza Gonzáles.

VIII.3 SEXUAL VIOLENCE AND THE OBLIGATION NOT TO DISCRIMINATE AGAINST WOMEN, IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

A) Arguments of the parties and of the Commission

215. The representatives affirmed that the State had violated the principle of non-discrimination and equal protection of the law contained in Articles 24 and 1(1) of the American Convention, owing to the sexual violence to which Gladys Espinoza was subjected. According to them, "rape was a practice resulting from the application of the anti-terrorist laws in Peru, and had a specific content that discriminated against women based on their gender, [so that] the violations perpetrated against Gladys Carol [should] not be analyzed as isolated events, disconnected from the more general situation of discrimination." They also asserted that "[t]he specific facts of this case, the legal system in force, and the context allow it to be affirmed that the system for investigating and prosecuting cases of terrorism and treason was characterized by discriminatory norms and practices that affected women unequally, based on their gender." The Commission and the State did not refer specifically to this aspect.

B) Considerations of the Court

216. Regarding the principles of equality before the law and non-discrimination, the Court has indicated that the concept of equality can be inferred directly from the unity of the nature of humankind and is inseparable from the essential dignity of the individual; thus, any situation is incompatible with this concept that, considering a specific group to be superior, treats it in a privileged way or, inversely, considering it inferior, treats it with hostility or, in any way, discriminates against it so that it cannot enjoy rights that are recognized to those who it does not consider included in that situation.³⁶³ At the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*. The whole juridical structure of national and international public order rests on it and it permeates the whole legal system.³⁶⁴

217. In this regard, the Court has pointed out that, while the general obligation under Article 1(1) of the American Convention refers to the obligation of the State to respect and to ensure "without discrimination" the rights contained in this treaty, Article 24 protects the right to "equal protection of the law."³⁶⁵ Article 24 of the American Convention prohibits legal or factual discrimination, not only with regard to the rights established therein, but with regard to all the laws that the State enacts and their application.³⁶⁶ In other words, it is not limited to reiterating the provisions of Article 1(1) of the Convention regarding the State's obligation to respect and to

³⁶³ Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 55, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 197.

³⁶⁴ Cf. *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2013. Series A No. 18, para. 101, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, supra*, para. 197.

³⁶⁵ Cf. *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 262.

³⁶⁶ Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 186, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 398.

ensure, without discrimination, the rights recognized in this treaty, but establishes a right that also results in obligations of the State to respect and to ensure the principle of equality and non-discrimination in the safeguard of other rights and in any internal laws that it enacts.³⁶⁷

218. The Court has established that Article 1(1) of the Convention “is a norm of a general nature the content of which extends to all the provisions of the treaty, and establishes the obligation of the States Parties to respect and to ensure the full and free exercise of the rights and freedoms recognized therein without any discrimination.” In other words, whatever the origin or the form it takes, any treatment that may be considered discriminatory in relation to the exercise of any of the rights ensured in the Convention is *per se* incompatible with this instrument.³⁶⁸ Consequently, the State’s failure to comply with the general obligation to respect and to ensure human rights, by means of any type of discriminatory treatment, results in its international responsibility.³⁶⁹ Thus, the Court has affirmed that there is an inseparable connection between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination.³⁷⁰ Article 24 of the Convention establishes a right that also results in the State’s obligations to respect and to ensure the principle of equality and non-discrimination in the safeguard of other rights and in all the domestic laws that it enacts,³⁷¹ because it protects the right to “equal protection of the law,”³⁷² so that it also prohibits the discrimination derived from any inequality resulting from domestic laws or their application.³⁷³

219. In this regard, the Court has determined that a difference in treatment is discriminatory when it does not have an objective and reasonable justification;³⁷⁴ that is, when it does not seek a legitimate objective, and when there is no reasonable proportional relationship between the means used and the objective sought.³⁷⁵

220. The Court has also established that States must abstain from taking measures that, in any way, are directly or indirectly aimed at creating situations of discrimination *de jure* or *de facto*. States are obliged to adopt positive measures to reverse or change any discriminatory situations that exist in their societies which affect a specific group of persons. This entails the special duty of protection that the State must exercise with regard to the acts and practices of third parties that, with its tolerance or acquiescence, create, maintain or encourage discriminatory situations.³⁷⁶

³⁶⁷ Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 186, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, *supra*, para. 199.

³⁶⁸ Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, *supra*, para. 53, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 398.

³⁶⁹ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 85, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 398.

³⁷⁰ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 53, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 398.

³⁷¹ Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 186, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 398.

³⁷² Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, *supra*, para. 54, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 398.

³⁷³ Cf. *Case of Aritz Barbera et al. (“First Contentious Administrative Court”) v. Venezuela*, *supra*, para. 209, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 398.

³⁷⁴ Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 46, and *Case of Norín Catrimán (Leaders, Members and Activist of the Mapuche Indigenous People) et al. v. Chile*, *supra*, para. 200.

³⁷⁵ Cf. *Case of Norín Catrimán (Leaders, Members and Activist of the Mapuche Indigenous People) et al. v. Chile*, *supra*, para. 200, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 316.

³⁷⁶ Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, paras. 103 and 104, and *Case of Norín Catrimán (Leaders, Members and Activist of the Mapuche Indigenous People) et al. v. Chile*, *supra*, para. 201.

221. From a general point of view, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, "CEDAW") defines discrimination against women as "[a]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."³⁷⁷ In this regard, the United Nations Committee on the Elimination of Discrimination against Women (hereinafter, "the CEDAW Committee") has stated that the definition of discrimination against women "includes gender-based violence, that is, violence that it directed against a woman because she is a woman or that affects women disproportionately." It has also stated that "[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."³⁷⁸

222. In the inter-American sphere, the preamble of the Convention of Belém do Pará indicates that violence against women is "a manifestation of the historically unequal power relations between women and men" and recognizes that the right of all women to a life free from violence includes the right to be free from any kind of discrimination. The Court has indicated that, when it has been shown that the application of a rule leads to a differentiated impact on women and on men, the State must prove that this is due to objective factors, unrelated to discrimination.³⁷⁹

223. Lastly, the Court has established that women who have been arrested or detained "must not suffer discrimination, and must be protected from all forms of violence or exploitation." This discrimination includes "violence against a woman because she is a woman or that affects women disproportionately," and includes "acts that inflict physical, mental or sexual harm or suffering, threats to commit such acts, coercion and other forms of deprivation of liberty."³⁸⁰

224. Since the representatives' arguments in this case refer to a supposed discrimination in relation to the obligation to respect and to ensure the right to personal integrity to the detriment of Gladys Espinoza, the Court will now determine whether the State failed to comply with the obligation contained in Article 1(1) of the American Convention owing to the alleged application to Gladys Espinoza of a discriminatory practice of violence and rape during her detention on the premises of the DIVISE and the DINCOTE in 1993.

B.1. The discriminatory practice of sexual violence and rape

225. In the instant case, the Court has already established that, during the conflict that occurred between 1980 and 2000, sexual violence was a generalized practice within the security forces and its main victims were women (*supra* para. 67). The Court considers that this practice constituted gender-based violence because it affected women merely because they were women and that, as revealed by the evidence, it was encouraged by the anti-terrorism laws in force during that period, which were characterized by the absence of basic guarantees for detainees, in addition to establishing, among other matters, the power to keep detainees in solitary confinement and incommunicado (*supra* paras. 57, 58, 61, 62 and 64).

³⁷⁷ Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, Article 1.

³⁷⁸ Cf. Committee on the Elimination of Discrimination against Women, General Recommendation 19: Violence against women, eleventh session, 1992, UN Doc. HRI/GEN/1/Rev.1 at 84 (1994), paras. 1 and 6.

³⁷⁹ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 396, citing EHCR, *Opuz v. Turkey*, Judgment of 9 June 2009, paras. 180, 191 and 200.

³⁸⁰ Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 303, and *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 397.

226. In this regard, several international organizations have recognized that, during armed conflicts, women and children face specific situations that affect their human rights, such as acts of sexual violence, which is frequently used as a symbolic means of humiliating the opposing party or as a means of punishment and repression.³⁸¹ The use of the State's power to violate the rights of women during an internal conflict, in addition to affecting them directly, may be aimed at having an effect on society through such violations and providing a message or a lesson.³⁸² In particular, rape is a paradigmatic form of violence against women which has consequences that even transcend the person of the victim.³⁸³

227. Thus, during the public hearing before the Court, expert witness Julissa Mantilla asserted that, in armed conflicts, "sexual violence is not a casual act; it is not an act that is disconnected from the war, but rather [...] it may be a strategy of war."³⁸⁴

228. The Court notes that witness Félix Reátegui, principal adviser to the President of the CVR and operational coordinator of the Final Report Unit, classified sexual violence against women in Peru as a "pattern of criminality" because "while it was a recurring action by both non-State [...] and State agents – in other words, members of the Armed Forces and the Police – [...] acts of sexual violence have a recurrence, a generalization and a systematization which indicate that, at certain times and in certain places, it is necessary to speak of crimes against humanity that can be attributed to both State and non-State agents." He also indicated that these acts could have an instrumental or a non-instrumental motivation, as follows: "a motivation that may be called instrumental that is associated with the intention of punishing the victim; destroying the victim morally; punishing, humiliating and morally destroying the man by using the body of the woman victim; extracting confessions by torture. The other aspect, non-instrumental, is simply the exercise of absolute power that men have over women; in some cases also being used as a "reward" that the head of an armed unit gives to his subordinates so that they may obtain sexual satisfaction with the woman who, thus, in this case is used as one of the spoils of war for the sexual satisfaction of the soldiers or subordinates."³⁸⁵

229. The Court has already established that the acts of violence and rape perpetrated against Gladys Espinoza during her detention in the DIVISE and the DINCOTE were consistent with the generalized practice of sexual violence that existed in Peru at the time of the facts (*supra* para. 67). In this regard, the Court recalls that a significant number of women detainees were subjected to gender-based sexual violence owing to their real or presumed personal involvement in the armed conflict, as well as those whose partners were real or supposed members of the subversive groups (*supra* para. 63). In the instant case, the Court has already established that the torture to which Gladys Espinoza was subjected, which included rape and other forms of sexual violence, took place in the context of a detention and was aimed at obtaining information on the abduction of a businessman by the MRTA. The Court also recalls that the State agents who arrested her together with Rafael Salgado threatened him that unless he provided information on the whereabouts of this businessman, "20 [men would] have their way with her"

³⁸¹ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, paras. 223 and 224, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 165. See also, Committee for the Elimination of Discrimination against Women, General Recommendation 19: Violence against women, *supra*, para. 16, and Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/45, "Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)", UN Doc. E/CN.4/2001/73, 23 January 2001.

³⁸² Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 224, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 165.

³⁸³ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 119, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 165.

³⁸⁴ Testimony provided by Julissa Mantilla during the public hearing on merits held in this case.

³⁸⁵ Affidavit made on March 27, 2014, by Félix Reátegui Carrillo (merits file, folios 921 and 926).

(*supra* para. 179). In other words, the body of Gladys Espinoza, as a woman, was used in order to obtain information from her partner and to humiliate and intimidate both of them. These acts confirm that the State agents used sexual violence and the threat of sexual violence against Gladys Carol Espinoza Gonzáles as a strategy in the fight against the said subversive group. Consequently, the Court decides that subjecting Ms. Espinoza to this generalized practice constituted discrimination owing to her condition as a woman, in violation of Article 1(1) of the American Convention to her detriment, in relation to the rights to personal integrity and to honor and dignity established in Articles 5(1), 5(2) and 11 of this instrument, and to the obligations established in Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

VIII.4. RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION

230. In this chapter, the Court will examine the alleged violation of the rights to judicial guarantees³⁸⁶ and to judicial protection³⁸⁷ to the detriment of Gladys Espinoza, due to the supposed failure of the State to conduct a diligent investigation into the acts of torture and cruel, inhuman and degrading treatment of which she was a victim in 1993 on the premises of the DIVISE and the DINCOTE, and in 1999 in the Yanamayo Prison.

A) Arguments of the Commission and of the parties

231. The Commission argued that the absence of an investigation into the torture and cruel and inhuman treatments suffered by Gladys Espinoza and the impunity in which the facts remain, despite the State's awareness of them, constitute a violation of Articles 8(1) and 25(1) of the American Convention, and of Articles 1, 6 and 8 of the ICPPT. In addition, the Commission asserted that the medical examinations performed on the presumed victim in 1993 "were not aimed at establishing the possible causes of the bodily injuries found on the victim."³⁸⁸ Furthermore, it underscored that the conclusions of the National Terrorism Chamber and of the Supreme Court of Justice that disputed the occurrence of torture in this case did not constitute "a criminal investigation designed to cast light on the acts of violence against Gladys Carol Espinoza, to identify and punish those responsible, and to order the corresponding reparations." In its final oral observations, the Commission affirmed that the State had failed to comply with its obligation to investigate for almost 20 years, because it was not until 2012 that it opened an investigation into the facts.³⁸⁹

232. The Commission also argued that the State was responsible for the violation of Article 7 of the Convention of Belém do Pará to the detriment of Gladys Espinoza, because the presumed failure of the Peruvian authorities to investigate the complaints filed in her favor encouraged a climate of impunity in this and other cases of torture, rape and other forms of violence against

³⁸⁶ Article 8(1) of the American Convention establishes that: "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

³⁸⁷ Article 25(1) of the American Convention stipulates that: "[e]veryone 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 recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

³⁸⁸ According to the Commission, they lack essential information; they were prepared by PNP officials when the presumed victim was in the custody of agents of the same institution and, in some cases, "they did not even contain a conclusion or diagnosis."

³⁸⁹ In this regard, it affirmed that "the State must take into account the passage of time for the investigation to be truly effective," and that it must include the facts of this case, the adoption of all the necessary measures in order to identify all those responsible, to avoid the re-victimization of Gladys Carol Espinoza, and to provide immediate inter-disciplinary medical and psychological treatment immediately, taking into account the particularities of the harm suffered in the context of the armed conflict.

women, that “took place during the internal armed conflict.” Thus, the State failed to comply with its obligation to prevent, to investigate and to punish violence against women. Peru also failed to comply with this obligation owing to the absence of an investigation into the torture inflicted on Gladys Espinoza on August 5, 1999, while she was confined in the Yanamayo Prison.

233. The representatives agreed that the State had violated Articles 8 and 25 of the American Convention and Article 7 of the Convention of Belém do Pará owing to the failure to investigate the facts of the case. They added that “[t]he delay in opening the investigations prevented the implementation of essential measures such as the prompt collection and preservation of evidence, the identification of eyewitnesses, or the inspection of the scene of the crime.”³⁹⁰ Regarding the medical examinations to which Gladys Espinoza was subjected, they indicated that “they were performed in the State’s medical institutions or hospitals, especially those of a military nature, or on the premises of the DINCOTE”; thus, failing to comply with “the principle of independence and impartiality of the investigations in cases of torture.” They also affirmed that these examinations recorded clear signs of physical ill-treatment. In addition, they indicated that the “violations suffered by Gladys Carol were inserted in a context of the systematic and generalized practice of torture and of violence against women during the armed conflict and, therefore, constitute a crime against humanity, the prohibition of which is a norm of *jus cogens*, and its investigation and punishment is obligatory under international law.”

234. Furthermore, the representatives argued that the different authorities who were aware of the complaints of torture and sexual violence against Gladys Espinoza applied gender stereotypes that were discriminatory and that led them to reject the victim’s allegations and, consequently, not to investigate them. Thus, the representatives indicated that “the absence of an appropriate investigation and the application of gender-based stereotypes during the judicial proceedings [against Gladys Espinoza] reflect egregious discriminatory practices that affected [her right ...] to equal protection of the law and to non-discrimination based on gender.” They also affirmed that the conclusions of the National Terrorism Chamber and of the Criminal Chamber of the Supreme Court derived from the psychological appraisal carried out on Gladys Espinoza in 2004 “are a reflection of a deep-rooted discriminatory practice in the judicial institutions,” which has been “recognized by the Supreme Court of Justice of the Republic itself in Plenary Decision No. 1-2011/CJ-116.” Based on the above, Peru violated Articles 24 and 1(1) of the Convention.

235. With regard to the investigation opened in 2012, the representatives indicated that, “after more than 21 [years], the preliminary proceedings to investigate these facts has not even started,” and “errors have been committed that have violated the victim’s rights.” In this regard, they mentioned that “an examination of sexual integrity [performed on August 20, 2013, during the said proceedings ...] was irrelevant and re-victimized Ms. Espinoza González,” and that she had not been provided with appropriate medical and psychological care. Also, during the public hearing, the representatives stated that the new proceedings opened in 2012 “represent some progress in the State’s obligation to investigate this case; however, [...] they raise serious concerns, [such as the fact that] they did not classify the facts that occurred in 1993 as torture.”

236. In its answering brief, the State indicated that it had “been conducting investigations in the domestic sphere related to the presumed human rights violations denounced by the Commission and the representatives [...]” Regarding the hearings that the National Terrorism Chamber and the Supreme Court had held on the presumed acts of torture against Gladys Espinoza, it mentioned that the Commission had contradicted itself, because first “it indicated that the ruling of the National Terrorism Chamber and the Supreme Court was not issued in a

³⁹⁰ Among others, they specified that “[i]n the case of sexual abuse, if the physical examination is performed more than a week after the attack, it is rare to find any physical signs”; however, “the first record of a genital examination of Gladys Carol was the one carried out [...] almost a month after the sexual abuse.”

criminal investigation designed to shed light on the acts of torture and rape against Gladys Carol Espinoza," and then it asserted that, the said rulings, 'rejected' the acts of torture and rape in criminal proceedings for the crime of terrorism that were unrelated to the investigation into the complaints presented by the petitioner." Peru also affirmed that a gynecological appraisal was not made of Gladys Espinoza for the medical certificate of January 7, 2014, and that the conclusions on her sexual integrity in that certificate were the result of the evaluation of the previous medical examinations of Gladys Espinoza. In addition, the State indicated that the prosecutor was unable to denounce the facts that occurred in 1993 as torture, because he did not have the necessary legal instrument and, also, because Article 9 of the American Convention establishes the principle of legality. Thus, it indicated that the definition of torture as a crime was introduced into Peruvian criminal law on February 21, 1998, under Law No. 26,926 (article 321), which incorporated Title XIV-A on crimes against humanity into the Criminal Code. With regard to the assessment of the medical and psychological appraisals submitted to the judicial proceedings, the State indicated that "[t]he judges who compose the Judiciary are unable to make a specialized and technical assessment of a medical and psychological nature [...] so that, in these cases, they have recourse to experts." According to the State, "[i]t would be absurd to maintain that the National Terrorism Chamber should not trust the opinion of the experts," who "were unable to affirm that the injuries were produced by torture" and who were obliged, under oath, to speak the truth. It added that "the Supreme Court [...] acted based on an application for a declaration of nullity [...] following the filing of an appeal, [so that] it could not issue a different opinion on the nature of the evidence, which in this case consists of the psychological and medical appraisals." Regardless of the foregoing, the State indicated that, at the present time, the prosecutor is conducting an investigation, and the rulings of the Supreme Court and of the National Terrorism Chamber have not impeded this.

B) Considerations of the Court

237. The Court has established that, pursuant to the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25),³⁹¹ remedies that must be substantiated in keeping with the rules of due process of law (Article 8(1)),³⁹² all as part of the general obligation of States to ensure to all persons subject to their jurisdiction the free and full exercise of the rights recognized by the Convention (Article 1(1)).³⁹³ It has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their family members that everything necessary is done to know the truth of what happened, and to investigate, prosecute and punish, as appropriate, those eventually found responsible.³⁹⁴

238. The Court has indicated in its consistent case law that the obligation to investigate is an obligation of means and not of results, which must be assumed by the State as an inherent legal duty and not simply as a formality, preordained to be fruitless, or merely as a measure taken by private individuals,³⁹⁵ which depends on the procedural initiative of the victims or of their family

³⁹¹ Cf. *Case of Fairén Garbí and Solís Corrales v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 2, para. 90, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 199.

³⁹² Cf. *Case of Godínez Cruz v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 3, para. 92, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 199.

³⁹³ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 199.

³⁹⁴ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 199.

³⁹⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 177, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 200.

members or on the contribution of evidence by private individuals.³⁹⁶ The investigation must be serious, impartial and effective, and be aimed at determining the truth and the pursuit, capture, prosecution and eventual punishment of the perpetrators of the facts.³⁹⁷ The said obligation remains “whosoever the agent to whom the violation may eventually be attributed, even private individuals, because if their acts are not investigated correctly, they would, to a certain extent, be aided by the public authorities, which would engage the international responsibility of the State.”³⁹⁸ Moreover, due diligence requires that the body conducting the investigation take all the actions and make all the inquiries required to achieve the result sought. To the contrary, the investigation is not effective in the terms of the Convention.³⁹⁹

239. In particular, under Article 1(1) of the American Convention, the obligation to ensure the rights recognized in Article 5(1) and 5(2) of the American Convention entails the State’s duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment.⁴⁰⁰ This obligation to investigate is enhanced by the provisions of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture that oblige the States “to take effective measures to prevent and punish torture within their jurisdiction,” as well as “to prevent and punish other cruel, inhuman or degrading treatment or punishment.” In addition, pursuant to Article 8 of that Convention, States Parties “shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. In addition, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal proceedings.”

240. In this regard, it is essential that States act diligently to avoid alleged acts of torture or cruel, inhuman and degrading treatment, taking into account, moreover, that the victims usually abstain from denouncing the facts, due to fear, especially when they are deprived of liberty in the custody of the State. In addition, the judicial authorities have the obligation to ensure the rights of all those deprived of liberty, which entails obtaining and preserving any evidence that may substantiate alleged acts of torture.⁴⁰¹

241. The Court also recalls that, in cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are complemented and enhanced by the obligations derived from the specific inter-American treaty, the Convention of Belém do Pará, for those States that are party to it. Article 7(b) of that Convention specifically obliges the States Parties to apply due diligence to prevent, investigate, punish and eradicate violence

³⁹⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 177, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 200.

³⁹⁷ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 200.

³⁹⁸ *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 177, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 200.

³⁹⁹ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 200.

⁴⁰⁰ Cf. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 147, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 341.

⁴⁰¹ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 135, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*. Judgment of May 14, 2013. Series C No. 260, para. 234.

against women.⁴⁰² In such cases, the State authorities must open *ex officio* and immediately, a serious, impartial and effective investigation as soon as they become aware of the facts that constitute violence against women, including sexual violence.⁴⁰³ Thus, when an act of violence has been perpetrated against a woman, it is particularly important that the authorities in charge of the investigation conduct this with determination and effectiveness, bearing in mind the duty of society to reject violence against women, and the State's obligation to eradicate this and to inspire confidence in the victims in the States institutions created to protect them.⁴⁰⁴

242. The Court has specified the guiding principles that must be observed in criminal investigations involving human rights violations.⁴⁰⁵ The Court has also indicated that the obligation to conduct an effective investigation has added implications when a woman has died or suffered ill-treatment or restriction of her personal liberty in the context of generalized violence against women.⁴⁰⁶ In cases of violence against women, various international instruments are useful for specifying and providing content to the enhanced State obligation to investigate them with due diligence.⁴⁰⁷ Among other matters, a criminal investigation into sexual violence must: (i) document and coordinate the investigation procedures and process the evidence diligently, taking sufficient specimens, performing tests to determine the possible perpetrator of the act, preserving other evidence such as the victim's clothes, inspecting the scene of the incident immediately, and ensuring the proper chain of custody; (ii) provide free legal assistance to the victim during all stages of the proceedings, and (iii) provide both emergency and, if necessary, continuing medical, prophylactic and psychological care to the victim, using a treatment protocol aimed at lessening the consequences of the offense.⁴⁰⁸ Also,

⁴⁰² Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 193, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 185.

⁴⁰³ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 378, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 185.

⁴⁰⁴ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 193, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 185.

⁴⁰⁵ These may include, *inter alia*: to gather and preserve the evidence in order to contribute to any potential criminal investigation of those responsible; to identify possible witnesses and to obtain their statements, and to determine the cause, form, place and time of the fact investigated. In addition, it is necessary to conduct a thorough investigation of the scene of the crime, and ensure that a rigorous analysis is made by competent professionals, using the most appropriate procedures. Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra*, para. 128, and *Case of J. v. Peru*, *supra*, para. 344.

⁴⁰⁶ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, para. 293, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 186.

⁴⁰⁷ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 194, and *Case of J. v. Peru*, *supra*, para. 344. *Istanbul Protocol*, 2001, paras. 67, 77, 89, 99, 101 to 105, 154, 161 to 163, 170, 171, 224, 225, 260, 269 and 290, and World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, *inter alia*, pp. 17, 30-1, 34, 39 to 44 and 57 to 74.

⁴⁰⁸ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 194, and *Case of J. v. Peru*, *supra*, para. 344. In this regard, the State is obliged to provide, with the consent of the victims, treatment for the consequences to their health of the sexual violence, including the possibility of access to prophylactic treatment and treatment to prevent pregnancy. In this regard, see: World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, *inter alia*, p. 63, Available at: <http://whqlibdoc.who.int/publications/2004/924154628X.pdf?ua=1>; See also: *Instrumento de Trabajo y Consulta, Protocolo Interinstitucional de Atención Integral a Víctimas de Violación Sexual* (Costa Rica), Available at: <http://ministeriopublico.poder-judicial.go.cr/biblioteca/protocolos/10.pdf>; *Modelo Integrado para la Prevención y Atención de la Violencia Familiar y Sexual*, 2010 (Mexico), Available at: http://www.inm.gob.mx/static/Autorizacion_Protocolos/SSA/ModeloIntegrado_para_Prevencion_Atn_Violencia_familiar_y_se.pdf; Federación Latinoamericana de Sociedades de Obstetricia and Ginecología, *Propuesta de Estándares Regionales para la Elaboración de Protocolos de Atención Integral Temprana a Víctimas de Violencia Sexual* (2011), Available at: <http://www.flasog.org/wp-content/uploads/2014/01/Propuestas-Estandares-Protocolos-Atencion-Victimas-Violencia-FLASOG-2011.pdf>; *Modelo de Atención Integral en Salud para Víctimas de Violencia Sexual*, 2011 (Colombia) Available at: <http://www.minsalud.gov.co/Documentos%20y%20Publicaciones/MODELO%20DE%20ATENCI%3%93N%20A%20V%3%8DCTIMAS%20DE%20VIOLENCIA%20SEXUAL.pdf>, and *Guía Técnica de Atención Integral de Personas Afectadas por la Violencia basada en Género*, 2007 (Peru), Available at: http://www.sis.gob.pe/ipresspublicas/normas/pdf/minsa/GUIASPRATICAS/2007/RM141_2007.pdf.

in cases of alleged acts of violence against women, the criminal investigation should include a gender perspective and be conducted by officials with experience in similar cases and in providing attention to victims of discrimination and gender-based violence.⁴⁰⁹ The Court has also referred to the essential characteristics of the medical examinations of the presumed victim and of the statements taken from her in this type of case (*infra* paras. 249 and 252).

243. Nevertheless, the Court has already established that no investigation whatsoever was conducted before the State was notified of the Report on Admissibility and Merits of the Inter-American Commission (*supra* para. 84), and that it was only on April 16, 2012, that the Third Supranational Criminal Prosecutor opened a criminal investigation into the acts perpetrated against Gladys Espinoza following her arrest on April 17, 1993, and until June 24 that year on the premises of the DIVISE and the DINCOTE, as well as for the incident that took place on August 5, 1999, in the Yanamayo Maximum Security Prison, among others (*supra* para. 85). The Court has verified that the proceedings are currently at the trial stage (*supra* paras. 99 and 100). Based on the foregoing, the Court will now examine, first, the failure to investigate the facts of this case until 2012, and then analyze the alleged failure to comply with the obligation in the investigation opened in 2012.

B.1. The failure to investigate between 1993 and 2012 the events that occurred on the premises of the DIVISE and the DINCOTE in 1993 and the incident that took place in the Yanamayo Prison in 1999

244. The Court will now proceed to evaluate the actions of the State in relation to its duty to investigate the acts of torture and sexual violence perpetrated against Gladys Carol Espinoza González during her detention on the premises of the DIVISE and of the DINCOTE: (a) between 1993 and 2004, and (b) following the statements made by Gladys Espinoza in 2004 during the criminal proceedings against her in which she described these acts. The Court will then analyze the actions of Peru in relation to its duty to investigate the torture she underwent in the Yanamayo Prison in 1999.

B.1.1. The failure to investigate between 1993 and 2004 the acts of torture and other ill-treatment suffered by Gladys Espinoza in the DIVISE and the DINCOTE

245. In this case, the Court has verified that, on various occasions, the State was advised of the acts of violence perpetrated against Gladys Espinoza on the premises of the DIVISE and the DINCOTE in 1993, namely: (i) on April 26, 1993, in a communication submitted by Teodora González to the 14th Special Terrorism Prosecutor; (ii) on April 28, 1993, in briefs sent by APRODEH to the Special Prosecutor of the Ombudsman's Office and to the Prosecutor General's Office, stressing that she had been subjected to "unnatural acts" and that "a blunt object (such as a broom handle) had been inserted in the woman's sexual organ [...] (*supra* para. 75); (iii) on April 28, May 7 and June 5, 1993, in statements made by Gladys Espinoza before the Military Prosecutor describing the torture to which she had been subjected at the time of her arrest and on the premises of the DIVISE and the DINCOTE (*supra* paras. 77 and 157), and (iv) by the physical examinations performed on April 18, 19 and 21, and May 18, 1993, while she was detained on the premises of the DIVISE and of the DINCOTE, as well as the psychological appraisal of Gladys Espinoza on April 26, 1993, by PNP psychologists (*supra* paras. 165 and 166). In this regard, the Court has already verified that Gladys Espinoza's injuries had become increasingly severe on each examination, and the last one recorded "signs compatible with a recent unnatural act" (*supra* para. 167).

⁴⁰⁹ Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 455, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 188.

246. In addition, the Court observes that senior authorities of the Peruvian Executive were aware or should have been aware of the acts of which Gladys Espinoza was a victim. Indeed, the Vice Minister of the Interior requested the DINCOTE to provide a "report on the possible ill-treatment to which [Gladys Espinoza] was allegedly being subjected" and, consequently, on May 27, 1993, the DINCOTE issued Report No. 2074-D3-DINCOTE in which it referred to and assessed all the statements made by Gladys Espinoza, and the medical examinations performed on her. Attached to this report was a copy of the statements made by Gladys Espinoza up until that date, as well as the medical reports on her condition available at the time. Nevertheless, the report indicated that Gladys Espinoza "has not been subjected to physical ill-treatment [...] or sexual abuse."⁴¹⁰

247. In this regard, the Court notes that no investigation whatsoever was opened into the said facts between 1993 and 2004. On this point, in view of the fact that, when Gladys Espinoza's statements were received and the medical and psychological appraisals were made, the State had already been advised of the torture, and even of sexual violence and rape and of the other cruel, inhuman and degrading treatment to which she had been subjected, the Court finds that the State should have taken the said statements and performed the said appraisals taking into account that she was a possible victim of this type of human rights violations. Consequently, the Court finds it necessary to define the scope of the State's obligation to investigate in relation to the said statements received from Gladys Espinoza and the respective physical and psychological appraisals.

248. Thus, first, the Court considers that, with regard to the interviews of a person who states that they have been subjected to acts of torture: (i) he or she should be allowed to describe freely what they consider relevant, so that the officials should not merely ask questions; (ii) no one should be required to speak of any form of torture if they are uncomfortable doing so; (iii) the psychosocial history prior to the arrest of the presumed victim should be documented during the interview, together with a summary of the facts narrated relating to the moment of the initial arrest, the circumstances and the place, and the conditions while in State custody, the ill-treatment or acts of torture presumably suffered, as well as the methods presumably used to this end, and (iv) the detailed statement should be recorded and transcribed.⁴¹¹ In cases in which the alleged torture includes acts of violence or rape, the presumed victim must give their consent to this recording.⁴¹²

249. In particular, the Court has indicated that, in interviews of a presumed victim of acts of violence or rape, the statement should be made in a safe and secure environment that provides privacy and instils confidence, and that the statement should be recorded in order to avoid or limit the need for its repetition.⁴¹³ This statement should contain, with the consent of the presumed victim: (i) the date, time and location of the assault, including a description of the type of surface on which it occurred; (ii) the name, identity and number of assailants; (iii) the nature of the physical contacts perpetrated; (iv) whether weapons or restraints were used; (v) use of medication, drugs, alcohol or other substances; (vi) how clothing was removed, if applicable; (vii) details of actual or attempted sexual activity against the presumed victim; (viii) whether condoms or lubricants were used; (ix) whether there were any subsequent activities by

⁴¹⁰ Report No. 2074-DR-DINCOTE issued by the DINCOTE on May 27, 1993 (evidence file, folios 1501 to 1503).

⁴¹¹ Cf. United Nations, Office of the High Commissioner for Human Rights, *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)*, New York and Geneva, 2004, paras. 100, 135 to 141.

⁴¹² Cf. World Health Organization, *Guidelines for medico-legal care for victims of sexual violence, supra, inter alia*, pp. 34, 37, 96 and 97.

⁴¹³ Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 194, and *Case of J. v. Peru, supra*, para. 344.

the patient that could alter evidence, and (x) details of any symptoms that the presumed victim has developed since that time.⁴¹⁴

250. From the three statements taken from Gladys Espinoza in 1993, it can be observed that: (i) none of them were received in a safe and secure environment; rather, to the contrary, they were received on the premises of the DINCOTE, where the acts of torture had occurred,⁴¹⁵ and two of them in the presence of military officers;⁴¹⁶ (ii) they were restricted to questions asked by the Investigating Officer, including questions on the existence of ill-treatment against her,⁴¹⁷ and there is no record that she was allowed to describe freely the facts that she considered relevant, and (iii) no relevant information was recorded on Gladys Espinoza's background, apart from that related to her possible participation in acts of terrorism or treason.⁴¹⁸ Furthermore, the Court observes that, during these statements, Gladys Espinoza was required to repeat her description of the acts of torture and sexual violence perpetrated against her.

251. Second, regarding the medical examinations performed on Gladys Espinoza on April 18, 19 and 21, and May 18, 1993, as well as the psychological appraisal made on April 26 that year while she was detained in the DIVISE and the DINCOTE (*supra* paras. 165, 166 and 245), the Court considers that, in cases in which signs of torture exist, the medical examinations of the presumed victim must be performed with the latter's prior and informed consent, without the presence of security agents or other State agents, and the corresponding reports should include at least the following:

- (a) The circumstances of the interview. The name of the subject and name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); any appropriate circumstances at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;
- (b) The background. A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment was alleged to have occurred and all complaints of physical and psychological symptoms;
- (c) A physical and psychological examination. A record of all physical and psychological findings upon clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
- (d) An opinion. An interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment or further examination should also be given[, and]
- (e) A record of authorship. The report should clearly identify those carrying out the examination and should be signed.⁴¹⁹

252. The Court has also indicated that, in cases of violence against women, a complete and detailed medical and psychological appraisal should be made as soon as there is awareness of the alleged acts by suitable trained personnel, if possible of the sex indicated by the victim,

⁴¹⁴ Cf. World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, *supra*, *inter alia*, pp. 36 and 37.

⁴¹⁵ Cf. Police statement by Gladys Espinoza of April 28, 1993 (evidence file, folios 8269 to 8270); Statement by Gladys Espinoza of May 7, 1993 (evidence file, folios 5804 to 5807), and Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folios 9398 to 9402).

⁴¹⁶ Cf. Statement by Gladys Espinoza of May 7, 1993 (evidence file, folios 5804 to 5807), and Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folios 9398 to 9402).

⁴¹⁷ Cf. Police statement by Gladys Espinoza of April 28, 1993 (evidence file, folios 8269 to 8270); Statement by Gladys Espinoza of May 7, 1993 (evidence file, folios 5804 to 5807), and Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folios 9398 to 9402).

⁴¹⁸ Cf. Police statement by Gladys Espinoza of April 28, 1993 (evidence file, folios 8269 to 8270); Statement by Gladys Espinoza of May 7, 1993 (evidence file, folios 5804 to 5807), and Preliminary statement of Gladys Espinoza of June 5, 1993 (evidence file, folios 9398 to 9402).

⁴¹⁹ *Istanbul Protocol*, *supra*, para. 83.

advising the latter that she may be accompanied by someone she trusts if she so wishes.⁴²⁰ This appraisal must be performed in keeping with protocols designed specifically for documenting evidence in cases of gender-based violence.⁴²¹

253. The reports assessed in this chapter reveal that: (a) the forensic personnel who performed the physical examination of Gladys Espinoza on May 18, 1993, were all male, and there is no record that she had been offered the presence of a person of the sex she preferred,⁴²² even though acts of sexual violence had already been reported; (b) there is no record in the reports on the appraisals made of Gladys Espinoza in April and May 1993, of any account provided by her of the acts that occurred during her arrest and following this, in particular, the acts of torture and other ill-treatment to which she was subjected;⁴²³ (c) there is no other documentation, in particular, photographic documentation, to substantiate the comments of the personnel who appraised her,⁴²⁴ and (d) there is no interpretation of the probable connection between the physical symptoms and the possible acts of torture to which Ms. Espinoza referred in her statements (*supra* para. 77),⁴²⁵ beyond the indication in the appraisal of May 18, 1993, of “signs compatible with a recent unnatural act” (*supra* para. 167).

254. In addition, the case file reveals that the first physical examination that made an assessment of the sexual integrity of Gladys Espinoza was performed on May 18, 1993, even though the State had been aware of the acts of rape and other forms of sexual violence to which she had been subjected since at least April 28, 1993 (*supra* para. 75).

255. In this regard, when referring to the investigation in cases of torture, the Istanbul Protocol indicates that “[t]he timeliness of such medical examination is particularly important,” and that it “should be undertaken regardless of the length of time since the torture.”⁴²⁶ Nevertheless, this Protocol notes that “[d]espite all precautions, physical and psychological examinations by their very nature may re-traumatize the patient by provoking or exacerbating symptoms of post-traumatic stress by reviving painful effects and memories.”⁴²⁷

⁴²⁰ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 194, and *Case of J. v. Peru*, *supra*, para. 344.

⁴²¹ Cf. World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, *supra*, *inter alia*, pp. 28 and 29.

⁴²² Cf. Medical certificate No. 1816-H of the Institute of Forensic Medicine of Peru of May 18, 1993 (evidence file, folio 1571).

⁴²³ Cf. Medical forensic appraisal of the Abduction Investigation Division of the Peruvian National Police of April 22, 1993 (evidence file, folio 1565); Medical certificate No. 16111-L of the Institute of Forensic Medicine of April 20, 1993 (evidence file, folio 1567); Report No. 235-SE.HO.PNP.604000.93 of the Hospital of the Peruvian National Police of April 26, 1993 (evidence file, folio 1569); Report No. 052-ODINFO-DINCOTE of the Counter-terrorism Division of April 26, 1993 (evidence file, folio 1576), and Medical certificate No. 1816-H of the Institute of Forensic Medicine of Peru of May 18, 1993 (evidence file, folio 1571).

⁴²⁴ Cf. Medical forensic appraisal of the Abduction Investigation Division of the Peruvian National Police of April 22, 1993 (evidence file, folio 1565); Medical certificate No. 16111-L of the Institute of Forensic Medicine of April 20, 1993 (evidence file, folio 1567); Report No. 235-SE.HO.PNP.604000.93 of the Hospital of the Peruvian National Police of April 26, 1993 (evidence file, folio 1569); Report No. 052-ODINFO-DINCOTE of the Counter-terrorism Division of April 26, 1993 (evidence file, folio 1576), and Medical certificate No. 1816-H of the Institute of Forensic Medicine of Peru of May 18, 1993 (evidence file, folio 1571).

⁴²⁵ Cf. Medical forensic appraisal of the Abduction Investigation Division of the Peruvian National Police of April 22, 1993 (evidence file, folio 1565); Medical certificate No. 16111-L of the Institute of Forensic Medicine of April 20, 1993 (evidence file, folio 1567); Report No. 235-SE.HO.PNP.604000.93 of the Hospital of the Peruvian National Police of April 26, 1993 (evidence file, folio 1569); Report No. 052-ODINFO-DINCOTE of the Counter-terrorism Division of April 26, 1993 (evidence file, folio 1576), and Medical certificate No. 1816-H of the Institute of Forensic Medicine of Peru of May 18, 1993 (evidence file, folio 1571).

⁴²⁶ *Istanbul Protocol*, *supra*, para. 104.

⁴²⁷ *Istanbul Protocol*, *supra*, para. 149.

256. Furthermore, in cases of sexual violence, the Court has underlined that the investigation must try, insofar as possible, to avoid the re-victimization of the presumed victim or the re-experience of the profoundly traumatic incident.⁴²⁸ Regarding examinations of sexual integrity, the World Health Organization has established that, in this type of case, the gynecological examination should be made as soon as possible.⁴²⁹ In this regard, the Court considers that the gynecological and anal examination should be performed, if it is considered appropriate to perform it and with the prior informed consent of the presumed victim, during the first 72 hours after the reported act, based on a specific protocol for attention to victims of sexual violence.⁴³⁰ This does not preclude the gynecological examination being performed after this period, with the presumed victim's consent, because evidence can be found some time after the act of sexual violence, particularly with the development of forensic investigation technologies.⁴³¹ Consequently, the time limits established for performing an examination of this nature must be considered as guidelines, rather than as rigid policy. Thus, the appropriateness of a gynecological examination must be considered on the basis of a case-by-case analysis taking into account the time that has passed since the alleged sexual violence occurred. Accordingly, the Court considers that the authority requesting a gynecological examination must provide detailed reasons for its appropriateness and, should it not be appropriate or if the presumed victim has not given her informed consent, the examination should be omitted, although this should never serve as an excuse for doubting the presumed victim and/or avoiding an investigation.

257. Bearing in mind the foregoing, the Court observes that the said medical examination was performed approximately three weeks after the time at which the State became aware of the acts of sexual violence perpetrated against Gladys Espinoza. Moreover, the case file does not reveal any reason that would justify such a delay in performing this medical examination.

258. Third, the Court considers that doctors and other health personnel are obliged not to engage, actively or passively, in acts which constitute participation or complicity in, or incitement or attempts to commit torture or other cruel, inhuman or degrading treatment.⁴³² In particular, in their reports, forensic doctors are obliged to record the existence of evidence of ill-

⁴²⁸ Cf. *Case of Fernández Ortega et al. v. Mexico*, supra, para. 196, and *Case of Rosendo Cantú et al. v. Mexico*, supra, para. 180.

⁴²⁹ Cf. World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, supra, inter alia, pp. 18, 43 and 58.

⁴³⁰ The Court observes that the following countries in the region have adopted the standard of 72 hours for the collection of forensic evidence in cases of rape: (i) Bolivia: *Atención Integral a las Mujeres Adultas y Adolescentes Víctimas de Violencia Sexual: Normas, Protocolos y Procedimientos*, 2010, inter alia, p. 51 and 94, Available at: http://www.justicia.gob.bo/index.php/normas/doc_download/92; (ii) Costa Rica: *Instrumento de Trabajo y Consulta, Protocolo Interinstitucional de Atención Integral a Víctimas de Violación Sexual*, supra, inter alia, p. 13 and 26; (iii) Paraguay: *Protocolo de Intervención con Víctimas/Sobrevivientes de Agresión Sexual en Facilidades de Salud*, 2006, inter alia, p. 26, Available at: <http://www.salud.gov.pr/Programas/ORCPS/ProtocolosMedicos/Protocolos/Protocolo%20de%20Intervencion%20con%20sobrevivientes%20de%20Agresion%20Sexual%2030%20oct%202006.pdf>, and (iv) Peru: *Guía Técnica de Atención Integral de Personas Afectadas por la Violencia Basada en Género*, 2007, supra, p. 34. The Court observes that in the case of: (v) United States of America, even though many jurisdictions have traditionally used 72 hours after the rape as a standard time limit for collecting evidence, many jurisdictions have established longer periods (for example, five days or one week). Cf. United States of America: *A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents*, 2013, p. 7, Available at: <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>.

⁴³¹ Cf. *A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents*, supra, p. 8.

⁴³² Cf. United Nations, General Assembly, *Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment*, Resolution 37/194 of 18 December 1982, principle 2, Available at: <http://www.un.org/documents/ga/res/37/a37r194.htm>. See also: World Medical Association, *Tokyo Declaration*, adopted in October 1975 and revised in May 2006, art. 1, Available at: <http://www.wma.net/en/30publications/10policies/c18/>

treatment, if this is the case.⁴³³ Thus, forensic doctors must take steps to notify possible abuse to the corresponding authorities or, if this entails foreseeable risks to health care professionals or their patients, to authorities outside the immediate jurisdiction.⁴³⁴ In addition, the State must provide the necessary guarantees to ensure that, if a medical forensic examination supports the possibility that acts of torture or other cruel, inhuman or degrading treatment have been perpetrated, the detainee is not returned to the place of detention where this occurred.⁴³⁵

259. In this regard, the Court notes that, despite the evident progressive deterioration in Gladys Espinoza's physical condition, revealed by the four physical examinations performed on her in April and May 1993 (*supra* para. 167), the forensic doctors who examined her did not report the existence of signs of torture to any authority and, on each of those occasions, Gladys Espinoza was returned to the same DINCOTE officials who had perpetrated the said torture and cruel, inhuman and degrading treatment against her.

260. The Court has established that the State must ensure the independence of medical and health care personnel responsible for examining and providing assistance to detainees so that they may perform the necessary medical examinations freely, respecting the norms established for the practice of their profession.⁴³⁶ Thus, the Court considers that "professional independence requires that, at all times, health care professionals act in accordance with the fundamental goal of medicine, which is to alleviate suffering and anguish, and to avoid harm to the patient, despite any circumstance that could counteract this." The obligation of independence requires that doctors should have full freedom to act in the interests of the patient, and means that doctors must use the best medical practices, whatsoever the pressure to which they may be subject, including possible instructions from those employing them, prison authorities or security forces. In this regard, the State is obliged to abstain from, in any way, obliging doctors to compromise their professional independence. Even though it is not sufficient to indicate that a doctor is a State employee to determine that he is not independent, the State must ensure that his contractual conditions grant him the necessary professional independence to issue his clinical opinions without pressure. The forensic doctor also has the obligation to be objective and impartial when assessing the person he is examining.⁴³⁷

261. The Court has indicated that, in principle, the burden of proving the facts on which his or her arguments are based corresponds to the plaintiff; however, it has emphasized that, contrary to domestic criminal law, in proceedings on human rights violations, the State's defense cannot rest on the plaintiff's impossibility of providing evidence when it is the State that controls the

⁴³³ Cf. *Istanbul Protocol*, *supra*, para. 71.

⁴³⁴ Cf. *Istanbul Protocol*, *supra*, para. 73. Similarly, see also: Argentine Criminal Code, article 144(2), Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/texact.htm>; National Mental Health Act of Argentina, art. 29, Available at: http://www.msal.gov.ar/saludmental/images/stories/info-equipos/pdf/2013-09-26_ley-nacional-salud-mental.pdf; Medical Ethics Code of Bolivia, art. 52, Available at: <http://snis.minsalud.gob.bo/documentacion/normativas/CODIGODEETICAYDEONTOLOGIAMEDICA.pdf>; Code of Criminal Procedure of Chile, art. 84, Available at: <http://www.leychile.cl/Navegar?idNorma=22960>; Criminal Code of Colombia, amended by Law 1121 of 2006, art. 441, Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=22647>, among others. Similarly, see: International Council of Nurses, *Nurses' role in the care of detainees and prisoners*, 1998, Available at: http://www.icn.ch/images/stories/documents/publications/position_statements/A13_Nurses_Role_Detainees_Prisoners.pdf.

⁴³⁵ Cf. *Istanbul Protocol*, *supra*, para. 126.

⁴³⁶ Cf. *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 92. See also, *Istanbul Protocol*, *supra*, paras. 56, 60, 65 and 66, and Committee against Torture, *General Comment No. 2: Implementation of article 2 by the States Parties*, UN Doc. CAT/C/GC/2, para. 13.

⁴³⁷ Cf. *Istanbul Protocol*, *supra*, paras. 57, 61, 67 and 71. In this regard see the *amicus curiae* presented by Women's Link Worldwide and the Legal Clinic of the Universidad de Valencia of April 15, 2014 (merits file, folio 1422).

means to clarify acts that occurred in its territory.⁴³⁸ Thus, the Court considers that the burden of proving the lack of independence of the forensic doctors attached to the State's institutions in cases of torture should not rest exclusively on the party alleging this, because it is the State that has the means to prove that this guarantee was respected.

262. In this case, of the four physical examinations performed on Gladys Espinoza in 1993, two were carried out by the Institute of Forensic Medicine of the Public Prosecution Service, two by the forensic doctors and psychologists of the Criminalistics Directorate of the Peruvian National Police, and another by the Emergency Service of the Hospital of the Peruvian National Police.⁴³⁹ The State did not submit arguments to disprove the alleged lack of independence of the doctors who evaluated Gladys Espinoza on those occasions, or evidence that proves whether the said doctors enjoyed guarantees for the independent exercise of their profession. Taking this into account, as well as the fact that the said doctors did not identify the signs which showed that Gladys Espinoza had been tortured and subjected to rape and other forms of sexual violence, even though the examinations performed revealed the progressive deterioration in her physical condition during her detention in the DINCOTE (*supra* para. 167), the Court considers that there is sufficient evidence to affirm that the said forensic doctors were not independent, impartial and objective. In this regard, the Court takes note that, during the oral hearing held before the National Terrorism Chamber on February 24, 2004, one of the forensic doctors,⁴⁴⁰ who had signed the medical reports of April 20 and May 18, 1993, and another of them,⁴⁴¹ who also signed the medical report of May 18, 1993, did not deny or affirm that Gladys Espinoza's injuries were the result of acts of torture, while the forensic doctor⁴⁴² who signed the medical report corresponding to the examination performed on April 22, 1993, stated that "it is not possible that [her injuries] resulted from torture." The Court also takes note that, in October 2012, the prosecutor in charge of the investigation into the acts of torture and sexual violence against Gladys Espinoza asked the Institute of Forensic Medicine to provide information on the medical examinations carried out on Gladys Espinoza since 1993, and the request went unanswered (*supra* para. 90).

263. The absolute absence of an investigation from 1993 to 2004 despite the indications identified in this chapter should not be assessed in isolation. The Court has noted that, during the Peruvian conflict, "the prosecutors called upon by law to determine the existence of abuse and report them to the courts ignored complaints by detainees."⁴⁴³ Furthermore, the CVR, basing itself on reports of the National Human Rights Coordinator and of the International Committee of the Red Cross, confirmed in its Final Report that State officials, "concealed or even endorsed what took place," and also indicated that, "despite the complaints of some victims and of national and international human rights organizations, as well as of organizations of the Catholic Church, the agents of justice failed to prosecute any member of the Police or Armed Forces for torture [...]. Consequently, this unlawful practice continued to be implemented with

⁴³⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 135, and *Case of J. v. Peru, supra*, para. 306.

⁴³⁹ Cf. Medical forensic appraisal of the Abduction Investigation Division of the Peruvian National Police of April 22, 1993 (evidence file, folio 1565); Medical certificate No. 16111-L of the Institute of Forensic Medicine of April 20, 1991 (evidence file, folio 1567); Report No. 235-SE.HO.PNP.604000.93 of the Hospital of the Peruvian National Police of April 26, 1993 (evidence file, folio 1569); Report No. 052-ODINFO-DINCOTE of the Counter-terrorism Division of April 26, 1993 (evidence file, folio 1576), and Medical certificate No. 1816-H of the Institute of Forensic Medicine of Peru of May 18, 1993 (evidence file, folio 1571).

⁴⁴⁰ Cf. Statement by forensic doctor A.O.S. of February 24, 2004 (evidence file, folios 10377 and 10378).

⁴⁴¹ Cf. Statement by forensic doctor J.A.M. of February 24, 2004 (evidence file, folio 10378). J.A.M. also ratified its content subsequently in 2013 (*supra* para. 90).

⁴⁴² Statement by forensic doctor J.L.V. of February 24, 2004 (evidence file, folios 10380 and 10381).

⁴⁴³ *Case of J. v. Peru, supra*, para. 319.

impunity, spreading feelings of helplessness and pessimism among the population.”⁴⁴⁴ In addition, as indicated *supra*, the Final Report of the CVR established that “[m]ost of the victims state that the medical forensic examinations that were carried out by [...] medical professionals were not rigorous; that is, they only performed the medical examinations as a mere formality. [...] Also, the testimonies received by the [CVR] indicate [that the medical reports] did not record the evident signs of torture or the complaints of the victims who said they had been tortured.” It also indicated that “[t]he professional misconduct of forensic doctors has particularly egregious consequences in the cases of sexual violence, because they condemn the crime to impunity.”⁴⁴⁵

264. Based on the above, the Court considers that the deficient way in which the State officials took statements about the acts of which Gladys Espinoza was a victim, the consistent refusal of the forensic doctors to identify the signs of torture and sexual violence that were evident on Gladys Espinoza, and the failure of those doctors to report them, as well as the lack of independence of the forensic doctors who evaluated Gladys Espinoza, had an adverse impact on the possible collection of evidence, contributing to the impunity that reigns in this case.

B.1.2. The allegations of torture raised during the criminal proceedings against Gladys Espinoza in 2003 and 2004 and the application of gender-stereotyping by the judicial authorities

265. The Court observes that the judgment delivered by the National Terrorism Chamber on March 1, 2004, in the proceedings against Gladys Espinoza for the crime of terrorism refers to a police statement made by Gladys Espinoza, in which she affirmed that, during her detention, she had been “a victim of physical and psychological ill-treatment, as well as of sexual abuse by the individuals who were in charge of her.”⁴⁴⁶ Furthermore, the ruling issued by the Permanent Criminal Chamber of the Supreme Court on November 24, 2004, on the application for a declaration of nullity filed by Gladys Espinoza, the senior prosecutor, and the Attorney General’s Office, states that “Gladys Carol Espinoza Gonzáles [...] affirm[ed] that, on police premises, she was the victim of sexual abuse and subjected to cruel and inhuman torture.”⁴⁴⁷ The foregoing represent two new occasions on which the State was made aware of the torture and sexual violence perpetrated against Gladys Espinoza in 1993 during her detention on the premises of the DIVISE and the DINCOTE.

266. As the Court has already indicated, even when the acts of torture or cruel, inhuman or degrading treatment have not been reported to the competent authorities by the victim, in any case in which there are indications that this has occurred, the State must open, *ex officio* and promptly, an impartial, independent and thorough investigation leading to the determination of the nature and origin of the injuries noted, together with the identification of those responsible, and their prosecution.⁴⁴⁸ Also, the obligation to investigate gender-based violence was enhanced for Peru by the entry into force of the Convention of Belém do Pará on June 4, 2006. The Court notes that the judicial bodies mentioned above, and also the Public Prosecution Service and the Attorney General’s Office, failed to file any complaint or open any investigation to clarify the facts that were alleged by Gladys Espinoza, despite being aware of the acts against her personal integrity.

⁴⁴⁴ *Informe Final de la Comisión de la Verdad y Reconciliación, supra*, Volume VI, Chapter 1.4, pp. 222 a 224.

⁴⁴⁵ *Informe Final de la Comisión de la Verdad y Reconciliación, supra*, Volume VI, Chapter 1.4, p. 224.

⁴⁴⁶ Judgment of the National Terrorism Chamber of March 1, 2004 (evidence file, folios 6136 and 6140).

⁴⁴⁷ Final Judgment No. 1252-2004 of the Permanent Criminal Chamber of November 24, 2004 (evidence file, folio 6154).

⁴⁴⁸ *Cf. Case of Gutiérrez Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132, para. 54, and *Case of J. v. Peru, supra*, para. 347.

267. According to the representatives, during the proceedings instituted against Gladys Espinoza in 2004, the National Terrorism Chamber and the Permanent Criminal Chamber of the Supreme Court of Justice which heard the case applied gender-stereotyping when assessing her statements that she had been subjected to torture and other ill-treatment in the DIVISE and the DINCOTE, discrediting them and, consequently, failing to order an investigation into these facts.

268. In this regard, the Court considers that gender-stereotyping refers to a preconception of the attributes or characteristics, or of the respective roles that are or should be played by men and women.⁴⁴⁹ Thus, the Court has identified gender stereotypes that are incompatible with international human rights law, and that States should take measures to eradicate.⁴⁵⁰

269. Taking this into account, in order to determine whether the National Terrorism Chamber and the Permanent Criminal Chamber of the Supreme Court of Justice failed to order an investigation into the acts of torture denounced by Gladys Espinoza based on gender stereotyping, the Court will examine the following documents, which are part of the case file of the proceedings instituted against her: (i) Forensic report No. 003821-V, issued by the Institute of Forensic Medicine (IML) following the evaluation of Ms. Espinoza on January 27 and February 9, 2004; (ii) Psychological appraisal report No. 003737-2004-PSC, prepared by the IML after interviewing Ms. Espinoza on February 9 and 10, 2004; (iii) the record of the public hearing held on February 26, 2004, in the criminal proceedings against Gladys Espinoza; (iv) the judgment of the National Terrorism Chamber of March 1, 2004, and (v) the ruling of the Permanent Criminal Chamber of the Supreme Court of Justice of November 24, 2004. The Court will also examine Plenary Decision No. 1-2011/CJ-116 of the Supreme Court of Justice of December 6, 2011, mentioned by the representatives in their arguments.

270. First, Forensic report No. 003821-V issued by the IML following the evaluations made of Gladys Espinoza on January 27 and February 9, 2004, reveals that the forensic doctors who evaluated Gladys Espinoza determined that her conduct during her statements was a "dramatization of the events" and that she "has a histrionic personality disorder, which does not prevent her from being in contact with the reality except when she disassociates herself from it." The report also concludes that Gladys Espinoza suffered from "dissociative disorder" and "histrionic personality disorder."⁴⁵¹ Similarly, Psychological appraisal report No. 003737-2004-PSC, prepared by the IML after interviewing Gladys Espinoza on February 9 and 10, 2004, indicates that "[t]he individual examined is a person with a low tolerance of frustration [...]; she tends to exaggerate her emotions [...] when it suits her interests; she tries to be convincing when she speaks, she is careful about the image she presents, she is evasive, she does not commit herself, she finds it difficult to admit she is wrong, she is manipulative in order to obtain secondary gains [...] and to seek support."⁴⁵²

271. Furthermore, during the public hearing held on February 26, 2004, before the National Terrorism Chamber, the psychologists who prepared Psychological appraisal report No. 003737-2004-PSC mentioned in the preceding paragraph gave oral testimony. When asked how they would define a person with histrionic and dissociative characteristics, they stated that "such individuals are characterized by being immature and unsure of themselves; they change the object of their affections in order to call attention to themselves; in the case of the dissocial

⁴⁴⁹ Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 401.

⁴⁵⁰ Cf. *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, para. 302.

⁴⁵¹ Forensic report No. 003821-V prepared by experts of the Institute of Forensic Medicine, dated January 22, 2004 (evidence file, folios 1557 and 1563).

⁴⁵² Psychological appraisal report No. 003737-2004-PSC of the Institute of Forensic Medicine (evidence file, folios 1453 to 1455).

characteristics, they are individuals who tend to lie and to play down their defects and errors, always giving more attention to the satisfaction of their own needs." They added that "these characteristics are not definitive; as noted, they are only features of a personality [that] in this case was histrionic and dissocial." They also asserted that "a histrionic trait means that the individual tends to manipulate others, not only during an interview but also by other means; the reference to secondary gains means that there is an unspecified interest that the individual seeks to achieve through their life history." They also indicated that the inmate with histrionic and dissocial personality traits tends to violate norms and rules."⁴⁵³

272. In this regard, expert witness Rebeca Cook stated before the Court that "[t]he characterization of a woman suspected of criminal activity as a 'bad girl' allows her maturity and humanity to be denied and, thereby, exempts those in charge of her custody from responsibility." She asserted that, the characteristics often attributed to women suspected of having committed offenses include: "being assertive, manipulative, lacking credibility, and with a tendency to challenge authority." The expert witness added that when "[j]udges hold similar gender stereotypes with regard to women suspects, this may result in the decision on the latter's innocence or guilt not being founded on appropriate evidence, or even that more severe punishments are imposed on them than on women suspects who submit to male authority."⁴⁵⁴ Hence, the Court recognizes and rejects the gender stereotype according to which women suspected of having committed an offense are considered to be intrinsically untrustworthy or manipulative, especially in the context of judicial proceedings. In this regard, the Court has stated that assessments of this nature reveal "a discretionary and discriminatory opinion based on the procedural situation of the women [...]."⁴⁵⁵

273. Meanwhile, expert witness María Jennie Dador stated before the Court that, when investigating cases of sexual violence and torture reported in Peru, the judicial authorities had "accorded too much significance to the medical forensic examinations, the integrity of the hymen or 'loss of virginity,' and evidence of physical signs of violence, without considering that, neither at that time nor today, were there or are there technical and scientific or human resources that would allow the justice system to obtain the necessary evidence to charge the assailants."⁴⁵⁶

274. In its judgment of March 1, 2004, the National Terrorism Chamber assessed the psychological evaluations performed by the forensic doctors in January and February 2004 in order to evaluate the admissibility of eliminating probative elements allegedly obtained by means of "humiliating treatment and torture, and also sexual abuse by unknown individuals [because it was] prohibited evidence [...]." When referring to these psychological appraisals, the Chamber asserted that they "show that the accused has histrionic and dissocial traits, and the psychological appraisals examined during the deliberations indicated that these characteristics correspond to an immature and insecure personality, that does not easily accept frustration, and that manipulates others in order to obtain advantages." Moreover, it declared the elimination requested inadmissible, because Gladys Espinoza had given a consistent version of the facts without providing "any kind of self-incriminating version, [...]; consequently, there is no causal relationship between the physical ill-treatment that the accused allegedly suffered and the obtaining of inculpatory evidence; thus it can be ruled out that it is prohibited evidence."⁴⁵⁷ In the reasoning of this judgment, the National Terrorism Chamber did not use the content of the

⁴⁵³ Statement by the psychologists M.C.L. and R.M.O. of February 26, 2004 (evidence file, folios 10387 to 10389).

⁴⁵⁴ Affidavit made by expert witness Rebecca Cook on March 27, 2014 (merits file, folios 1135 and 1136).

⁴⁵⁵ *Mutatis mutandi*, Case of *J. v. Peru*, *supra*, para. 352.

⁴⁵⁶ Affidavit made by expert witness María Jennie Dador on March 25, 2014 (merits file, folios 961 to 990).

⁴⁵⁷ Judgment of the National Terrorism Chamber of March 1, 2004 (evidence file, folios 1513 to 1530).

medical examinations performed on Gladys Espinoza to justify its decision, but rather based itself only on her failure to incriminate herself. The Court also notes that the National Terrorism Chamber did not rule on the existence or inexistence of torture; however, as indicated (*supra* para. 266), it did not order an investigation into the said facts.

275. Meanwhile, the ruling issued by the Permanent Criminal Chamber of the Supreme Court on November 24, 2004, corresponding to the “application for a declaration of nullity filed by [Gladys Espinoza] against the guilty verdict [of March 1, 2004]; by the senior prosecutor with regard to the *quantum* of the sentence, and by the Attorney General’s Office with regard to the amount of the civil reparation,” asserted that “during the oral trial, the medical experts have indicated that the injuries to Gladys Carol Espinoza Gonzáles are not compatible with torture, and it should be added that the psychological appraisal concluded that the person appraised is someone who is manipulative in order to obtain advantages.” Thus, the Chamber considered that “there are no grounds to declare the nullity of the judgment [...] convicting Gladys Carol Espinoza [...] of the crime against public peace-terrorism.”⁴⁵⁸ In this regard, in the said judgment, the Criminal Chamber of the Supreme Court of Justice rejected the allegation of the possible existence of “torture that [Gladys Espinoza] denounced she was a victim of on police premises,” based, exclusively, on the indications of the medical experts during the oral trial (*supra* para. 270), and specifically stated that Gladys Espinoza is a person who is manipulative in order to obtain advantages. The Criminal Chamber did not assess any other evidence in the case file in order to reach this conclusion, and interpreted the assessments of the expert witnesses during the oral hearing in a way that was designed to invalidate her credibility as a witness. However, the Court recalls, in particular, that two of the three medical experts who testified before the National Terrorism Chamber during the said public hearing neither denied nor affirmed the existence of acts of torture and sexual violence against Gladys Espinoza (*supra* para. 262). Thus, this selective way of assessing the expert opinions provided during the oral hearing invalidated the content of Gladys Espinoza’s statements, and this is a matter of particular concern given the special significance of the statements of a presumed victim of sexual violence (*supra* para. 150).

276. It is pertinent to take into account that, when analyzing psychological reports 003821-V and 003737-2004-PSC of February 2004 mentioned *supra*, the psychologist Carmen Wurst, in the psychological appraisal made of Ms. Espinoza in 2008, stated that “[n]either of the said appraisals has taken into account that this was a case of torture and rape. The conclusions make no mention of the relationship that existed between the traumatic event and the aftereffects found [...]. The conclusions emitted only corroborate and substantiate the psychological harm produced by the torture. [Moreover, these appraisals] have been used in a pejorative manner, when referring to reactions that could be expected [...]. The diagnosis tries to demonstrate that, owing to her histrionic traits, the patient has invented the episode of torture, which is absolutely improbable and incorrect, because these reactions and clinical symptoms are normal and only to be expected and, to the contrary, confirm the aftereffects of torture according to the Istanbul Protocol.”⁴⁵⁹

277. Furthermore, the Court recalls that a pattern of torture and of sexual violence existed in Peru, implemented in a discriminatory manner against women in the context of investigations into terrorism and treason at the time of the facts (*supra* paras. 67 and 229). In addition, as previously indicated, at the time the Criminal Chamber’s judgment was delivered, in cases of sexual violence, the Peruvian courts accorded too much significance to the medical evidence,

⁴⁵⁸ Final Judgment No. 1252-2004 of the Permanent Criminal Chamber of November 24, 2004 (evidence file, folio 6154).

⁴⁵⁹ Report on the psychological and psychiatric appraisals made by Carmen Wurst de Landázuri on October 5, 2008 (evidence file, folios 1544 to 1555).

thus making stereotyped assessments limited to verifying the integrity of the hymen, the loss of virginity, and the physical traces of violence (*supra* para. 273).

278. The Court finds it pertinent to underscore that a guarantee of access to justice for women victims of sexual violence must be the establishment of rules for the assessment of the evidence that avoid stereotyped affirmations, insinuations and allusions.⁴⁶⁰ In this regard, the Court observes that, Plenary Decision No. 1-2011/CJ-116 of the Supreme Court of Justice of December 6, 2011,⁴⁶¹ which “establishe[d] as legal doctrine” the criteria for the assessment of the evidence of sexual offenses in Peru following that date,⁴⁶² affirmed that “some sectors of the community assume that this assessment of the evidence is governed by gender stereotypes among the police, prosecutors and judges” and recognized the need “to make an appropriate assessment and selection of the evidence in order to neutralize the possibility of producing any error that injures human dignity and is a sources of impunity.” Thus, the Court considers that, in the instant case, the absence, in 2004, of norms that would regulate the special assessment of the evidence that is called for in cases of sexual violence encouraged the use of gender stereotypes in the Permanent Criminal Chamber’s assessment of the evidence that Gladys Espinoza had been a victim of torture and sexual violence.

279. Based on all the foregoing, the Court considers that the statement of the Permanent Criminal Chamber of the Supreme Court that Gladys Espinoza manipulated the reality in her own interests is consistent with the opinion of expert witness Dador, in the sense that, in cases of sexual violence, the Peruvian judicial authorities used gender-based stereotypes in the assessment of the evidence, detracting from the statements of women victims of such acts. Added to this, the Court considers that the following factors reveal that this Chamber chose the evidence selectively to the detriment of Gladys Espinoza: (i) the fact that the judge rejected the allegation of the possible existence of torture by indicating that she was a person who manipulated the reality; (ii) the existence of medical expert opinions that did not deny the possibility that Gladys Espinoza had been a victim of torture, and (iii) the failure to analyze the other evidence in the judicial case file, such as the medical examinations performed on her, which reveal elements that would reasonably constitute evidence of torture. In addition, the absence of norms for the assessment of the evidence in this type of case promoted the selective choice of evidence in order to reject Gladys Espinoza’s allegations of torture, which resulted in the failure to order any investigation into this. The above constituted treatment that discriminated against her by the Permanent Criminal Chamber of the Supreme Court of Justice

⁴⁶⁰ Cf. Affidavit made by expert witness Rebecca Cook on March 27, 2014 (merits file, folio 1142).

⁴⁶¹ Plenary Decision No. 1-2011/ CJ-116 is an instrument prepared in order to respond to “the need to incorporate into the assessment of the evidence of sexual offenses” the standards contained in Rules 70 and 71 of the Rules of Procedure and Evidence of the International Criminal Court. The text of these rules is as follows:

“Rule 70. Principles of evidence in cases of sexual violence

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent.

(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;

(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

Rule 71. Evidence of other sexual conduct

In the light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.”

⁴⁶² Plenary decision No. 1-2011/CJ-116 of the Supreme Court of Justice of December 6, 2011, paras. 6, 7 and 40 (evidence file, folios 5191 to 5203).

of Peru, because it founded its judgment on a gender stereotype relating to the unreliability of the statements of women suspected of having committed an offense.

280. In this regard, the Court reiterates that judicial ineffectiveness in individual cases of violence against women encourages a climate of impunity that facilitates and promotes the repetition of the acts of violence in general, and sends a message that violence against women may be condoned and accepted, which fosters its perpetuation and social acceptance of the phenomenon, the feeling and sensation of insecurity for women, and their persistent mistrust in the system for the administration of justice.⁴⁶³ This ineffectiveness or indifference represents, in itself, discrimination against women in access to justice. Accordingly, when there are indications or concrete suspicions of gender-based violence, the authorities' failure to investigate the possible discriminatory reasons for the act of violence against a woman may, of itself, constitute a form of gender-based discrimination.⁴⁶⁴

281. In this regard, expert witness Rebecca Cook indicated that "[a] culture of impunity [...] perpetuates the idea that, by default, women considered suspects are worth less than men [...]. The inadequate response of States and judges to gender-based violence suffered by women when they are in police custody or in prison reflects and perpetuates the perception that this type of violence against women is not a serious crime. In sum, violence against women who are considered suspects is [hidden] and under-penalized, allowing it to continue with impunity."⁴⁶⁵ She also indicated that "[t]he implementation of a gender perspective [in access to justice mechanisms] requires a guarantee that the gender stereotypes held by agents or officials will not prevent or distort effective investigations or the prosecution and/or appropriate punishment of violence against women."⁴⁶⁶

282. In the instant case, Félix Reátegui, principal adviser to the President of the CVR and operational coordinator of the of the Final Report Unit, indicated in relation to the number of cases of sexual violence recorded that, "contrary to other violations, there is a marked tendency for sexual violence to be reported much less frequently than it really occurs for different reasons: due to the limited importance given to it; because in a context of continuous violence against women, it tends to be seen as something normal or as a minor violation; owing to shame and the fear of stigmatization and because, traditionally, the State authorities have shown scant respect for women who report that they have suffered sexual violence."⁴⁶⁷ In this regard, expert witness Julissa Mantilla indicated during the public hearing before the Court, without the State contesting this, that of the 538 cases of rape recorded by the CVR, 527 were committed against women and, up until 2012, of the 538 cases of rape found by the CVR, "only 16 cases were being investigated. Of those, 13 were at the stage of preliminary investigation by the Public Prosecution Service and three were before courts."⁴⁶⁸ In this regard, the Court has already indicated in this Judgment that the Report of the CVR is an important reference point for the facts of this case (*supra* para. 50). The foregoing allows this Court to conclude that Peru rendered invisible the egregious pattern of sexual violence of which women detained due to their presumed participation in crimes of terrorism and treason were victims, which represented an obstacle to the judicialization of these facts, promoting their impunity to date, and constituted gender-based discrimination in access to justice.

B.1.3. The failure to investigate the 1999 incident in the Yanamayo Prison

⁴⁶³ Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, paras. 388 and 400, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 208.

⁴⁶⁴ Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 208.

⁴⁶⁵ Affidavit made by expert witness Rebecca Cook on March 27, 2014 (merits file, folios 1137 and 1138).

⁴⁶⁶ Affidavit made by expert witness Rebecca Cook on March 27, 2014 (merits file, folio 1138).

⁴⁶⁷ Affidavit made by Félix Reátegui on March 27, 2014 (merits file, folio 922).

⁴⁶⁸ Expert opinion provided by Julissa Mantilla during the public hearing held on April 4, 2014.

283. Regarding the alleged failure to investigate the acts of torture perpetrated against Gladys Espinoza on August 5, 1999, in the Yanamayo Prison, the Court notes that, in his Report on the Yanamayo Prison, Puno of August 25, 1999, the Ombudsman described the violence used against Gladys Espinoza and the injuries that she suffered, and indicated that four other female inmates were subjected to sexual violence on the same occasion (*supra* paras. 209 and 210). In addition, in this report, the Ombudsman affirmed that the “information available to him [...] allowed [him] to conclude that during the inspection of August 5, [...] the police agents, using disproportionate force, ill-treated five female inmates, [facts that t]he said police authorities have not only denied [...], but have also systematically tried to conceal.”⁴⁶⁹ Lastly, the Ombudsman recommended that an investigation be opened to identify and punish those responsible for the said incident.

284. Consequently, the Court finds that the State was aware of the possible perpetration against Gladys Espinoza of acts that could constitute cruel and inhuman treatment or torture by DINOES personnel as of at least August 25, 1999, the date of the above-mentioned report of the Ombudsman (*supra* para. 209); nevertheless, it did not open any investigation in this regard until 2012 (*supra* para. 85). Furthermore, the said report indicated that, in the context of the said inspection of August 5, 1999, the other women who were assaulted alleged that they had been subjected to sexual violence, which constitutes sufficient evidence to establish that the State should have also opened an investigation with a gender perspective (*supra* para. 210) into the acts perpetrated against Gladys Espinoza. This obligation also arises from the Convention of Belém do Pará, which Peru ratified on June 4, 1996 (*supra* para. 18).

B.1.4. Conclusion on the absence of an investigation from 1993 to 2012

285. Based on the foregoing, the Court considers that the State should have opened an investigation, *ex officio*, immediately after April 18, 1993, into the acts of torture perpetrated against Gladys Espinoza during her arrest, and subsequently on the premises of the DIVISE and the DINCOTE (*supra* para. 245). The State should also have opened an investigation into the acts of sexual violence perpetrated against her, at least, following April 28, 1993, the date on which APRODEH filed the corresponding complaints before the Special Prosecution Unit of the Ombudsman’s office (*supra* para. 245). Similarly, the Court considers that the State should have opened an investigation promptly after August 25, 1999, into the acts of torture and the possible existence of sexual violence against Gladys Espinoza within the Yanamayo Prison on August 5, 1999 (*supra* para. 283). Nevertheless, it was not until April 16, 2012, that the Third Supranational Criminal Prosecutor opened a criminal investigation into these facts, which is currently at the trial stage (*supra* para. 243).

286. The Court notes that the start of the investigation in 2012 signified an unjustified delay of approximately 19 years in relation to the facts that occurred in the DIVISE and DINCOTE in 1993, and approximately 13 years in relation to the facts that occurred in the Yanamayo Prison in 1999, and that the proceedings are still underway. In this regard, the Court recalls that the lack of diligence means that, as time passes, the possibility of obtaining and presenting pertinent evidence to clarify the facts and determine the corresponding responsibilities is adversely affected, and the State has thereby contributed to their impunity.⁴⁷⁰ Thus, it is

⁴⁶⁹ Report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (evidence file, folios 1580 to 1601).

⁴⁷⁰ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010 Series C No. 217, para. 172, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 214. The Court has defined impunity as the total absence of investigation, pursuit, capture, prosecution and conviction of those responsible for human rights violations. Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Preliminary objections*. para. 173, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 214.

obvious that some of the evidence that could have been collected in order to clarify the acts of violence of which Gladys Espinoza was a victim is no longer available owing to the passage of time. The Court also notes that the deficient way in which statements were taken and medical examinations performed in this case contributed to impunity, and that the application of gender stereotypes by the Permanent Criminal Chamber of the Supreme Court of Justice also resulted in the failure to investigate the facts. Lastly, the Court observes that, in this case, the State has not submitted information to confirm that it has provided Gladys Espinoza with the medical and psychological care required in cases of violence and rape (*supra* paras. 199, 257 and 262).

287. Consequently, the Court determines that the State has violated the rights recognized in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of this instrument, and also the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. It also finds that the State failed to comply with the obligation to investigate sexual violence contained in Article 7(b) of the Convention of Belém do Pará with regard to the incident that took place in the Yanamayo Prison and, as of June 4, 1996, date on which Peru ratified this treaty, with regard to the facts that occurred in 1993 in the DIVISE and the DINCOTE.

288. Furthermore, the Court determines that the stereotyped assessment of the evidence by the Permanent Criminal Chamber of the Supreme Court of Justice, as a result of which an investigation into the reported facts was not ordered, constituted gender-based discrimination in access to justice and, therefore, constituted non-compliance by the State with the obligation contained in Article 1(1) of the Convention, in relation to Articles 8(1) and 25 and 2 thereof, and to Articles 1, 6 and 8 of the ICPPT as well as Article 7(b) of the Convention of Belém do Pará.

B.2. The investigation opened in 2012

289. The representatives argued that, during the investigation opened in 2012, the State has incurred in errors that violate Gladys Espinoza's rights, including the failure to identify perpetrators and the absence of key activities to clarify the facts,⁴⁷¹ as well as the presumed re-victimization of Gladys Espinoza owing to the supposed practice of an examination of sexual integrity approximately 20 years after the facts. For its part, the State affirmed that Gladys Espinoza was not subjected to a physical examination that included a gynecological examination in 2013.

290. In this regard, the Court reaffirms that the State is obliged to investigate the acts of torture and sexual violence perpetrated against Gladys Espinoza, *ex officio* and within a reasonable time, in order to identify, prosecute and punish, as appropriate, those responsible for the facts and thus avoid impunity. In this regard, the Court has verified that, on February 28, 2012, the Third Supranational Criminal Prosecutor of Lima was requested to investigate the incidents that occurred in 1993 and 1999 to the detriment of Gladys Espinoza and that, consequently, the Provincial Criminal Prosecutor had issued notes addressed to the DIRCRI, the Institute of Forensic Medicine, the Board of Prosecutors of the Judicial District of Puno, the

⁴⁷¹ They indicated that, since the investigation started, "the only substantial measure implemented by the State has been to file a complaint against some of those supposedly responsible for the facts." They also indicated that, "during the recently-opened investigation, testimony has not been received from witnesses and members of the victim's family, such as Lily Cubas [*sic*] and Manuel Espinoza" and that "at the time this brief is submitted, the investigations have only been able to identify [...] presumed perpetrators of the facts that took place in the DIVISE in 1993; however, regarding the facts that occurred in the DINCOTE, only one presumed perpetrator has been accused [...]. Similarly, regarding the 1999 incident in the Yanamayo Prison, the investigations conducted in the domestic sphere have only permitted the identification of one presumed perpetrator." They also indicated that, "considering that widespread violations were committed at the time of the facts [in] all the State institutions mentioned, the investigations should have been conducted taking into account other cases that had been reported," and that "the investigation completely excludes the criminal responsibility of the medical, judicial and administrative personnel who committed additional violations by act and omission in this case."

Peruvian Ombudsman, and the National Penitentiary Institute, and had received statements from at least 58 individuals, among other measures aimed at clarifying the facts that took place between April 17 and June 24, 1993, in the DIVISE and the DINCOTE, and the acts of torture that occurred on August 5, 1999, in the Yanamayo Prison (*supra* paras. 84 to 100). The Court considers that, since there is an ongoing investigation in which it is still possible to gather evidence and to determine other responsibilities, at this time it has not found deficiencies related to these actions that constitute further non-compliance with the obligation to investigate. Also, regarding the alleged examination of integrity presumably performed on Gladys Espinoza in 2013, the representatives did not provide information regarding the circumstances in which this was carried out that would allow its argument to be assessed. Therefore, the Court does not find a violation of Articles 8 and 25 of the Convention in relation to the investigation opened in 2012.

VIII.5. RIGHT TO PERSONAL INTEGRITY OF THE VICTIM'S NEXT OF KIN, IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE RIGHTS

A) Arguments of the parties and of the Commission

291. The Commission argued that, in the case *sub judice*, it has been proved that when she found out about her daughter's arrest, Teodora Gonzáles went to the DINCOTE headquarters several times without obtaining any information. According to the Commission, Mrs. Gonzáles and one of her children were later authorized to visit Gladys Espinoza for a few minutes and, at that time, she broke down and fainted upon seeing her daughter's physical condition. The Commission considered that the personal integrity of the members of Gladys Espinoza's family was violated as a result of the steps they took to denounce the torture and rape suffered by the victim, and owing to the failure of the judicial authorities to take any action in this regard. Furthermore, it argued that Mrs. Gonzáles died without having obtained any kind of response to the denunciations of torture presented on behalf of her daughter. Lastly, it indicated that, owing to the prison regime established in article 20 of Decree Law No. 25475, and particularly during the incarceration of Ms. Espinoza Gonzáles in the Yanamayo Maximum Security Prison, her family were unable to visit her for several years. Consequently, the Commission concluded that the State was responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the victim's mother, Teodora Gonzáles, and her brother, Manuel Espinoza Gonzáles.

292. The representatives asserted that Teodora Gonzáles and Manuel Espinoza Gonzáles went to the DINCOTE to obtain information on the whereabouts of Gladys Espinoza. There, the agents presumably denied that Gladys Espinoza was detained at that location. Since they could not obtain information from the authorities about the victim's whereabouts, "Gladys Espinoza's next of kin decided to have recourse to APRODEH and, through this organization, they contacted the Director of the DINCOTE, and were thus able to obtain information confirming the victim's detention on those police premises, and were able to see her, but only for a mere five minutes." According to the representatives, on that occasion, the family found that she had been beaten on different parts of her body. This situation was extremely painful for her family members who, at all times, were in the custody of armed police agents who mocked the victim and asserted that her injuries were self-inflicted. In addition, the uncertainty about Ms. Espinoza's whereabouts during her transfers and "the absence of specific, reliable and prompt information caused Gladys Espinoza's family pain and indignation."

293. The representatives also stated that "during the time Gladys Espinoza was confined in the Yanamayo prison, she was only allowed to receive one visit a month, in the special prison visiting room, and by only one family member." In view of the difficulties involved in traveling to the prison, the family decided that it should be Gladys Espinoza's mother "who should make the visits [...]"; however, "the conditions of distance, low temperatures, and limited contact, as well

as the demeaning physical conditions endured by Gladys [Espinoza], rendered [the visits] made by Mrs. Gonzáles profoundly harrowing, and seriously affected the latter's emotional and physical health." In 2010, Teodora Gonzáles' health failed completely and she died, to the distress of the whole family.

294. Regarding the criminal proceedings faced by Gladys Espinoza, the representatives indicated that her family had tried to find and present various documents for the victims legal defense, and were mistreated by the authorities who "obstructed their efforts, [...] causing them great suffering." According to the representatives, more than 19 years after the facts occurred, the absence of effective remedies had caused Gladys Espinoza's next of kin suffering and anguish that constituted a violation of the right to personal and moral integrity. Consequently, the representatives asked the Court to declare that the State of Peru had violated Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the next of kin of Gladys Carol Espinoza Gonzáles, Teodora Gonzáles and Manuel Espinoza Gonzáles. In their final written arguments, the representatives argued that the determination of when the victims' next of kin may also be considered victims does not depend only on the type of violation in question, but also on the harm that the said next of kin have suffered, taking into account the elements described.

295. The State indicated that "a domestic criminal investigation has been opened into the presumed torture and rape of Gladys Carol Espinoza Gonzáles in order to investigate the facts and to punish those presumably responsible." In addition, it affirmed that "the visiting restrictions established in the anti-terrorism laws have already been eliminated, because these laws have been annulled by a judgment of the Peruvian Constitutional Court; in other words, the prison conditions during the first half of the 1990s were rectified by the Peruvian State itself by eliminating that prison regime. Moreover, the petitioner left the Yanamayo Prison on April 17, 2001, and was transferred to the Aucayama Prison in Huaral, to the north of Lima, and she is currently in the Chorrillos Women's Maximum Security Prison." In its final oral and written arguments, the State indicated that it was aware that it was for the Inter-American Commission on Human Rights to determine the presumed victims; however, it added that this aspect should be standardized, because while in the case of *J. v. Peru* it was determined that only Ms. J. was a victim and not her parents or siblings, in the instant case, which is very similar, the Commission had argued that the next of kin of the person directly harmed by the State's actions are also presumed victims.

B) Considerations of the Court

296. In numerous cases the Court has considered that the next of kin of victims of human rights violations may, in turn, be victims.⁴⁷² In this regard, the Court has indicated that it can declare the violation of the right to mental and moral integrity of the next of kin of victims of certain human rights violations by applying a presumption *iuris tantum* with regard to mothers and fathers, daughters and sons, husbands and wives, and permanent companions (hereinafter "direct next of kin), provided this is in keeping with the particular circumstances of the case. Regarding such direct next of kin, it is for the State to disprove this presumption.⁴⁷³ This presumption has been applied, for example, in cases of massacres, enforced disappearances of

⁴⁷² Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281, para. 279.

⁴⁷³ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 274, para. 227.

persons, and extrajudicial executions.⁴⁷⁴ In other circumstances, the Court must analyze whether the evidence in the case file proves a violation of the presumed victim's right to personal integrity, whether or not he or she is a relative of any other victim in the case and, in this regard, it will assess, for example, whether there are particularly close ties between such a person and the victims in the case that would allow the Court to consider that his or her right to personal integrity has been violated.⁴⁷⁵

297. In this regard the Court observes that Gladys Espinoza was subjected to torture, including sexual violence and rape, and was also the victim of inhuman and degrading treatment, all within the framework of a generalized practice of such acts (*supra* paras. 67, 185, 187 and 196). In other words, Ms. Espinoza was a victim of egregious human rights violations. Therefore, the Court considers that, in this case, the said *iuris tantum* presumption is applicable to Teodora González de Espinoza, mother of Ms. Espinoza González, who is now deceased.⁴⁷⁶ Moreover, the Court observes that both Gladys Espinoza⁴⁷⁷ and her brother, Manuel Espinoza,⁴⁷⁸ have stated that their mother was profoundly affected by what happened to her daughter.

298. In addition, with regard to the harm suffered by Manuel Espinoza González, he testified before the Court that his relationship with Gladys Espinoza had always been "very close since they were children." He also stated that, for his mother and himself, "it was very difficult and painful to find Gladys" beaten and injured, with bruises and sutures when they saw her in the DINCOTE for the first time (*supra* para. 74), and that he felt "terrible, because [he] was powerless to do anything for [his] sister" on discovering what had happened to her. He recalled "the way they treated [his] sister with anger and distress, and how this affected [his] mother." He also stated that they "were not the first or the last to experience such events and [for] everything to remain unpunished. This ma[de him] feel very frustrated and depressed [...]; everything that happened, but [he] remains hopeful [...] that one day [they] will obtain justice for [his] sister."⁴⁷⁹

299. Based on the foregoing, the Court determines that the State violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Teodora González de Espinoza and Manuel Espinoza González.

IX REPARATIONS (Application of Article 63(1) of the American Convention)

300. Article 63(1) of the Convention stipulates that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party." In this regard, the Court has indicated that any violation of an international obligation that has

⁴⁷⁴ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 119, and *Case of Osorio Rivera and family members v. Peru, supra*, para. 227.

⁴⁷⁵ Cf. *Case of Blake v. Guatemala. Merits, supra*, para. 114, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela, supra*, paras. 279 and 281.

⁴⁷⁶ Cf. Death certificate of Teodora González de Espinoza of August 4, 2006, issued by the National Civil Registry of the Republic of Peru (evidence file, folio 12866).

⁴⁷⁷ Cf. Affidavit made on March 26, 2014, by Gladys Carol Espinoza González (merits file, folio 906).

⁴⁷⁸ Cf. Affidavit made on March 25, 2014, by Manuel Espinoza González (merits file, folios 914, 915 and 917).

⁴⁷⁹ Cf. Affidavit made on March 25, 2014, by Manuel Espinoza González (merits file, folios 912, 914, 916 and 917).

caused harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that is one of the basic principles of contemporary international law on State responsibility.⁴⁸⁰

301. The Court has established that the reparations should have a causal nexus with the facts of the case, the violations declared, the damage proved, and the measures requested to redress the corresponding harm.⁴⁸¹

302. Bearing in mind the violations of the Convention declared in the preceding chapters, the Court will proceed to analyze the claims presented by the Commission and the representatives, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, in order to established the measures designed to redress the harm caused to the victims.⁴⁸²

A) Injured party

303. The Court considers that, under Article 63(1) of the Convention, the injured party is anyone who has been declared a victim of the violation of any right recognized therein. Therefore, the Court considers Gladys Carol Espinoza Gonzáles, Teodora Gonzáles de Espinoza (deceased) and Manuel Espinoza Gonzáles to be the “injured party.”

B) Obligation to investigate the facts that gave rise to the violations and to identify, prosecute and punish, as appropriate, those responsible

304. The Commission asked that the Court order the State to “[c]onduct an immediate, serious, and impartial investigation into the torture and rape of Gladys Carol Espinoza [...] with a gender perspective,” and also to “[i]dentify all those responsible for such acts, [...] and to impose on them the corresponding civil, administrative, and criminal penalties as a guarantee of non-repetition,” including the medical personnel, members of the Peruvian National Police and officials of the Public Prosecution Service and the Judiciary who committed irregularities in relation to the complaints of torture filed on behalf of Gladys Espinoza.

305. The representatives indicated that the State had failed totally to comply with its obligation to investigate the facts until 2012, almost 20 years after they were perpetrated. Consequently, they asked the Court to order Peru “to conduct, within a reasonable time, a complete, impartial and effective investigation in order to identify, prosecute and punish under the ordinary justice system all the perpetrators of the human rights violations” with penalties proportionate to the severity of the acts committed against Gladys Espinoza. According to the representatives, these investigations should include the rape and the acts of torture that Gladys Espinoza was a victim of during her detention in the DINCOTE, in the hospital to which she was transferred, and during the violent inspection in the Yanamayo Prison. They also asked the Court to order the State to investigate, prosecute and punish, with the corresponding civil and administrative and criminal measures, the medical, judicial, expert and police officials responsible for the irregularities and omissions committed in the judicial proceedings.

⁴⁸⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 243.

⁴⁸¹ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 245.

⁴⁸² Cf. *Case of Velásquez Rodríguez. Reparations and costs, supra*, paras. 25 to 27, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 244.

306. The State affirmed that, “at this time, a domestic criminal investigation is underway relating to the investigation and punishment of those responsible for the presumed torture and rape of Gladys Carol Espinoza.” Moreover, it indicated that “it will be for the domestic authorities [...] to decide [...] the facts concerning the offense of torture and the application of this offense at the time, or with regard to the statute of limitations.” However, the Public Prosecution Service, in a decision of March 31, 2014, declared that the acts of torture and sexual violence against Gladys Espinoza constituted gross human rights violations and, therefore, were not subject to the statute of limitations. In addition, the State affirmed that the Commission had exceeded its authority when recommending that the responsibility of members of the Judiciary and of the Public Prosecution Service be investigated in relation to these facts, because “[t]he judges who compose the Judiciary are unable to make technical and specialized assessments of a medical and psychological nature, [...] so that, in these cases, they have recourse to experts, who are specialists in those areas. [Also,] in this case, the National Terrorism Chamber complied with its duty by, at the request of the presumed victim, offering her a means of proof consisting in the execution of a medical forensic appraisal to determine whether she had been a victim of torture, and a psychological appraisal to determine her mental health [...].”

307. In this Judgment, the Court has declared, *inter alia*, that, from 1993 to 2012, the State failed to comply with its obligation to investigate the acts of torture suffered by Gladys Espinoza, which included rape and other forms of sexual violence. This was due to the unjustified delay of approximately 19 years in relation to the acts that occurred at the time of her arrest and also on the premises of the DIVISE and the DINCOTE in 1993, and of approximately 13 years in relation to the incident that occurred in the Yanamayo Prison in 1999. The Court has also determined that the stereotyped assessment of the evidence by the Criminal Chamber of the Supreme Court of Justice that led it to declare that Ms. Espinoza had not been a victim of torture and, therefore, not to order an investigation into the facts denounced, constituted gender-based discrimination in access to justice (*supra* paras. 285 to 288).

308. Therefore, the Court establishes that the State must, within a reasonable time, open, advance, guide, continue and conclude, as applicable and with the greatest diligence, the pertinent criminal investigations and proceedings, in order to identify, prosecute and punish, as appropriate, those responsible for the gross violations of the personal integrity of Gladys Espinoza. The investigation and criminal proceedings must be, as applicable, for the acts of torture, sexual violence and rape of which Gladys Carol Espinoza González was a victim on her arrest on April 17, 1993, during the time she remained on the premises of the DIVISE and the DINCOTE in April and May 1993, and also during the incident that took place on August 5, 1999, in the Yanamayo Maximum Security Prison, in Puno, based on the criteria described for investigating this type of case (*supra* paras. 238 to 242, 248, 249, 251, 252, 255, 256, 258, 260 and 266). Thus, the State must remove all obstacles, *de facto* and *de jure*, that maintain total impunity in this case. Due diligence in the investigation signifies that all the pertinent State authorities are obliged to collaborate in the collection of evidence and must therefore provide the judge, prosecutor or other judicial authority with all the information requested, and abstain from acts that entail the obstruction of the investigative procedure.

309. As it has established on other occasions relating to this type of case,⁴⁸³ both the respective investigation and the criminal proceedings should include a gender perspective, undertake specific lines of investigation with regard to the sexual violence in order to avoid omissions in the collection of evidence, and provide the victim with information on any progress in the investigation and criminal proceedings pursuant to domestic law and, as appropriate, adequate participation at all stages of the investigation and trial. In addition, the investigation

⁴⁸³ Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, para. 455, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 251.

must be conducted by officials with experience in similar cases and in attention to victims of gender-based discrimination and violence. Furthermore, it must be ensured that those in charge of the investigation and the criminal proceedings, as well as, when appropriate, other persons involved such as witnesses, experts, or members of the victim's family, have due guarantees for their safety. Likewise, since a gross violation of human rights is involved, because torture was a generalized practice in the context of the conflict in Peru, the State must abstain from using mechanisms such as amnesty to benefit the perpetrators, or any other similar provision, such as prescription, non-retroactivity of the criminal law, *res judicata*, *ne bis in idem* or any other similar extenuating circumstance in order to evade this obligation.⁴⁸⁴

C) Measures of rehabilitation and satisfaction, and guarantees of non-repetition

C.1. Rehabilitation

310. The Commission asked the Court to order the State to make reparation to Gladys Carol Espinoza Gonzáles and her next of kin for the human rights violations they suffered. In this regard, it specified that such reparations should be comprehensive and include treatment for her physical and mental health by specialized medical personnel, and by mutual agreement with the victim, until her recovery has been determined.

311. The representatives asked the Court to order the State to ensure free and permanent medical and psychological treatment for Gladys Espinoza. They indicated that this treatment should be provided by competent professionals, following authorization by the victim and the determination of her medical needs, and should include the provisions of any medicine she required. They also indicated that the State should adopt the necessary measures to ensure that the psychological care is provided in the center in which Gladys Espinoza is detained or by transferring her, as necessary, to the places where the treatment is provided, for the sessions. They also requested some specific measures in favor of the victim.⁴⁸⁵ In addition, they emphasized "that this reparation will not be met with the provision of treatment by the Public Health Insurance Scheme (SIS), to which anyone has access, [because] the treatment provided must be differentiated and take into account her present situation as a prisoner."

312. The State indicated that all the country's prison inmates receive medical and psychological treatment and that, if they require specialized care, this is also provided by the State. With regard to the presumed victim's next of kin, the State indicated that the purpose of the "Public Health Insurance Scheme (SIS)" is to protect the health of Peruvians who do not have health insurance, and this system provides both medical and psychological care.

313. In Chapters VIII.1, VIII.2 and VIII.5 of this Judgment, the Court concluded, *inter alia*, that Gladys Carol Espinoza Gonzáles had suffered the violation of her right to personal liberty, as well as severe violations of her personal integrity, which had left physical and psychological scars. In addition, her brother, Manuel Espinoza Gonzáles, suffered harm to his personal integrity as a result of the facts of this case. Regarding the State's argument concerning the medical, psychological and specialized treatment received by the country's prison inmates, as

⁴⁸⁴ Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Osorio Rivera and family members v. Peru, supra*, para. 244.

⁴⁸⁵ They asked the Court to order the State to submit Gladys Espinoza to a complete and detailed medical examination to evaluate all aspects of her physical condition. The comprehensive medical examination should explore the long-term consequences on her health of the prison conditions she has had to endure. They also indicated that the victim required: (a) urgent odontological treatment; (b) an evaluation of her intellectual faculties in order to assess her present condition, whether there has been a deterioration and, if so, recommendations should be made as to how to redress this; (c) a detailed psychological assessment to determine areas that require attention, chronic symptoms indicated in the diagnoses made that are still present and have not been treated, and (d) psychological and emotional support to help Gladys Espinoza construct her future and restore fully her capacities and hopes.

well as the services provided by the Public Health Insurance Scheme (SIS), the Court finds it necessary to clarify that any measures of reparation that the Court may establish are based directly on the harm caused by the human rights violations declared in this case.

314. Consequently, the Court establishes that the State must provide, free of charge and immediately through its specialized health care institutions, in an adequate, comprehensive and effective manner, the medical, psychological or psychiatric treatment required by Gladys Carol Espinoza Gonzáles, following her informed consent and if she so wishes, including the provision of medicines, also free of charge. The State must also ensure that the professionals who are assigned assess the victim's psychological and physical conditions adequately and have sufficient training and experience to treat both her physical health problems and the psychological traumas resulting from the cruel, inhuman and degrading treatment, and the torture she has suffered, which included rape and other forms of sexual violence (*supra* paras. 185, 187, 196, 208 and 214). To this end, and since Gladys Espinoza is currently incarcerated, these professionals must have access to the place where she is confined, and her transfer, as necessary, to health care institutions must be ensured. Subsequently, the treatments must be provided, insofar as possible, in the health care centers nearest to her place of residence⁴⁸⁶ in Peru for as long as necessary. This means that Gladys Espinoza must receive a differentiated treatment in relation to the process and the procedures that have to be complied with in order to be treated in the public hospitals.⁴⁸⁷

315. Furthermore, the State must provide, free of charge and immediately, through its specialized health care institutions, in an adequate, comprehensive and effective manner, the psychological or psychiatric treatment required by Manuel Espinoza Gonzáles, following his informed consent and if he so wishes, including the provision of medicines, also free of charge. In addition, the treatments must be provided, insofar as possible, in the health care centers nearest to his place of residence in Peru for as long as necessary. This means that Mr. Espinoza Gonzáles must receive a differentiated treatment in relation to the process and the procedures that have to be complied with in order to be treated in the public hospitals.

316. In addition, when providing psychological or psychiatric treatment to Gladys Espinoza and Manuel Espinoza, it will be necessary to consider the particular circumstances and needs of each victim, in order to provide collective, family or individual treatment, as agreed with each of them and following an individual evaluation.⁴⁸⁸ The victims who request this measure of reparation, or their legal representatives, have six months as of notification of this Judgment to advise the State of their intention of receiving psychological or psychiatric treatment and, in the case of Gladys Espinoza, medical treatment also.⁴⁸⁹

C.2. Satisfaction

C.2.1. Publication of the Judgment

317. The representatives asked the Court to "order the State to publish, within six months, at least the sections on the context and the proven facts, as well as the operative paragraphs of the Judgment in the Official Gazette and in a national newspaper. This publication should also

⁴⁸⁶ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 51, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 258.

⁴⁸⁷ Cf. *Case of Heliodoro Portugal v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of May 28, 2010, *considerandum* 28, and *Case of Osorio Rivera and family members v. Peru, supra*, para. 256.

⁴⁸⁸ Cf. *Case of 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of Osorio Rivera and family members v. Peru, supra*, para. 256.

⁴⁸⁹ Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 252, and *Case of Osorio Rivera and family members v. Peru, supra*, para. 256.

appear on the website of the Public Prosecution Service at no more than three links from the main page, retaining it until the judgment had been complied with fully.” The Commission and the State did not comment in this regard.

318. The Court establishes that the State must publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court, once, in the official gazette; (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this Judgment in its entirety, available for one year, on an official web site of the Judiciary, as well as on the official web sites of the Public Prosecution Service and the Peruvian National Police.

C.3. Guarantees of non-repetition

C.3.1. Measures of a normative and institutional nature

319. The Commission asked the Court to order the State to adopt the legislative, administrative, and any other measures necessary to ensure that reports of torture and sexual violence involving members of the security forces are investigated *ex officio* and with due diligence. It also asked that protocols be drawn up to facilitate and encourage the effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, taking into account the international standards established in the Istanbul Protocol and other applicable international criteria.

320. The representatives asked the Court to order the State to adopt or review appropriate protocols to investigate violations relating to the right to personal integrity. In particular, they asked that the State be ordered to incorporate into the actual protocols the standards set out in the Istanbul Protocol concerning the execution of medical examinations, the collection of evidence, confidentiality and ethics in the handling of interviews, and the importance of not re-victimizing victims. These protocols should be public knowledge and, in particular, should be available in police stations, hospitals, and any place to which victims of such offenses may have recourse to file complaints. In addition, the State must allocate an appropriate and sufficient budget to ensure the implementation and effectiveness of this instrument.

321. The State affirmed that the Institute of Forensic Medicine of the Public Prosecution Service worked with protocols that were adapted to the Istanbul Protocol, on issues such as attention to victims, investigation of torture, and forensic investigation and the investigation of crimes against humanity. It also advised that, on the orders of the Special Prosecution Units, the experts of the Forensic Clinical and Thanatology Divisions of the Criminalistics Unit would be implementing the international provisions of the Minnesota, Istanbul and Tokyo Protocols when assessing the protocols concerning the torture of the persons and/or corpses they examine. In addition, it listed the names of the professionals who composed the working group that would be evaluating cases of torture. It also gave details of the adaptation of its domestic laws, of public policies implemented with a gender perspective, and of services and programs provided by the State for the protection of women.

322. The Court appreciates the State’s efforts to combat gender-based violence.⁴⁹⁰ This progress, especially in the judicial area, constitutes a structural indicator related to the adoption

⁴⁹⁰ Regarding the information provided by Peru concerning the elaboration of protocols and their implementation, as well as the adaptation of its laws and the implementation of public policies, the Court has taken into account the information provided by the State and the representatives in their main briefs and in their final arguments. In this regard, it has evaluated in detail the following evidence forwarded by the parties: (i) Affidavit made on March 25, 2014, by María Jennie Dador Tozzini (merits file, folios 961 to 990); ii) Affidavit made on March 26, 2014, by Ana María Alejandra Mendieta Trefogli (merits file, folios 1038 to 1094); (iii) Affidavit made on March 26, 2014, by Moisés Valdemar Ponce Malaver (merits file, folios 1018 to 1036); (iv) Protocol for the investigation of torture or cruel,

of norms that, in principle, are aimed at dealing with violence and discrimination against women. Nevertheless Peru did not provide the Court with information on the effectiveness of the measures adopted. Furthermore, Peruvian investigation protocols should include the standards established in this Judgment. Consequently, the Court orders the State of Peru, within a reasonable time, to draw up investigation protocols to ensure that cases of torture, rape and other forms of sexual violence are duly investigated and prosecuted pursuant to the standards indicated in paragraphs 248, 249, 251, 252, 255 and 256 of this Judgment, which relate to the collection of evidence in cases of torture and sexual violence and, in particular, to the reception of statements, and the execution of medical and psychological assessments.

C.3.2. Education and training programs

323. The Commission asked the Court to order the State to implement training programs for State officials that take into account the international standards established in the Istanbul Protocol, so that these officials have the necessary technical and scientific information to evaluate possible situations of torture or cruel, inhuman or degrading treatment. It also asked that the State implement, within a reasonable time, permanent human rights education programs at all hierarchical levels of the Police Forces, and include in the curriculum of those training programs special reference to international human rights instruments, specifically those relating to the protection of women's rights, particularly their right to a life free of violence and discrimination

324. The representatives asked the Court to order the State to implement permanent training courses for public servants in keeping with the Istanbul Protocol that provided them with the necessary technical and scientific information to evaluate possible situation of torture, rape or cruel, inhuman or degrading treatment.

325. The State advised that it had been implementing human rights education programs, as well as different academic activities, courses, workshops, and education and training sessions on human rights (and described their content), for members of the Peruvian National Police, the Ministry of Defense, and the Armed Forces, including the Peruvian Army, Air Force and Navy, at all levels. The State also listed, explained and gave details of the contents of the basic, higher and advanced programs, as well as of the seminar, workshops and master's degree program that it has been offering in this area. In addition, it affirmed that steps had been taken to provide training to judges on issues relating to gender and law. In this regard, it indicated that the Peruvian Academy of the Judiciary had approved an amendment to its regulations, and had incorporated courses on gender and law into the curriculum; thus, from basically being optional courses, they would now be key courses in the training provided to judges and prosecutors.

326. The Court assesses positively the measures adopted by the State concerning human rights training in different State institutions.⁴⁹¹ However, it recalls that, considered as a system

inhuman or degrading treatment, Institute of Forensic Medicine (evidence file, folio 6168); (v) Manual for the assessment of psychological harm in adult victims of domestic or sexual violence, torture and other forms of intentional violence of the Institute of Forensic Medicine of Peru (evidence file, folio 6179); (vi) Protocol for the medical forensic examination to detect injuries or death as a result of torture (evidence file, folio 6188); (vii) Note No. 2520-2012-MP-FN-IML/JN of the Head of the Institute of Forensic Medicine of August 27, 2012, advising that the experts of the Forensic Clinical and Thanatology Divisions of the Criminalistics Unit "apply the international provisions of the Minnesota, Istanbul and Tokyo Protocols when assessing the protocols concerning the torture of the persons and/or corpses they examine, by order of the Special Prosecutors Unit" (evidence file, folio 6161), and (viii) Report of the Ministry for Women and Vulnerable Populations of August 29, 2012, recognizing that the Istanbul Protocol is implemented in Peruvian public organizations (evidence file, folio 6255).

⁴⁹¹ Regarding the information provided by Peru on the implementation of human rights education programs, as well as different academic activities, courses, workshops, and education and training sessions on human rights, the Court has taken into account the information provided by the State and the representatives in their main briefs and in their final arguments. In this regard, it has made a detailed assessment of the following evidence forwarded by the

of continuing education, training should be offered for a considerable time in order to achieve its objectives.⁴⁹² Likewise, and in light of its case law,⁴⁹³ the Court notes that training with a gender perspective entails not only a process of learning the norms, but must also teach all officials to recognize the existence of discrimination against women, and the impact on women of stereotyped ideas and assessments in relation to the scope and content of human rights.

327. Consequently, the Court establishes that the State, within a reasonable time, must incorporate into the permanent education and training programs and courses for those in charge of criminal investigations and judicial proceedings, the standards established in paragraphs 237 to 242, 248, 249, 251, 252, 255, 256, 258, 260, 266, 268 and 278 of this Judgment concerning: (i) a gender perspective for due diligence in conducting preliminary investigations and judicial proceedings in relation to gender-based discrimination and violence against women, in particular acts of violence and rape, and (ii) the elimination of gender stereotypes.

C.3.3. Measures for just reparation to all women victims of the generalized and aberrant practice of sexual violence and rape during the conflict

328. The representatives explained that, on July 28, 2005, by Law No. 28,592, the State had established a Comprehensive Reparations Plan (PIR) to implement actions of reparation, justice and restitution for victims of gross human rights violations during the conflict in Peru. The law's implementing regulations were adopted on July 6, 2006. According to the representatives, individuals who belonged to subversive organizations, as well as those who had already received reparations under other State mechanisms were excluded from the PIR. In this regard, they affirmed that women subversive should be tried and punished for the crimes they committed during the conflict; however, their guilt would not justify failing to make reparation for the sexual violence suffered during their detention. Hence, they asked the Court to order the State to take the necessary steps to ensure that all victims of human rights violations during the Peruvian conflict may receive just reparation. The Commission did not comment in this regard.

329. The State indicated that article 4 of Law No. 28,592, creating the Comprehensive Reparations Plan (PIR), established that victims who are not included in the PIR and who claim that they have a right to reparation retain their right to have recourse to the courts. On this point, it clarified that, although they are excluded from the PIR, those convicted of terrorism have other mechanisms that are equally satisfactory to obtain reparation, because they may exercise their right to resort to the courts; hence, Law No. 28,592 is not discriminatory in any way. In addition, it argued that "the Truth Commission was clear when it indicated that it was necessary to establish a program of reparations, and it is true that individuals prosecuted for terrorism do not have access to this reparations program, which includes financial reparations, because the individual convicted of terrorism is already indebted to the State as regards civil reparation."

330. The Court recalls that the reparations it orders must have a causal nexus with the violations declared in the judgment (*supra* para. 301). Since the exclusion of those convicted

parties: (i): Affidavit made on March 26, 2014, by Ana María Alejandra Mendieta Trefogli (merits file, folios 1038 to 1094); (ii) Affidavit made on March 26, 2014, by Moisés Valdemar Ponce Malaver (merits file, folios 1018 to 1036); (iii) Report No. 005-2012-MIMP-PNCVFS-YNN of the Ministry for Women and Vulnerable Populations, with information on the design of training sessions for the Judicial Districts of Lima and North Lima, which have been extended to other districts (evidence file, folio 6195); (iv) Report No. 021-2012-MIMP-PNCVFS-UGDS-JMR of the Ministry for Women and Vulnerable Populations, of August 29, 2012, with information on human rights education programs (evidence file, folio 6255), and (v) Note No. 80-2012-MINDEF/pp of the Ministry of Defense with information on the implementation of permanent human rights education programs within the Armed Forces (evidence file, folio 6285).

⁴⁹² Cf. *Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 6, 2009. Series C No. 200, para. 251, and *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 540.

⁴⁹³ Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 540.

of terrorism from benefiting from the Comprehensive Reparations Plan, created by Law 28,592 of July 28, 2005, was raised by the representatives for the first time in their request for reparations and, therefore, did not form part of the purpose of the litigation on the merits of this case, the Court has not ruled on the compatibility of this law with the Convention, pursuant to Article 2 thereof. Consequently, it is not incumbent on the Court to rule on the requested measure.

C.3.4. Rehabilitation of women victims of sexual violence during the Peruvian conflict

331. In this case, the Court has established that the generalized practice of rape and other forms of sexual violence was used as a war strategy and particularly affected women in the context of the Peruvian conflict from 1980 to 2000 (*supra* paras. 67, 228 and 229). Consequently, the Court considers that, if it does not already have one, the State must implement a mechanism that allows all women victims of such violations who request this to have access free of charge, through the State's public institutions, to specialized medical, psychological and/or psychiatric rehabilitation to redress this type of violation.

C.4. Other measures requested

332. The representatives asked that the Court order the State to organize an act of public apology and redress, and acknowledgement of international responsibility, owing to the facts of this case. In this regard, the Court considers that the delivery of this Judgment and the reparations ordered in this chapter are sufficient and appropriate to make reparation for the violations suffered by the victims and does not find it necessary to order this measure.

D) Compensation

333. The representatives indicated that neither Gladys Espinoza nor her brother or mother have had access to reparation under the national reparations plan. They also referred to the severe harm caused by the violations perpetrated against Gladys Espinoza, added to the fact that she will have served her sentence in 2018, at an advanced age, with various mental and physical health problems, and without any support to be able to live decently. They therefore asked the Court to allocate an amount, in equity, for non-pecuniary damage to the victims. The Commission did not make any request in this regard. The State asked the Court to rule in accordance with the criteria and guidelines established in its judgments. In addition, it recalled that the nature and amount of the reparations depends on the nature of the violations committed and the harm caused, and that these should bear a relationship to the violations declared in the Judgment. Thus, it asked that the Court apply the precedents established in the cases of *Castillo Petruzzi et al.* and *Lori Berenson Mejía*, both against Peru and, consequently, not grant the financial compensation requested by the representatives.

334. The Court takes note that neither the Commission nor the representatives requested payment for pecuniary damage; hence, in this case, it will not order compensation for that concept. However, it has verified the pain and suffering experienced by Gladys Carol Espinoza Gonzáles, Teodora Gonzáles de Espinoza and Manuel Espinoza Gonzáles due to the facts of this case. Consequently, and pursuant to the criteria developed by the Court with regard to the concept of non-pecuniary damage,⁴⁹⁴ the Court considers that the State must, in equity, pay the following sums of money (in United States dollars) to the victims: (a) US\$60,000.00 (sixty thousand United States dollars) for the non-pecuniary damage suffered by Gladys Carol

⁴⁹⁴ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of January 30, 2014. Series C No. 276, para. 156.

Espinoza Gonzáles; and (b) US\$5,000.00 (five thousand United States dollars) for the non-pecuniary damage suffered by Manuel Espinoza Gonzáles. It also decides to order the State to pay compensation of US\$40,000.00 (forty thousand United States dollars) for the non-pecuniary damage suffered by Teodora Gonzáles de Espinoza; this amount to be delivered to her heirs pursuant to paragraph 344 of this Judgment.

E) Costs and expenses

335. The representatives asked that, for the *Asociación Pro Derechos Humanos* (APRODEH), the Court establish, in equity, an amount for the expenses incurred during the domestic and the international proceedings and, for the expenses arising from attending the public hearing of the case in Costa Rica, they requested payment of US\$3,156.00. They clarified that, since APRODEH is “a non-profit organization, it has not charged the family any type of honoraria.” In the case of the Center for Justice and International Law (CEJIL), they indicated that it had incorporated the litigation of the case in the international proceedings as of November 19, 2008. For the concept of expenses, which include travel, hotels, communication expenses, photocopies, stationery, and mailings, time dedicated to legal matters relating to this specific case and researching, collecting and presenting evidence, including conducting interviews and preparing briefs, they asked the Court to establish, in equity, the sum of US\$6,030.20. They also requested the reimbursement of US\$6,293.00 for travel by two persons from Washington, D.C., to Peru, and travel by two persons from Washington, D.C., to Costa Rica to attend the public hearing in this case.⁴⁹⁵ They asked that the said amounts be reimbursed directly by the State to the representatives. Lastly, they asked that a sum be set aside for future expenses related to the proceeding of monitoring compliance with the judgment. The Commission did not comment in this regard.

336. The State argued that, although the Center for Justice and International Law (CEJIL) had incorporated the litigation of the case as of November 19, 2008, it had included expenses dated January 18, March 27, April 22 and 26, and September 18 and 19, 2008; in other words, prior to the date on which it had incorporated the international proceedings.⁴⁹⁶ Consequently, those expenses were unrelated to the case. It also asserted that some of the vouchers attached by CEJIL were not related to the litigation of the case, especially if it was considered that CEJIL personnel travelled to Peru for several cases and not only for this one. It also observed that the said organization had also carried out various training, academic and research activities. Accordingly, the State listed the expenses that it contested, which were not related to this case. Lastly, the State argued that several vouchers provided by the representatives had smudges, stains, amendments, erasures, and signs of having been corrected, which did not allow the expenses incurred by CEJIL to be assessed or authenticated satisfactorily.⁴⁹⁷

⁴⁹⁵ In this amount they included: airfares, land transportation, accommodation, communications, photocopies, stationery and mailings, honoraria required for the treatment of Lily Cuba by a psychologist owing to the aftereffects of her participation in the public hearing.

⁴⁹⁶ The following vouchers are related to expenditure prior to the date on which CEJIL incorporated the international proceedings: expense voucher in favor of Michael Camilieri dated April 22, 2008, for US\$500.00; *per diem* receipt signed by Michael Camilieri dated April 22, 2008, for US\$350.00; American Express voucher in the name of Viviana Krsticevic for accommodation at the Hotel Nuevo Mundo, Lima, dated April 26, 2008, for US\$848.85; expense voucher in favor of Francisco Quintana, dated September 18, 2008, for US\$1,950.00; *per diem* receipt signed by Francisco Quintana, dated September 19, 2008, for US\$450.00 and US\$1,500.00; expense voucher in favor of Alejandra Vicente, dated September 18, 2008, for US\$450.00, and *per diem* receipt signed by Alejandra Vicente, dated September 19, 2008, for US\$450.00.

⁴⁹⁷ The State objected specifically to the following vouchers: expense voucher in favor of Viviana Krsticevic, dated May 5, 2009, for US\$300.00; expense voucher in favor of Ariela Peralta, dated June 23, 2009, for US\$400.00; voucher in favor of Alejandra Vicente for expenses from September 20 to 26, 2009, for US\$450.00; voucher in favor of Francisco Quintana for expenses from September 20 to October 2, 2009, for US\$425.00; voucher in favor of Alejandra Vicente for expenses from April 11 to 16, 2010, and voucher in favor of Francisco Quintana for expenses on November 23 and 24, 2010, for US\$220.00.

337. The Court reiterates that, pursuant to its case law, costs and expenses form part of the concept of reparation, because the activity deployed by the victims in order to obtain justice at both the national and international level entails disbursements that must be compensated when the international responsibility of the State has been declared in a judgment against it. Regarding the reimbursement of expenses, it is for the Court to make a prudent assessment of their scope, which includes the expenses arising before the authorities of the domestic jurisdiction, and also those arising during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.⁴⁹⁸ As it has indicated on other occasions, the Court recalls that it is not sufficient merely to forward probative documents; rather the parties are also required to include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be established clearly.⁴⁹⁹

338. The Court has verified that the representatives forwarded vouchers relating to the purchase of air tickets, the payment of hotels, transportation, food and expenses incurred owing to working meetings held in Peru, as well as to attend the public hearing held at the seat of the Court in this case. Regarding the documents contested by the State, the Court notes that, indeed, CEJIL presented some vouchers related to expenses prior to its incorporation into the litigation before the inter-American system on November 19, 2008, and others whose relationship to this case is not explained, as well as internal documents of the organization listing expenses that are not accompanied by the respective payment voucher. Consequently, the Court will not consider these documents. The representatives also presented vouchers that do not correspond only to expenses incurred due to this case and, in fairness, these have been deducted from the calculation made by the Court.

339. Nevertheless, the Court finds it reasonable to presume that other disbursements existed over the approximately 21 years during which APRODEH acted, and the approximately six years, during which CEJIL acted, in the processing of this case. Consequently, the Court orders the State to reimburse, in equity, the sum of US\$20,000.00 (twenty thousand United States dollars) to APRODEH, and US\$15,000.00 (fifteen thousand United States dollars) to CEJIL. These amounts must be delivered directly to the representative organizations. As it has in other cases,⁵⁰⁰ at the stage of monitoring compliance with judgment, the Court may order the reimbursement by the State to the victims or their representatives of any subsequent expenses that are reasonable and duly authenticated.

F) Reimbursement of the expenses to the Victims' Legal Assistance Fund

340. The representatives presented requests to access the Victims' Legal Assistance Fund of the Court to cover certain expenses related to the presentation of evidence. In Orders of the President of the Court of February 21, 2013, and May 7, 2014, it was decided to admit the request filed by the presumed victims to access the Victim's Assistance Fund and it was

⁴⁹⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs*. Judgment of 2May 9, 2014. Series C No. 279, para. 450.

⁴⁹⁹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 496.

⁵⁰⁰ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra*, para. 291, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 195.

established that the financial assistance would be allocated to cover the necessary travel and accommodation expenses to receive the testimony of the witness Lily Elba Cuba Rivas during the hearing, and to cover the expenses of notarizing and forwarding the statements of Gladys Carol Espinoza Gonzáles and Manuel Espinoza Gonzáles presented by affidavit.

341. The State was able to present its observations on the disbursements made in this case, which amounted to US\$1,972.59 (one thousand nine hundred and seventy-two United States dollars and fifty-nine cents). Peru indicated that the statement of the indicated expenses had been certified by the Secretariat of the Court, and these were therefore credible, and that the said disbursements were in accordance with the provisions of the above-mentioned Orders of the President of the Court.

342. Based on the violations declared in this Judgment and that the requirements to access the Fund were met, the Court orders the State to reimburse the sum of US\$1,972.59 (one thousand nine hundred and seventy-two United States dollars and fifty-nine cents) to the Fund for the expenses incurred. This amount must be reimbursed to the Inter-American Court within ninety days of notification of this Judgment.

G) Method of complying with the payments ordered

343. The State shall pay the compensation for non-pecuniary damage and to reimburse costs and expenses established in this Judgment directly to the persons indicated herein, within one year of its notification, as established in the following paragraphs.

344. If the beneficiaries should be deceased before they receive the respective compensation, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

345. The State must comply with its obligations by payment in United States dollars or Peruvian currency, using the exchange rate between the two currencies in force on the New York Stock Exchange, United States, the day before the payment to make the respective calculation.

346. If, for reasons that can be attributed to the beneficiaries of the compensation, it is not possible for them to receive it within the indicated time frame, the State shall deposit the said amounts in their favor in an account or certificate of deposit in a Peruvian financial institution, in United States dollars and in the most favorable financial conditions allowed by the State's banking law and practice. If, after 10 years, the compensation has not been claimed the amounts shall be returned to the State with the interest accrued.

347. The amounts allocated in this Judgment as compensation must be delivered to the persons indicated in full, as established in this Judgment, without deductions arising from possible taxes or charges.

348. If the State should fall in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Peru.

X OPERATIVE PARAGRAPHS

Therefore,

THE COURT

DECIDES,

unanimously,

1. To reject the preliminary objection concerning the alleged lack of competence *ratione materiae* filed by the State, as established in paragraphs 22 and 23 of this Judgment.

2. To admit partially the preliminary objection concerning lack of competence *ratione temporis* of the Court in relation to certain facts, as established in paragraphs 27 to 29 of this Judgment.

DECLARES,

unanimously that:

3. The State violated the right to personal liberty recognized in Article 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Carol Espinoza Gonzáles, as established in paragraphs 106 to 137 of this Judgment.

4. The State violated the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, and failed to comply with the obligations established in Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Gladys Carol Espinoza Gonzáles, as established in paragraphs 140 to 143, 148 to 196 and 202 to 214 of this Judgment.

5. The State violated the right to privacy and the protection of honor and dignity recognized in Article 11(1) and 11(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Gladys Carol Espinoza Gonzáles, as established in paragraph 197 of this Judgment.

6. The State violated the rights to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of this treaty. Furthermore, the State failed to comply with the obligations established in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and in Article 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). All to the detriment of Gladys Carol Espinoza Gonzáles, as established in paragraphs 237 to 287 and 290 of this Judgment.

7. The State failed to comply with the obligation of non-discrimination contained in Article 1(1) of the American Convention, in relation to the rights recognized in Articles 5(1), 5(2) and 11, as well as Articles 8(1), 25 and 2 of this instrument, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), to the detriment of Gladys Carol Espinoza Gonzáles, as established in paragraphs 216 to 229, 265 to 282 and 285 to 288 of this Judgment.

8. The State violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Teodora Gonzáles and Manuel Espinoza Gonzáles, as established in paragraphs 296 to 299 of this Judgment.

AND ESTABLISHES,

unanimously that:

9. This Judgment constitutes *per se* a form of reparation.

10. The State must, within a reasonable time, open, promote, direct, continue and conclude, as applicable and with the greatest diligence, the pertinent criminal investigations and proceedings to identify, prosecute and punish, as appropriate, those responsible for the severe harm to personal integrity caused to Gladys Carol Espinoza Gonzáles, based on the criteria indicated for investigations into this type of case, as established in paragraphs 307 to 309 of this Judgment.

11. The State must provide immediately and free of charge, the medical and psychological or psychiatric treatment, as appropriate, to the victims in this case who request this, as established in paragraphs 313 to 316 of this Judgment.

12. The State must make the publications indicated in paragraph 318 of the Judgment, within six months of notification of this Judgment, as established herein.

13. The State must, within a reasonable time, implement protocols to ensure that cases of torture, rape and other forms of sexual violence are investigated and prosecuted appropriately, pursuant to the standards indicated in paragraphs 248, 249, 251, 252, 255 and 256 of this Judgment, as established in paragraph 322 hereof.

14. The State must incorporate, within a reasonable time, in the permanent education and training programs and courses for those in charge of criminal investigations and judicial proceedings the standards established in paragraphs 237 to 242, 248, 249, 251, 252, 255, 256, 258, 260, 266, 268 and 278 of this Judgment, as established in paragraphs 326 and 327 hereof.

15. The State must implement, within a reasonable time, a mechanism that allows all women victims of the generalized practice of rape and other forms of sexual violence during the Peruvian conflict to have free access to specialized medical, psychological and/or psychiatric rehabilitation to remedy this type of violation, as established in paragraphs 67.b, 225 and 331 of the Judgment.

16. The State must pay, within one year of notification of this Judgment, the amounts established in paragraph 334 hereof as compensation for non-pecuniary damage, and reimburse costs and expenses as established in paragraphs 337 to 339 of this Judgment.

17. The State must reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount disbursed during the processing of this case, as established in paragraph 342 of this Judgment.

18. The State must provide the Court with a report on the measures adopted to comply with this Judgment within one year of its notification.

19. The Court will monitor complete compliance with this Judgment, in exercise of its attributes and in compliance with its obligations under the American Convention on Human Rights, and will close this case when the State has complied fully with its provisions.

DONE, in San José, Costa Rica, on November 20, 2014, in the Spanish language.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary