

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF V.R.P., V.P.C.\* ET AL. V. NICARAGUA**

**JUDGMENT OF MARCH 8, 2018**

***(Preliminary objections, merits, reparations and costs)***

In the case of *V.R.P., V.P.C. et al.*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges;\*\*

Eduardo Ferrer Mac-Gregor Poisot, President  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge, and  
L. Patricio Pazmiño Freire, 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 "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" or "the Court's Rules of Procedure"), delivers this judgment structured as follows:

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\* At the admissibility stage of this case, the Inter-American Commission on Human Rights decided to maintain the names of the presumed victims confidential, using the initials "V.R.P." and "V.P.C." to refer to them. The Inter-American Court decided to continue to maintain this confidentiality and, similarly, it decided to do the same for the other family members, and will therefore use the initials "N.R.P.", "H.J.R.P." and "V.A.R.P." to refer to them.

\*\* Judges Eduardo Vio Grossi and Roberto F. Caldas did not take part in the deliberation and signature of this judgment for reasons beyond their control, which were accepted by the full Court.

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## I

**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.* On August 25, 2016, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “V.R.P. and V.P.C.” against the Republic of Nicaragua (hereinafter “the State of Nicaragua,” “the State” or “Nicaragua”). According to the Commission, the case relates to the alleged international responsibility of the State of Nicaragua for the presumed lack of State response to the rape committed by a non-state agent against a female child, who, at the time of the facts, was eight years of age and who indicated that the person responsible was her father. The Commission also alleged violations of the rights to personal integrity, dignity, privacy and autonomy, equality before the law and non-discrimination, and the special protection due to a child, particularly owing to the alleged failure to comply with the duty to investigate with due diligence, within a reasonable time and with a gender-based perspective, and the enhanced State obligations arising from the victim’s condition as a child, because she was seriously revictimized with a severe impact on her mental integrity and on that of her mother and sisters. The presumed victims in this case are V.R.P. and V.P.C., and also N.R.P., H.J.R.P. and V.A.R.P., based on the considerations set out below in the chapter on preliminary considerations.

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

- a) *Petition.* On October 28, 2002, V.P.C. (hereinafter “the petitioner” or “presumed victim”) lodged the initial petition before the Commission, in which she alleged the international responsibility of Nicaragua for the supposed irregularities and situation of impunity in the criminal proceedings opened based on the crime of rape committed against the female child V.R.P. (hereinafter “the presumed victim”).
- b) *Admissibility Report.* On February 11, 2009, the Commission adopted Admissibility Report No. 3/09 in which it concluded that petition 4408-02 was admissible.<sup>1</sup>
- c) *Merits Report.* On April 13, 2016, the Commission adopted Merits Report No. 4/16, pursuant to Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 4/16”), in which it reached a series of conclusions and made several recommendations to the State.
  - a. *Conclusions.* The Commission concluded that the State was responsible for “violating the rights established in Articles 5, 8, 11, 19, 24 and 25 of the American Convention, in relation to Article 1(1) of this instrument, and in Article 7(b) of the [Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women or] Convention of Belém do Pará, to the detriment of the persons indicated in th[e] report.”
  - b. *Recommendations.* Consequently, the Commission made a series of recommendations to the State:

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<sup>1</sup> In this report, the Commission decided that the petition was admissible with regard to the presumed violation of the rights recognized in Articles 5(1), 8(1), 11, 19, 24 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, and of Article 7 of the Convention of Belém do Pará with regard to V.R.P. The Commission also concluded the admissibility of the presumed violation of Articles 5(1), 8 and 25 of the Convention in relation to Article 1(1) of this instrument, with regard to V.P.C. Cf. IACHR, Admissibility Report No. 3/09, Petition 4408-02. Case of V.R.P. and V.P.C. v. Nicaragua, February 11, 2009 (file of procedure before the Commission, volume XI, folios 4656 to 4669).

- i. Carry out the corresponding investigations and criminal processes, with due diligence and within a reasonable time, in order to identify, prosecute and, in this case, punish the person responsible for the rape of V.R.P.[;]
- ii. Provide full compensation, both pecuniary and non-pecuniary, for the human rights violations declared in th[e] report[;]
- iii. Provide free and immediate medical and psychological or psychiatric care, as appropriate, to the [presumed] victims in this case upon request. Taking into account that the [presumed] victims reside outside the country, this recommendation can be fulfilled by providing an amount of money that would reasonably cover the cost of the health care required by the [presumed] victims[;]
- iv. Order the corresponding administrative, disciplinary or criminal measures to address the acts or omissions of State officials that contributed to the denial of justice and impunity of this case[;]
- v. Develop investigation protocols so that cases of rape and other forms of sexual violence against women and girls are duly investigated and prosecuted pursuant to the standards established in th[e] report[;]
- vi. Strengthen institutional capacity to combat impunity in cases of rape and other forms of sexual violence against women and girls by means of effective criminal investigations with a gender-based perspective, thus ensuring the appropriate punishment and compensation[;]
- vii. Design and implement permanent training programs for public officials who are members of the Judiciary, the Public Prosecution Service, and the National Police, on international standards for the investigation of rape and other forms of sexual violence against women, including girls. It is also necessary to provide training for the health care personnel, both medical and psychological, who are involved in such investigations, on international standards for the treatment of child victims of sexual violence, [and]
- viii. Adopt public policies and integrated institutional programs aimed at combatting violence against women and girls as a form of discrimination, and at promoting the elimination of discriminatory sociocultural patterns that prevent their full access to justice.

c. *Notification to the State.* Report No. 4/16 was notified to the State in a communication of May 25, 2016, granting it two months to provide information on compliance with the recommendations.

d) *Reports on the Commission's recommendations.* The State of Nicaragua never responded to the Commission's Merits Report.

e) *Submission to the Court.* On August 25, 2016, the Commission submitted all the facts and human rights violations described in the Merits Report to the jurisdiction of the Inter-American Court "owing to the need to obtain justice."<sup>2</sup>

3. *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 indicated in its Merits Report (*supra* para. 2.c.a). In addition, the Commission asked the Court to order the State to adopt certain measures of reparation, which are described and examined in Chapter IX of this judgment.

## II PROCEEDINGS BEFORE THE COURT

4. *Appointment of Inter-American Public Defenders.* In the brief presenting the case, the Commission indicated that V.P.C. had acted as petitioner. Then, following a communication sent by

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<sup>2</sup> The Commission appointed Commissioner Esmeralda Arosemena de Troitiño and Executive Secretary, Paulo Abrão, as its delegates before the Court. It also appointed Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Erick Acuña Pereda, Executive Secretariat lawyers, as legal advisers.

the Secretariat,<sup>3</sup> on the instructions of the President of the Court during the preliminary examination of the submission of the case, on November 4 and 10, 2016, V.P.C. and V.R.P. requested the appointment of an inter-American defender. After the respective communications with the Inter-American Public Defenders Association (AIDEF),<sup>4</sup> on November 22, 2016, the General Coordinator of that Association advised the Court that Fidencia Orozco García de Licardi (Guatemala) and Juana María Cruz Fernández (Dominican Republic) had been designated as inter-American public defenders to exercise the legal representation of the presumed victims in this case (hereinafter "the representatives").<sup>5</sup>

5. *Notification of the representatives and the State.* The Court notified the Commission's submission of the case to the inter-American public defenders of the presumed victims on November 25, 2016, and to the Nicaraguan State on November 24, 2016.

6. *Brief with pleadings, motions and evidence.* On January 27, 2017, the representatives submitted their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") to the Court. The representatives were in substantial agreement with the arguments of the Commission. In addition to the rights alleged by the Commission, they presented arguments on the alleged violation of freedom of conscience and religion (Article 12(1)), the right to protection of the family (Article 17(1)) and the right to freedom of movement and residence (Article 22(1)). They also presented arguments regarding other articles of the Convention of Belém do Pará, in particular Articles 1, 2, 4(b) and 4(g), as well as regarding Articles 2(1), 3(1) and (2), 4, 16, 24(1) and (2) of the Convention on the Rights of the Child. Additionally, the inter-American defenders requested access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Assistance Fund" or "the Assistance Fund"). Lastly, they asked the Court to order the State to adopt different measures of reparation and to reimburse certain costs and expenses.<sup>6</sup>

7. *Answering brief.* On May 16, 2017, the State<sup>7</sup> submitted to the Court its brief answering the submission of the case in the Inter-American Commission's Merits Report and the brief with pleadings, motions and evidence of the representatives (hereinafter "answering brief"). In this brief, the State filed three preliminary objections and argued that the State was not responsible for the presumed violation of the rights alleged by the Commission and the representatives.

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<sup>3</sup> Although, as a presumed victim, the representation by V.P.C. was duly accredited in the terms of Article 35(1)(b) of the Court's Rules of Procedure, on the instructions of the Court's President, the presumed victims were advised that Article 37 of the Court's Rules of Procedure established the mechanism of the Inter-American Defender, according to which, "[i]n cases where alleged victims are acting without duly accredited legal representation, the Court may, on its own motion, appoint an inter-American defender to represent them during the processing of the case."

<sup>4</sup> In a communication of November 10, 2016, issued on the instructions of the President of the Court and based on article 2 of the Memorandum of Understanding between the Court and the AIDEF, the Association's General Coordinator was asked to appoint, within 10 days, a defender to assume the legal representation in the case, and to advise where the pertinent communications should be sent.

<sup>5</sup> In application of Article 37 (Inter-American Defender) of the Court's Rules of Procedure. As established in the statement of motives for amendment of the Court's Rules of Procedure, the purpose of the mechanism of the Inter-American Defender is so that "alleged victims will be guaranteed a lawyer to represent their interests before the Court, and economic considerations will no longer impede access to legal representation."

<sup>6</sup> In briefs of March 7 and 15, 2017, the State objected to the date on which the annexes to the pleadings and motions brief were received. On March 17, 2017, it was indicated that the annexes were received within the time frame indicated in the Rules of Procedure and that the annexes received subsequently corresponded to the rectification of some irregularities found during the preliminary examination, owing to which time was granted for their correction. This time did not constitute an additional time frame that was not included in the Rules of Procedure and did not involve a fresh opportunity for the parties or the Commission to remit new documents or evidence beyond those already submitted; rather, it consisted in a request for rectification to allow the Court to have complete evidentiary material in its case file.

<sup>7</sup> The State appointed César Augusto Guevara Rodríguez, member of the Executive Secretariat of the Office of the Attorney General, and María Elsa Frixione Ocón, Head of the International Criminal Matters, Humanitarian and Human Rights Unit, of the Office of the Attorney General, as Agents.

8. *Observations on the preliminary objections.* On July 5 and 6, 2017, the Commission and the representatives, respectively, presented their observations on the preliminary objections filed by the State. The representatives also referred to other aspects of the State's answering brief, although this had not been requested. In addition, the representatives contested certain evidence offered by the State.

9. *Public hearing.* In an order of September 21, 2017,<sup>8</sup> the President called the parties and the Inter-American Commission to a public hearing to receive their final oral arguments and observations on the preliminary objections and eventual merits, reparations and costs, and also to receive the statements of two presumed victims, one expert witness proposed by the representatives and one expert witness proposed by the Commission. The public hearing took place on October 16 and 17, 2017, during the fifty-eight special session of the Court held in Panama City, Republic of Panama.<sup>9</sup> Before the public hearing began, the statement of V.R.P. was received in private, with only the parties to the case, the Inter-American Commission, and the Secretariat staff essential for the implementation of this procedure. Once this statement and the questions of the parties had concluded, the public part of the hearing continued, during which the Court received the statements of V.P.C., and of expert witnesses Enrique Oscar Stola and Miguel Cillero Bruñol. In addition, the Court requested the parties to present certain information and documentation. The affidavits that had been requested were received on October 10, 2017.

10. *Amici curiae.* *Amicus curiae* briefs were received from: (1) Muhammad Muzahidul Islam, on October 16 and 20, 2017,<sup>10</sup> and (2) the Colombian ProBono Foundation and Gómez-Pinzón Abogados,<sup>11</sup> on October 23, 2017.<sup>12</sup>

11. *Final written arguments and observations.* On November 20, 2017, the representatives and the State forwarded their respective final written arguments, and the Commission presented its final written observations.

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<sup>8</sup> Cf. *Case of V.R.P. and V.P.C. v. Nicaragua*. Order of the President of the Inter-American Court of September 21, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/vrp\\_21\\_09\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/vrp_21_09_17.pdf)

<sup>9</sup> There appeared at this hearing: (a) for the Inter-American Commission: the Second Vice President of the Commission, Esmeralda Arosemena de Troitiño, and Executive Secretariat lawyers, Silvia Serrano Guzmán and Selene Soto Rodríguez; (b) for the representatives of the presumed victims: Fidencia Orozco García Licardi and Juana María Cruz Fernández, inter-American defenders, and (c) for the State of Nicaragua: the designated agents, César Augusto Guevara Rodríguez and María Elsa Frixione Ocón.

<sup>10</sup> The brief presented an analysis of the alleged international responsibility of the State of Nicaragua owing to the failure to comply with its obligation to ensure the rights to personal integrity, dignity, privacy and autonomy, equality before the law and the principle of non-discrimination, taking into consideration the special protection of the child, and the absence of due diligence in the investigation within a reasonable time.

<sup>11</sup> The brief was signed by Ana María Arboleda, Anamaría Sánchez Quintero, David Cujar Bermúdez, María Valentina Díaz Gómez and Diego Alejandro Moreno Baquero. It presented a comparative study of common elements of the domestic laws of several States Parties to the American Convention that have been used to provide care for child victims of sexual violence, and that were developed and implemented with the support of UNICEF, in order to guide the Court on the customary standards that have been applied in the protection of the rights of this vulnerable population. It also referred to the context of sexual violence in Latin America and the Caribbean.

<sup>12</sup> In its final arguments, the State presented a series of observations on the *amici curiae* and asked the Court not to take them into account because they were biased opinions and had not been forwarded with sufficient notice. The Court notes that, according to Article 2(3) of the Rules of Procedure, the person who submits an *amicus curiae* is a person or institution "unrelated to the case and to the proceedings before the Court" – in other words, they are not a procedural party – in order to offer "reasoned arguments on the facts contained in the presentation of the case or legal considerations on the subject-matter of the proceedings." Because it is not incumbent on the Court to rule on whether or not the content of such briefs is correct or on requests or petitions contained in them, the State's observations do not affect the admissibility of the *amici curiae*, without prejudice to the eventual relevance of such observations when assessing the information provided in them. Cf. *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. 15, and *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, footnote 11.

12. *Helpful evidence.* On November 27, 2017, the President of the Court asked the State for helpful evidence. Nicaragua presented this documentation on December 5, 2017. On December 15, 2017, the State sent some missing pages and clarified other annexes forwarded as part of the helpful evidence requested.

13. *Observations of the representatives and the Commission.* The President granted the representatives and the Commission a time frame for submitting any observations they deemed pertinent on the helpful evidence provided by the State. On December 21, 2017, the representatives forwarded their observations on the helpful documentation provided by the State and the Commission indicated that it would not be making any observations.<sup>13</sup>

14. *Disbursements in application of the Assistance Fund.* On December 15, 2017, on the instructions of the President of the Court, the Secretariat forwarded information to the State on the disbursements made in application of the Victims' Legal Assistance Fund in this case and, as established in Article 5 of the Rules for the Operation of this Fund, granted it a time frame to present any observations it deemed pertinent. The State submitted its observations on December 21, 2017.

15. *Deliberation of this case.* The Court began deliberating this judgment on March 8, 2018.

### **III JURISDICTION**

16. The Inter-American Court has jurisdiction to hear this case, pursuant to Article 62(3) of the American Convention, because Nicaragua has been a State Party to this instrument since September 25, 1979, and accepted the contentious jurisdiction of the Court on February 12, 1991. In addition, Nicaragua deposited the instrument ratifying the Convention of Belém do Pará on December 12, 1995.

### **IV PRELIMINARY OBJECTIONS**

17. The State filed the following preliminary objections in its answering brief: alleged failure to exhaust domestic remedies; alleged lack of jurisdiction *ratione temporis* of the Inter-American Commission and Court, and alleged lack of jurisdiction *ratione materiae* of the Court in relation to the presumed violation of articles of the Convention on the Rights of the Child. The Court will decide these objections in the above order.

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<sup>13</sup> On January 4, 2018, the State indicated its discrepancy with "the decisions taken in the [Secretariat] note" with regard to the helpful evidence requested of the State, as well as the request to the Commission and the representatives for observations on this evidence. On January 10, 2018, on the instructions of the President of the Court, the State was advised that the Court had not opened a new adversarial stage; rather, based on its own Rules of Procedure, it considered it pertinent to ask the State to provide helpful evidence, since it was the State who was able to provide it. The request made to the State for this evidence did not result in procedural imbalance; to the contrary, it allowed the Court to have the most evidence possible when taking a decision and, in any case, it gave the State the opportunity to present additional evidence to substantiate its final arguments, because the State had "not provided supporting evidence." When forwarding the said documentation, the State was able to refer to it and to present the pertinent clarifications and explanations – as it did in its communications of December 5 and 15, 2017. The request for observations was made exclusively with regard to the helpful evidence sent by the State; in other words, it constituted an opportunity to contest, challenge or question the authenticity of the documents provided. Consequently, it could not be classified as a new procedural opportunity to submit arguments on the merits of the case. The Court would not take into account any arguments presented by the representatives that went beyond what had been requested.



## **A. Objection on the alleged failure to exhaust domestic remedies**

### *A.1 Arguments of the State and observations of the Commission and the representatives*

18. The **State** alleged the failure to exhaust domestic remedies based on Article 46(1)(a) of the Convention. It argued that the Commission should have verified whether domestic remedies had been exhausted because the criminal proceedings had not been exhausted. Therefore, the State argued that the Commission, by admitting the petition, had established a parallel procedure to the domestic jurisdictional proceedings, given that these had not concluded and there had been no unjustified delay under the procedural system at the time. The State indicated that, in the Admissibility Report, the Commission had "argued the admissibility the petition [...] alleging that there had been an unwarranted delay [...] which contravened its Rules of Procedure and the Convention." In this regard, the State denied that an unjustified delay existed in this case because the proceedings were initiated on November 20, 2001, and the first instance concluded on April 13, 2002, "a reasonable time in the context of the procedural reality at the time." It pointed out that the domestic remedies were exhausted with judgment No. 45 of the Criminal Chamber of the Northern District Appellate Court, issued on October 24, 2007. Accordingly, the State asked the Court to "rule on the Commission's obligation, in each case, to evaluate the effectiveness of the domestic remedies included and the components of a structured, systemic and integral legal order with specific, but complementary, spheres of protection.

19. The **Commission** confirmed that the State had argued the failure to exhaust domestic remedies at the appropriate procedural moment. It reiterated that "in cases in which the situation of the domestic remedies changed during the admissibility procedure, the analysis of compliance with the requirement of exhaustion of domestic remedies is made based on the situation at the time of the Admissibility Report and not on the basis of the situation when the petition was lodged or when its processing began." The Commission clarified that "although, at the merits stage, it became aware that the criminal proceedings had culminated on October 24, 2007, [...] it did not have this information when issuing its Admissibility Report." It indicated that, the State's last brief at the admissibility stage was prior to that date. In its final observations, the Commission clarified that, in its initial answering brief, the State had indicated that the petitioner had exhausted the domestic remedies. However, subsequently, it advised that those remedies had not been exhausted because the nullification proceeding was pending and the delay was due to the many procedures requested by both parties. That is why, in light of the available information, the Commission understood that the proceedings continued and applied the exception of an unjustified delay established in Article 46(2)(c) of the American Convention. It indicated that, if it had "been advised opportunely that the criminal proceeding had concluded, the petition would always have been admissible because the domestic remedies had effectively been exhausted." Consequently, the Commission asked the Court to reject this preliminary objection filed by Nicaragua.

20. The **representatives** argued that, at the time of the facts, there was no due process of law that would have provided effective protection to the rights that were violated. They indicated that the only possible remedy for the plaintiff was to file an appeal for nullification, which was a special procedure established for specific cases. Therefore, according to the representatives, the exception established in Article 46(2)(c) of the Convention was applicable, because when the case was heard by a jury, domestic laws did not include due process of law for the protection of the right or rights that are alleged to have been violated. In their final arguments, they added that the State had filed this objection in a generic manner, without specifying the remedies that had not been exhausted and, in particular, whether they were appropriate and effective.

### *A.2 Considerations of the Court*

21. Article 46(1)(a) of the Convention establishes that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 requires that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The Court recalls that the rule of prior exhaustion of domestic remedies was conceived in the interests of the State because it seeks to exempt it from responding before an international organ for acts attributed to it before it has had the opportunity to rectify them by its own means. This signifies that the said remedies must not only exist formally, but also they must be appropriate and effective, as a result of the exceptions established in Article 46(2) of the Convention.<sup>14</sup>

22. The Court has also affirmed in its consistent case law that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be presented at the appropriate procedural moment; that is, during the admissibility procedure before the Commission. After this, it is understood that the principle of procedural preclusion applies.<sup>15</sup>

23. Accordingly, during the admissibility stage of the case before the Commission, the State must specify clearly the remedies that, in its opinion, have not yet been exhausted in order to safeguard the principle of procedural equality between the parties that should govern every procedure before the inter-American system.<sup>16</sup> As the Court has repeatedly established, it is not the task of this Court, or of the Commission, to identify *ex officio* the domestic remedies that are pending exhaustion, because it is not incumbent on the international organs to rectify the lack of precision of the State's arguments.<sup>17</sup>

24. Indeed, the Court recalls that, in the case of a preliminary objection of this nature, the first matter it must determine is whether it was filed at the proper procedural moment. In this regard, the Commission has indicated that the State asserted the failure to exhaust domestic remedies opportunely (*supra* para. 19), and the representatives have not contested this aspect. The Court notes that the State alleged the failure to exhaust domestic remedies during the admissibility stage, specifically in the addendum to its initial response,<sup>18</sup> received on February 16, 2005,<sup>19</sup> when it stated that, at that time, they had not been totally exhausted because the decision was pending on a request for nullification of the Jury Court's verdict that acquitted the accused.<sup>20</sup> Therefore, the objection was filed at the proper procedural moment, as revealed by the Admissibility Report.<sup>21</sup>

<sup>14</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 61 and 63, and *Case of Dismissed Employees of PetroPerú et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017. Series C No. 344, paras. 27 and 32.

<sup>15</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 88; *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 47, and *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 331, para. 21.

<sup>16</sup> Cf. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 28, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 78.

<sup>17</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 23, and *Case of Dismissed Employees of PetroPerú et al. v. Peru, supra*, paras. 27 and 33.

<sup>18</sup> On February 11, 2005, the State forwarded its initial response which did not mention the matter of the exhaustion of domestic remedies. Cf. Report MRE/DM-DGOI/196/02/05 of February 9, 2005, received on February 11, 2005, by the Inter-American Commission (file of procedure before the Commission, volume VIII, folios 3229 to 3234).

<sup>19</sup> Cf. Addendum to Report MRE/DM-DGOI/196/02/05 of February 14, 2005, received on February 16, 2005, by the Inter-American Commission (file of procedure before the Commission, volume VIII, folios 3237 to 3242).

<sup>20</sup> Cf. Addendum to Report MRE/DM-DGOI/196/02/05 of February 14, 2005, received on February 16, 2005, by the Inter-American Commission (file of procedure before the Commission, volume VIII, folios 3237 to 3242).

<sup>21</sup> Cf. IACHR, Admissibility Report No. 3/09, Petition 4408-02. *Case of V.R.P. and V.P.C. v. Nicaragua*, February 11, 2009, paras. 42 and 43 (file of procedure before the Commission, volume XI, folios 4657 to 4669).

25. That said, the Court stresses that, as established in its case law, the Commission must analyze the exhaustion of domestic remedies when deciding on the admissibility of the petition and not when this is lodged.<sup>22</sup> In addition, the Commission needed to have the most recent, necessary and sufficient information to carry out this analysis of admissibility, which should have been provided by the parties to the proceedings.

26. On this point, the Court notes that, on February 11, 2009, the date on which the Commission ruled on admissibility, the information in its file for this procedure revealed that the appeals filed on August 25, 2005, by the assistant prosecutor of the Public Prosecution Service and by the legal representative of V.P.C. (*infra* para. 120) were pending a decision and, indeed, more than six years had passed since the facts occurred without the State having issued a final decision. There is no evidence in the file of the procedure before the Commission that it had been informed of the delivery of judgment No. 45 of the Criminal Chamber of the Northern District Appellate Court on October 24, 2007.

27. Based on the above, and in accordance with this Court previous rulings, the Commission could only have taken into account any progress made in the proceedings in the domestic jurisdiction if the parties had provided it with that information during the procedure.<sup>23</sup> Consequently, the analysis of admissibility made by the Commission in 2009 was in keeping with the information available to it at that time, and it could not be required to make a different analysis, since it lacked the most recent information.

28. The Court also notes that, even if the Commission had possessed information on the domestic proceedings updated to 2009, the remedies were exhausted, because the State itself has asserted that they concluded with judgment No. 45 of the Criminal Chamber of the Northern District Appellate Court delivered on October 24, 2007. Consequently, the Court rejects the preliminary objection filed by the State.

29. Finally, the Court notes that it will not examine the arguments of the representatives that the exception to the exhaustion of domestic remedies was applicable owing to the inexistence of due process of law, because it is not the Court's task to re-examine admissibility.

## ***B. Objection concerning the lack of jurisdiction *ratione temporis* of the Inter-American Commission and the Court***

### *B.1 Arguments of the State and observations of the Commission and the representatives*

30. The **State** alleged that the Commission did not have competence based on Article 45 of the Convention, because the facts of the case had taken place prior to its acknowledgement of the Commission's competence. The State argued that, on February 6, 2006, it had added a third paragraph to declaration No. 49 of January 15, 1991, in which it declared that it acknowledged the competence of the Commission only for subsequent facts or facts that began to be executed after the date on which it deposited its declaration. It affirmed that the Commission had violated "peremptory norms of jurisdiction [...], contravening the Convention [...], resulting in absolute nullity that determined the Commission's lack of competence to examine these facts, and this did not admit validation of any kind and resulted in the inadmissibility of the petition." Consequently, it understood that "the Court [...] should not admit the case submitted by the Commission in order to

<sup>22</sup> Cf. *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 25, and *Case of Favela Nova Brasilia v. Brazil, supra*, para. 85.

<sup>23</sup> Cf., *mutatis mutandi*, *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 41.

ensure the security and reliability of the international protection [...], because, in the instant case, there had been evident violations of the procedural rules established in the Convention." On that basis, the State asked the Court to declare that "the objection filed was substantiated, that the litigation in question was inadmissible, and to order the closure of this case."

31. The **Commission** indicated that the State's defense was based on an attempt to apply a reservation made by Nicaragua in 2006 in relation to Article 45 of the American Convention which regulates communications between States or inter-State petitions, and "that bears no relationship to the instant case." Therefore, it asked the Court to reject this preliminary objection.

32. The **representatives** argued that the Court had jurisdiction to hear this case because Nicaragua had been a State Party to the Convention since September 25, 1979, and had accepted the Court's contentious jurisdiction on February 12, 1991. They also argued that the only situation in which express acknowledgement of the Commission's competence is required is that established in Article 45 of the Convention, but this refers exclusively to the reception and examination of inter-State communications, and not those between private individuals and the State. Thus, the representatives concluded that the paragraph added by the State in February 2006 was not applicable to this case, because it did not relate to an inter-State petition. Consequently, they asked the Court to reject the objection of lack of jurisdiction filed by Nicaragua.

## B.2 Considerations of the Court

33. Taking into account the State's arguments to support this preliminary objection, the Court recalls that the contentious function may be activated by two different procedures for complaints or communications before the Commission, each of them governed by specific regulations. One of them is in the context of the system of individual petitions, established in Article 44 of the Convention, according to which the States become the defendant in contentious cases arising from individual petitions. In the other procedure, established in Article 45 of this instrument, the States become opposing procedural parties; namely, plaintiff and defendant in contentious cases arising from inter-State communications. Once this procedure has concluded, it may result in the submission of a case to the Court so that the Court may exercise its contentious jurisdiction, provided the other requirements are met.<sup>24</sup>

34. In the case of individual petitions, as indicated in Article 44 of the Convention, Article 19 of the Commission's Statute, and Article 23 of its Rules of Procedure, the competence of the Commission is activated automatically to examine alleged violation of the American Convention, provided that the defendant State has ratified this instrument. To the contrary, in the case of inter-State communications, it is necessary that the defendant State, in addition to ratifying the Convention, has expressly declared its willingness to submit to the competence of the Commission, as established in Article 45.<sup>25</sup>

35. That said, the Court notes that the 2006 declaration of acceptance of competence referred to by the State of Nicaragua refers to Article 45 which, as indicated, governs the Commission's competence to examine inter-State communications. Consequently, as this case does not refer to an inter-State communication, but rather to an individual petition, the provisions of Article 45 are not applicable.

<sup>24</sup> Cf. *Article 55 of the American Convention on Human Rights*. Advisory Opinion OC-20/09 of September 29, 2009. Series A No. 20, para. 32.

<sup>25</sup> Article 45 establishes that: "1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention."

36. Therefore, this objection must be rejected.

**C. Objection concerning the lack of jurisdiction *ratione materiae* of the Court in relation to the presumed violation of articles of the Convention on the Rights of the Child**

*C.1 Arguments of the State and observations of the Commission and the representatives*

37. The **State** filed a preliminary objection alleging the Court's lack of jurisdiction *ratione materiae* owing to the representatives' wish to submit to the consideration of, and assessment by, this Court of Articles 2(1), 3(1) and (2), 4, 16, and 24(1) and (2) of the Convention on the Rights of the Child, in relation to the presumed victim, V.R.P. In this regard, it argued that, according to Article 62 of the Convention, the disputes submitted to the Court may only refer to the interpretation and application of the provisions of the American Convention and its two supplementary Protocols. The State also indicated that Article 1 of the Court's Statute clearly established that its purpose is the interpretation and application of the American Convention; therefore, the Court does not have jurisdiction with regard to other international treaties that are not part of the inter-American system. Consequently, according to the State, the Court did not have jurisdiction to decide on compliance with obligations arising from instruments that are not part of the inter-American system, such as the Convention on the Rights of the Child, which establishes the Committee on the Rights of the Child as its own special treaty body. On this basis, the State asked the Court to exclude Articles 2(1), 3(1) and (2), 4, 16, and 24(1) and (2) of the Convention on the Rights of the Child from its assessment.

38. The **Commission** observed that this objection relates to the arguments set out by the representatives – who are empowered to present arguments on additional rights to the Court – in their brief with pleadings, motions and evidence. Nevertheless, the Commission underlined that, in its Report No. 4/16, it had not established violations of the Convention on the Rights of the Child, but rather had used this instrument as part of the relevant international *corpus juris* to provide content to the provisions of the American Convention, which was consistent with the practice of both the Commission and the Court.

39. The **representatives** argued that, since the Convention on the Rights of the Child formed part of the international *corpus juris* for the protection of the child, they had "used [its] provisions [...] to analyze the instant case." On this basis, and citing the best interest of the child, they argued that this was why they referred to the provisions of the Convention on the Rights of the Child, in relation to Articles 1(1) and 19 of the American Convention. Consequently, the representatives asked the Court to reject the objection.

*C.2 Considerations of the Court*

40. The Court notes that the arguments presented by the representatives in relation to the provisions of the Convention on the Rights of the Child were imprecise. However, the Court understands that the representatives did not ask the Court to declare the international responsibility of the State with regard to the said provisions for which this Court does not have competence; rather, it cited them as norms that provide content to the scope of the special measures of protection established in Article 19 of the American Convention, which the Court does have competence to interpret and to apply. Indeed, the Court has indicated that "when examining the compatibility of the State's laws and practices with the Convention, the Court may interpret the

obligations and rights contained in this instrument in light of other treaties."<sup>26</sup> This is derived expressly from Article 29(b) of the American Convention which refers to the rules for the interpretation of the Convention's provisions "by virtue of another convention to which one of the said States is a party," and reflects a tendency of the American Convention to integrate the regional system and the universal system for the protection of human rights.<sup>27</sup>

41. Bearing in mind that the titleholder of rights and the main presumed victim in this case was under 18 years of age at the time of the facts, the Court finds it useful and appropriate to have recourse to the Convention on the Rights of the Child which contains various specific and more developed provisions on the participation, access to justice and rehabilitation of children and adolescents who are victims of offenses. These provisions are able to illustrate the content and scope of the special measures of protection that must be specified in this case in light of Article 19 of the Convention. The Court considers that this instrument is applicable to the instant case in the terms indicated, because Nicaragua is a party to that international treaty<sup>28</sup> and has therefore recognized the rules expressly established therein as a source of law. However, it should also be recalled, as has been stressed on numerous occasions, that the Convention on the Rights of the Child is the international treaty that has the greatest claim to universality, and this "reveals a broad international consensus (*opinio iuris comunis*) in favor of the principles and institutions included in that instrument, which reflects current developments on this issue."<sup>29</sup>

42. In sum, this Court has established in reiterated case law that, both the American Convention and the Convention on the Rights of the Child, as well as other international instruments with different legal content and effects that serve as a guide for interpretation,<sup>30</sup> form part of a very comprehensive international *corpus juris* for the protection of children and adolescents. This *corpus juris* should provide the basis for establishing the content and scope of the general provisions defined in Article 19 of the American Convention, in relation to the other rights contained in the said instrument, when the titleholder of rights is under 18 years of age.<sup>31</sup> Therefore, based on the preceding considerations, the Court rejects the objection filed.

## V

### PRELIMINARY CONSIDERATIONS

43. Before examining the pertinent facts and applying the norms of the American Convention to them, owing to the State's arguments, some preliminary considerations must be included on the determination of the presumed victims and the rights presumably violated according to the representatives. Regarding the State's arguments on the representatives' supposed late presentation of some annexes to the pleadings and motions brief, the Court will take the pertinent decision in the chapter corresponding to the evidence (*infra* para. 60).

<sup>26</sup> *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 24, and *Case of Vásquez Durand et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of February 15, 2017. Series C No. 332, para. 30.

<sup>27</sup> *Cf. "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights),* Advisory Opinion OC-1/82, September 24, 1982. Series A No. 1, para. 41.

<sup>28</sup> Nicaragua ratified the Convention on the Rights of the Child on October 5, 1990.

<sup>29</sup> *Juridical Status and Human Rights of the Child,* Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, para. 29, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.* Advisory Opinion OC-21/14 of August 19, 2014. Series A No.21, para. 57.

<sup>30</sup> *Cf. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection..* Advisory Opinion OC-21/14, *supra*, para. 60.

<sup>31</sup> *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999. Series C No. 63, para. 194, and *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2016. Series C No. 325, footnote 115.

## **A. Determination of the presumed victims**

### *A.1 Arguments of the State and observations of the Commission and the representatives*

44. The **State** argued that the Court did not have competence to examine the alleged violations of the rights of N.R.P., H.J.R.P. and V.A.R.P., because the Commission had not included them as presumed victims in its Merits Report. The State asserted that, in Admissibility Report No. 3/09, the Commission had established a limit with regard to those who were the presumed victims in this matter. Also, in Report No. 4/16, it had determined that the victims in this case were V.R.P. and V.P.C. However, the representatives, in the section of their pleadings and motions brief on reparations, had incorporated a request to the Court to recognize the petitioner's other children as beneficiaries. Therefore, the State asked the Court to declare itself incompetent to examine the reparations claimed in favor of N.R.P., H.J.R.P. and V.A.R.P., because the possible victims and beneficiaries of an eventual reparation can only be the persons identified by the Commission in its Merits Report. In its final arguments, the State affirmed that neither in this report, even in paragraph 153, nor in the letter submitting the case to the Court, had the Commission referred to articles of the Convention that were supposedly violated in the case of V.P.C.'s other children.

45. The **representatives** argued that, although it corresponded to the Commission to determine the presumed victims, it was inaccurate to consider that the Commission had not referred to the V.R.P.'s siblings as victims in this case, as revealed by paragraphs 153 and 154 of the Merits Report of the Commission. Therefore, the representatives asked the Court to declare as presumed victims N.R.P., H.J.R.P. and V.A.R.P., siblings of presumed victim V.R.P. and children of the petitioner and presumed victim V.P.C.

46. The **Commission** indicated that paragraph 154 of the Merits Report established violations in relation to the whole direct family of V.R.P. In this regard, it clarified that the omission from paragraph 4 of the Merits Report "was an involuntary factual error that did not invalidate the said determination."

### *A.2 Considerations of the Court*

47. This Court recalls that the presumed victims should be indicated in the Commission's Merits Report issued under Article 50 of the Convention. Article 35(1) of the Court's Rules of Procedure establishes that the case will be submitted to the Court by the presentation of this report, which must contain "the identification of the presumed victims." On this basis, it is for the Commission, and not the Court, to identify the presumed victims in a case before the Court precisely and at the proper procedural opportunity.<sup>32</sup> Legal certainty requires, as a general rule, that all the presumed victims are fully identified in the Merits Report, and it is not possible to add new presumed victims subsequently, save in the exceptional circumstances established in Article 35(2) of the Court's Rules of Procedure, which are not applicable in this case.

48. The Court notes that, in Merits Report No. 4/16, the Commission did not include a specific paragraph listing the presumed victims in this case. However, it decided that "there is sufficient evidence to conclude that the rape suffered by V.R.P., its consequences, and the impunity – attributable to the State – in which the case remains has caused emotional suffering to V.P.C. and her children H.J.R.P., V.A.R.P. and N.R.P., in violation of the right recognized in Article 5(1) of the

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<sup>32</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 41.

American Convention in relation to Article 1(1) of this instrument.”<sup>33</sup> Also, in the conclusions contained in paragraph 154, the Commission indicated that the violations of the rights of the Convention were established “to the detriment of the persons indicated in each section of the [said] report.”<sup>34</sup> It is true, however, that the Commission failed to include the conclusion with regard to the analysis made of the violation of Article 5(1) of the Convention to the detriment of V.R.P.’s siblings in paragraph 4 of the Merits Report, and in the note submitting the case. However, the Court considers that this lack of precision cannot be understood to undermine the examination made in the corresponding section and the express conclusion contained in paragraphs 153 and 154, because the brief submitting the case and the Merits Report should be read and understood as a whole. On this basis, the Court concludes that, in the circumstances of this case, Merits Report No. 4/16 individualizes N.R.P., H.J.R.P. and V.A.R.P. as presumed victims in a way that is sufficiently precise, and alleges the presumed violation of Article 5(1) of the Convention to their detriment.

49. Consequently, the Court will consider as presumed victims in this case those persons identified and individualized by the Commission, namely: V.R.P. and V.P.C., and also N.R.P., H.J.R.P. and V.A.R.P.

## **B. Other human rights violations alleged by the representatives**

### *B.1 Arguments of the State and observations of the Commission and the representatives*

50. The **State** disagreed with the arguments presented by the representatives with regard to the violation of human rights that the Commission had not included. It argued that the principle of procedural good faith had been violated because, in the case of the presumed victim V.R.P., the representatives had alleged violations of Articles 1(1), 8(1), 17(1), 22(1) and 25(1) of the American Convention; Articles 1, 2, 4(b) and 4(g) of the Convention of Belém do Pará, and also Articles 2(1), 3(1) and (2), 4, 16, and 24(1) and (2) of the Convention on the Rights of the Child. The State included the same argument in relation to V.P.C. with regard to the alleged violation of Articles 5(1), 8, 11, 12(1), 24 and 25 of the American Convention in relation to Article 1(1) of this instrument, and Articles 4(g) and 7(b) of the Convention of Belém do Pará; and also the violation of Articles 5(1) and 11 of the American Convention in relation to Article 1(1) thereof in relation to the presumed victims’ siblings, none of which had been alleged during the processing of the case, either before the Commission or before the Court. The State argued that the citation of the new presumed violations constituted an evident change in the original position of the petitioner and her representatives in relation to the Commission’s Merits Report that, in its opinion, “constitute[d] a direct violation of the procedure under the inter-American system, a violation of the right of defense, and a violation of legal certainty.” Therefore, the State asked the Court not to admit the analysis of the said provisions in this case.

51. The **representatives** argued that, based on Article 40 of the Court’s Rules of Procedure, the brief with pleadings, motions and evidence was autonomous and independent from the allegations made in the Merits Report submitted by the Commission, and new rights violations could be included in it, provided they fell within the factual framework established by the Commission. They added that, in the instant case, all the violations described were included within the factual framework. They understood that, consequently, it was possible to include rights that had not been included in the Merits Report because the violations and abuse suffered by V.P.C. and V.R.P., which were described in the factual framework of the case, had ulterior consequences. The representatives concluded that, in this case, they had “described some violations of the presumed

<sup>33</sup> IACHR, Merits Report No. 4/16, para. 153.

<sup>34</sup> IACHR, Merits Report No. 4/16, para. 154.



victims' rights, but always within the framework of the facts indicated by the Commission."

52. The **Commission** made no observations in this regard.

### B.2 Considerations of the Court

53. According to the consistent case law of this Court, the presumed victims and their representatives may cite the violation of rights other than those contained in the Merits Report, provided those rights relate to the facts contained in that document, because the presumed victims are the titleholders of all the rights established in the Convention.<sup>35</sup>

54. Accordingly, the Court notes that, in Merits Report No. 4/16, contrary to the State's arguments, the Commission concluded the violation of the rights contained in Articles 5, 8, 11, 19, 24 and 25 of the American Convention, in relation to Article 1(1) of this instrument, and also of Article 7(b) of the Convention of Belém do Pará. The representatives, in addition, to the violations established by the Commission, asked the Court to declare the violation of the rights contained in Articles 12(1), 17(1) and 22(1) of the American Convention, in relation to Article 1(1) of this instrument, and of Articles 1(1), 2, 4(b) and 4(g) of the Convention of Belém do Pará. The representatives also cited the rights established in Articles 2(1), 3(1), 3(2), 4, 16 and 24(1) and 24(2) of the Convention on the Rights of the Child, as analyzed above *supra*.

55. First, with regard to the arguments concerning Articles 12(1), 17(1) and 22(1) of the American Convention, the Court understands that they are based on the factual framework described in the Merits Report and, indeed, conform to the case law mentioned previously and to Article 40 of the Court's Rules of Procedure. Therefore, it is not appropriate to admit the claims of the State, and those rights will be considered when examining the merits of the case.

56. In addition, regarding the rights contained in the Convention of Belém do Pará, this Court has already indicated in its case law that it has competence to rule on this instrument.<sup>36</sup> However, pursuant to the provisions of its Article 12, the possibility of lodging "petitions" with the Commission refers to "denunciations or complaints of violations of [its] Article 7," and not to the other articles. Consequently, when examining the alleged violations of the Convention of Belém do Pará, the Court may only establish the State's responsibility for failing to comply with the provisions of Article 7, without prejudice to the interpretive value of the instrument as a whole. On this basis, the arguments of the State are rejected.

57. Lastly, regarding the rights of the Convention on the Rights of the Child, the Court has already rule in this regard when addressing the preliminary objection on its supposed lack of jurisdiction *ratione materiae* filed by the State, so that it refers to the decision taken at that time (*supra* paras. 40 to 42).

## VI EVIDENCE

### A. Documentary, testimonial and expert evidence

58. The Court received diverse documents presented as evidence by the State, the representatives and the Inter-American Commission, attached to their principle briefs and as

<sup>35</sup> Cf. *Case of the "Five Pensioners" v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Acosta et al. v. Nicaragua, supra*, para. 30.

<sup>36</sup> 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. 40, and *Case of Favela Nova Brasília v. Brazil, supra*, para. 67.

helpful evidence (*supra* paras. 1, 6, 7 and 12). The Court also received the affidavits of N.R.P., H.J.R.P. and V.A.R.P., proposed by the representatives. Regarding the evidence provided at the public hearing, the Court received the statements of presumed victims V.R.P. and V.P.C., and also the opinions of expert witnesses Enrique Oscar Stola, proposed by the representatives, and Miguel Cillero Bruñol, proposed by the Commission.

## **B. Admission of the evidence**

### *B.1 Admission of the documentary evidence*

59. In this case, as in others, the Court admits the probative value of those document submitted by the parties and by the Commission at the proper procedural moment, that were not contested or refuted, and the authenticity of which was not questioned.<sup>37</sup>

60. The State alleged that certain evidence presented with the representatives' brief was inadmissible because it was time-barred. According to Article 57(2) of the Rules of Procedure, the procedural opportunity for the presentation of documentary evidence is, in general, together with the briefs submitting the case, with pleadings and motions, or answering the submission of the case, as applicable. In this regard the Court notes that the evidence contested by the State was duly offered at the proper procedural moment and submitted to the Court together with the brief with pleadings, motions and evidence. The Court reiterates that the fact that it asked the representatives to rectify certain errors in the annexes, specifically in those pages that were partially illegible or missing, does not make the evidence inadmissible or time-barred *per se*, because the Court has the authority to obtain the evidence that will be useful for deciding the case and, if necessary, to request such rectification.

61. The representatives contested several items of evidence presented by the State with its answering brief. Regarding a series of annexes, they indicated that these were incomplete. In the case of other annexes, they indicated that these did not prove what they were intended to prove or, as in the case of the Constitution provided, that the document was out of date, because it did not contain certain amendments. In this regard, the Court considers that the issues raised refer to the probative value of the evidence and not to its admissibility.

62. Pursuant to Article 58(b) of its Rules of Procedure, the Court finds it appropriate to admit the documents provided by the State that were requested by the Court's judges or its President as helpful evidence. However, the Court notes that the representatives contested annexes 9.a and 9.b.6 submitted by the State, because they were not official documents. Since it is not possible to verify the authenticity of those documents, the Court declares that they are inadmissible. The representatives also indicated that several of the documents concerning laws and protocols are subsequent to the facts of the case, and the Court will take this into account when evaluating this documentation.

### *B.2 Admission of the statements and expert opinions*

63. The Court finds it pertinent to admit the statements and the expert opinions provided during the public hearing and by affidavit, insofar as they are in keeping with the purpose defined by the President in the order requiring them,<sup>38</sup> and the purpose of this case.

<sup>37</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140, and *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*. Judgment of August 22, 2017. Series C No. 338, para. 42.

<sup>38</sup> The purpose of all these statements was established in the order of the President of the Inter-American Court of September 21, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/vrp\\_21\\_09\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/vrp_21_09_17.pdf).

### **C. Assessment of the evidence**

64. Based on its consistent case law on evidence and its assessment, the Court will examine and assess the documentary evidence provided by the parties and the Commission that it has incorporated into the case file, together with the statements and expert opinions, when establishing the facts of the case and ruling on the merits. To this end, it will abide by the principle of sound judicial discretion, within the corresponding legal framework, taking into account the body of evidence and the arguments made in the case.<sup>39</sup>

65. Lastly, pursuant to its case law, the Court recalls that the statements made by the presumed victims cannot be assessed in isolation, but rather in the context of all the evidence in the proceedings, insofar as they may provide further information on the presumed violations and their consequences.<sup>40</sup>

## **VII FACTS**

### **A. Background**

66. V.R.P. was born on April 15, 1992, in Jinotega, Nicaragua.<sup>41</sup> She is the daughter of V.P.C. and H.R.A. and a member of the family group that is also composed of her three older siblings: N.R.P., H.J.R.P. and V.A.R.P.<sup>42</sup>

67. Up until 2002, both V.R.P. and her siblings lived in a house owned by her mother. Their father's presence in the house was almost non-existent, because H.R.A. was in an extramarital relationship and only came to the house sporadically, a circumstance that made his relationship with her mother rather unsettled.<sup>43</sup>

68. H.R.A. was a lawyer; he was employed as Assistant Attorney of the Department of Matagalpa, among other posts.<sup>44</sup> He was also a member of the Sandinista National Liberation Front (FSLN).<sup>45</sup>

69. The marriage was dissolved on January 31, 2002, as a result of lawsuit filed by por V.P.C. in

<sup>39</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 79.

<sup>40</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Pacheco León et al. v. Honduras. Merits, reparations and costs*. Judgment of November 15, 2017. Series C No. 342, para. 20.

<sup>41</sup> Cf. Birth certificate of V.R.P. issued by the Jinotega Civil Registry (evidence file, volume XV, annex 2.a to the submission of the case, folio 6632).

<sup>42</sup> Cf. Identity documents of H.J.R.P. and V.A.R.P. and driving license of N.R.P. (evidence file, volume XVI, annexes B.3, B.4 and B.5 to the brief with pleadings, motions and evidence, folios 7089 to 7092). See also, Report of the Ministry of the Family, Jinotega Delegation, issued on July 11, 2002 (evidence file, volume XV, annex 1 to the submission of the case, folios 6621 to 6630).

<sup>43</sup> Cf. Report of the Ministry of the Family, Jinotega Delegation, issued on July 11, 2002 (evidence file, volume XV, annex 1 to the submission of the case, folios 6621 to 6630), and Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>44</sup> Cf. Certifications issued by the Ministry of Justice (file of procedure before the Commission, volume XI, folios 4132 and 4134), and Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>45</sup> The domestic file contains "a flyer that states that the accused [H.R.A.], is a companion in the fight who was being prosecuted unjustly, flyer signed by a person who also came forward to the Jury Court as a member of the Sandinista Party and as a witness, to testify in favor of the accused." Note of the District Deputy Criminal Judge of Jinotega dated August 1, 2003 (file of procedure before the Commission, volume X, folio 3856).

November 2001.<sup>46</sup>

**B. The events that occurred in 2000**

70. V.R.P. recounted that, in September and October 2000, when she was eight years old, her father took her on two occasions to a place known as "Las Flores." There, he gave her coffee to drink, following which she felt lightheaded and slept. She also stated that, even though she was unaware of what her father did to her, when she woke up she noticed that he was buckling up his belt, and tidying up the front of his trousers, pulling up the zip and, also, he cleaned her anal area.<sup>47</sup>

**C. The criminal complaint and the start of the investigation**

71. On October 16, 2001, V.P.C. took her daughter to a private consultation with a pediatrician because of the difficulties V.R.P. had to defecate and the pains she had in the anal area. After examining V.R.P. and taking the respective biopsy under anesthesia, the doctor who saw her found that the child had a ruptured hymen and condylomas in the perianal area, indicating a venereal disease.<sup>48</sup> Based on her medical profile, the pediatrician decided to refer her to the Victoria Motta Hospital. On October 17, 2001, they went to see a gynecologist for a more specialized assessment. This physician, following a gynecological examination under anesthesia, confirmed the diagnosis of a hymen that had been perforated some time previously, and identified ulcers in the anus, mucosal tearing in the anal area, injuries to the cervix, and the presence of the human papillomavirus and condylomas in the perianal area.<sup>49</sup> Owing to these injuries, V.R.P. was subjected to cryotherapy for the condylomas in the cervix and an anoplasty of the whole perianal circumference.<sup>50</sup> Both physicians concluded and declared in the domestic proceedings that, based on the medical findings, V.R.P. had been a victim of sexual abuse and had suffered anal penetration.<sup>51</sup>

72. Based on these findings, and the account given by V.R.P., on November 20, 2001, V.P.C.

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<sup>46</sup> Cf. Judgment issued by the Civil District Court of Jinotega on January 31, 2002 (evidence file, volume XV, annex 3 to the submission of the case, folios 6704 to 6706).

<sup>47</sup> Cf. Statement *ad-inquirendum* given by V.R.P. before the judge of the Jinotega Criminal District on November 21, 2001 (evidence file, volume XVII, annex 9 to the answering brief, folios 8201 and 8202), and Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017. See also, Psychological Report No. 16275/01 of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XV, annex 4 to the submission of the case, folios 6708 and 6709); Forensic Medical Report No. 16273/01 of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XV, annex 4 to the submission of the case, folios 6710 to 6712), and Mental health assessment of V.R.P. conducted by the Victoria Motta Hospital in Jinotega on November 26, 2001 (evidence file, volume XV, annex 5 to the submission of the case, folio 6714).

<sup>48</sup> Cf. Testimony provided by Alejandro Anastasio Barahona before the District Criminal Court on November 21, 2001 (evidence file, volume XVI, annex E.8 to the brief with pleadings, motions and evidence, folios 7300 and 7301).

<sup>49</sup> Cf. Gynecological examination of October 17, 2001 (evidence file, volume XVI, annex E.1 to the brief with pleadings, motions and evidence, folios 7272 and 7273); Testimony provided by Yader Peralta Alarcón before the District Criminal Court on November 21, 2001 (evidence file, volume XVI, annex E.6 to the brief with pleadings, motions and evidence, folios 7293 and 7294), and Testimony provided by Alejandro Anastasio Barahona before the District Criminal Court on November 21, 2001 (evidence file, volume XVI, annex E.8 to the brief with pleadings, motions and evidence, folios 7300 and 7301).

<sup>50</sup> Cf. Epicrisis of October 24, 2001 (evidence file, volume XVI, annex E.1 to the brief with pleadings, motions and evidence, folio 7268). See also, Forensic Medical Report No. 16273/01 of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XV, annex 4 to the submission of the case, folios 6710 a 6712); Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017; Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017, and Affidavit made by H.J.R.P. on October 9, 2017 (evidence file, volume XVIII, affidavits, folio 8347).

<sup>51</sup> Cf. Testimony provided by Alejandro Anastasio Barahona before the District Criminal Court on November 21, 2001 (evidence file, volume XVI, annex E.8 to the brief with pleadings, motions and evidence, folio 7302), and Testimony provided by Yader Peralta Alarcón before the District Criminal Court on November 21, 2001 (evidence file, volume XVI, annex E.6 to the brief with pleadings, motions and evidence, folio 7294).

denounced H.R.A. for the crime of the rape of his daughter before the District Criminal Court.<sup>52</sup>

73. On November 21, 2001, the statements *ad-inquirendum*<sup>53</sup> of V.R.P.<sup>54</sup> and V.P.C.<sup>55</sup> were taken, at which time the latter ratified the complaint against H.R.A. On the same date, a search warrant was issued, and H.R.A. was arrested<sup>56</sup> and gave a preliminary statement before the district criminal judge. On that occasion, he rejected the charges brought against him and asked that the said court investigate the connection between members of the "Mormon sect" and his daughter's rape, because V.P.C. was a members of this sect and, supposedly, knew that one of its most senior representatives had been accused of the sexual abuse of minors.<sup>57</sup>

74. Owing to these events, V.R.P. stopped going to school<sup>58</sup> because she felt ashamed and was afraid of being rejected as the proceedings had become public knowledge.<sup>59</sup> In this regard, it should be mentioned that, in an order of November 21, 2001, the Jinotega District Criminal Court established that "since the court had been requested to restrict the access of the media, and also the general public, this preliminary hearing will be held in private."<sup>60</sup> Despite this, the radio station, Radio Stereo Libre, 95.3 FM, which had connections with the plaintiff's lawyer, covered each stage of the criminal proceedings against H.R.A. in 2002.<sup>61</sup>

#### **D. The evidentiary measures ordered**

75. During the preliminary proceedings, orders were issued to receive 21 statements<sup>62</sup> and also to conduct other evidentiary measures described below.

##### *a) Medical examination of V.R.P.*

76. A medical examination of V.R.P. was ordered. To this end, the district criminal judge in charge of the proceedings asked the Director of the Victoria Motta Hospital to put together a medical team composed of a pediatrician, a surgeon and a gynecologist to conduct a forensic medical assessment of V.R.P. with the forensic physician.<sup>63</sup> The Director of the hospital set up this

<sup>52</sup> Cf. Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017, and Complaint brief dated November 19, 2001, filed the following day (evidence file, volume XVI, annex D.1 to the brief with pleadings, motions and evidence, folios 7122 a 7136).

<sup>53</sup> According to article 154 of the Code of Criminal Procedure: "[t]he aggrieved person shall give his statement before the whole court *ad-inquirendum*, under oath, unless this is not possible, in which case it shall be deferred until the impediment is eliminated" (evidence file, volume XVII, annex 2 to the answering brief, folio 8048).

<sup>54</sup> Cf. Statement *ad-inquirendum* made by V.R.P. before the Jinotega District Criminal Judge on November 21, 2001 (evidence file, volume XVII, annex 9 to the answering brief, folios 8201 and 8202).

<sup>55</sup> Cf. Statement *ad-inquirendum* made by V.P.C. before the Jinotega District Criminal Judge on November 21, 2001 (evidence file, volume XV, annex 2.b to the submission of the case, folio 6634).

<sup>56</sup> Cf. Order issued by the Jinotega District Criminal Court on November 21, 2001 (evidence file, volume XVII, annex 31 to the answering brief, folio 8275).

<sup>57</sup> Cf. Preliminary statement made by H.R.A. on November 21, 2001 (evidence file, volume XV, annex 2.d to the submission of the case, folios 6639 to 6648).

<sup>58</sup> Cf. Communication of V.P.C. addressed to the Special Attorney for Children and Adolescents on September 9, 2002 (evidence file, volume XVI, annex E.85 to the brief with pleadings, motions and evidence, folio 7586).

<sup>59</sup> Cf. Statement made by V.P.C. before the Inter-American Commission on April 20, 2009 (evidence file, volume XV, annex 37 to the submission of the case, folio 7003).

<sup>60</sup> Order issued by the Jinotega District Criminal Court on November 21, 2001 (evidence file, volume XVII, annex 31 to the answering brief, folio 8275).

<sup>61</sup> Cf. Certification issued by Radio Stereo Libre, 95.3FM on August 2, 2003 (evidence file, volume XVI, annex E.55 to the brief with pleadings, motions and evidence, folio 7492).

<sup>62</sup> Cf. Report of the State of Nicaragua on the case of the child V.R.P., Petition No. P 4408/02, of December 13, 2005 (evidence file, volume XV, annex 17 to the submission of the case, folio 6848).

<sup>63</sup> Cf. Communication of the Jinotega District Criminal Court to the Director of the Victoria Motta Hospital in Jinotega of

medical team as requested<sup>64</sup> and, on November 22, 2001, the forensic physician tried to carry out the requested procedure, in which not only three doctors took part (the pediatrician, the surgeon and the gynecologist), but in addition a psychiatrist, the judge and the judge's secretary were also present.<sup>65</sup>

77. The judicial record of November 22, 2001, noted that the forensic physician, accompanied by a gynecologist, a pediatrician and a psychiatrist began the forensic medical examination of V.R.P., describing certain findings, but "the whole procedure was suspended owing to the child's negativity."<sup>66</sup> In a communication presented to the Director of the Local Comprehensive Health Care System (SILAIS) of the Department of Jinotega, V.P.C. explained that the medical professional who intervened had "behaved in an unethical, grotesque and vulgar manner" when examining her daughter<sup>67</sup> (*infra* para. 177). During her appearance before this Court, V.R.P. recounted the circumstances in which the procedure took place and the reasons why she refused to let the examination continue.<sup>68</sup>

78. The statements received by the Court reveal that, during the first forensic medical examination, the physician smelt of alcohol; also, he did not allow V.R.P.'s mother to place a blanket and a cushion for the child to lie on, bearing in mind that she was in pain and had sores because she had recently undergone a surgical procedure, and she was told to lie down on a metal gurney. The evidence received by this Court reveals that, during the medical examination, V.R.P., indicated her refusal to allow it owing to the pain she felt due to the violent manner in which the doctor had touched her. Indeed, the statements of V.R.P., V.P.C. and V.R.P.'s grandmother all agree in indicating that the doctor, when examining V.R.P., "opened her legs," "used considerable force," so that the child tended to close her legs because she felt a burning sensation and a great deal of pain in the affected areas.<sup>69</sup> Owing to the violent attitude of the physician, some of the health care personnel present decided not to continue participating in the procedure.<sup>70</sup>

79. Subsequently, V.P.C. insisted that it should be the forensic physician's assistant, accompanied by the pediatrician and the gynecologist appointed by the hospital, who conducted the medical

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November 22, 2001 (evidence file, volume XVI, annex E.9 to the brief with pleadings, motions and evidence, folio 7304).

<sup>64</sup> Cf. Communication of the Director of the Victoria Motta Hospital in Jinotega to the Jinotega District Criminal Court of November 22, 2001 (evidence file, volume XVI, annex E.10 to the brief with pleadings, motions and evidence, folio 7306).

<sup>65</sup> Cf. Judicial record of November 22, 2001 (evidence file, volume XVI, annex E.11 to the brief with pleadings, motions and evidence, folios 7308 to 7309).

<sup>66</sup> Judicial record of November 22, 2001 (evidence file, volume XVI, annex E.11 to the brief with pleadings, motions and evidence, folios 7308 to 7309). See also, Communication addressed to the Jinotega District Criminal Judge by the forensic physician (evidence file, volume XV, annex 2.e to the submission of the case, folio 6650).

<sup>67</sup> Cf. Communication sent by V.P.C. to the Director of the Local Comprehensive Health Care System on November 22, 2001 (evidence file, volume XV, annex 9 to the submission of the case, folios 6769 to 6770), in which she reported that the physician had told V.R.P. that "she had to submit to his vulgar treatment and that he did not even have the right to give her a sedative." She also indicated that he told the child: "don't cry anymore, when girls from the countryside come to me, the child and her mother, I tell them to open their legs and they do it; [...] if you won't let me examine your vagina, I can just imagine what you will do when I have to examine your anus." All this took place in the presences of other medical professionals. Cf. Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017, and Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>68</sup> Cf. Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017.

<sup>69</sup> Cf. Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017; Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017, and Witness statement of L.C. on November 23, 2001 (evidence file, volume XVI, annex E.12 to the brief with pleadings, motions and evidence, folio 7313).

<sup>70</sup> Cf. Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017, and Judicial record of November 22, 2001 (evidence file, volume XVI, annex E.11 to the brief with pleadings, motions and evidence, folios 7308 to 7309).

examination of V.R.P.<sup>71</sup> She also requested that her daughter undergo a psychiatric assessment.

80. On November 23, 2001, the Jinotega District Criminal Court ordered that the Director of the Victoria Motta Hospital be asked to authorize a psychiatrist to monitor V.R.P., and, eventually, to provide a report on the child's emotional status.<sup>72</sup>

81. Another examination was scheduled for November 24, 2001, at the Women's Center. On that occasion, V.R.P. also refused to submit to the examination because she was emotionally affected by the treatment she had received at the hands of the forensic physician.<sup>73</sup>

82. On November 26, 2001, an outpatient psychiatric evaluation was conducted at the Victoria Motta Hospital in Jinotega. The report indicated that V.R.P. "clearly identified the person responsible as her father and specified that her father has the same disease from which she is currently suffering" and that "her account is reliable, very clear and truthful."<sup>74</sup>

83. On November 27, 2001, the medical examination was carried out at the Institute of Forensic Medicine of the Supreme Court of Justice in Managua. There, the physician was able to verify the injuries suffered by V.R.P.<sup>75</sup> On that occasion, the genital area was examined under anesthesia<sup>76</sup> as requested,<sup>77</sup> and it was found that V.R.P. had "hymen ruptured some time previously; three whitish lesions in the cervix; vaginal walls very painful on inspection, and anus with an area of ulceration." In addition, the presence of the human papillomavirus and condyloma acuminata, sexually transmitted diseases, was noted. All of which allowed it to be concluded that the child had been the victim of sexual assault.<sup>78</sup>

84. On the same date, V.R.P. underwent a psychological evaluation which concluded that the child was suffering from post-traumatic stress disorder, accompanied by significant symptoms of depression, and that there were emotional indicators of shame, fear and feelings of guilt, related to the stressful experience, compatible with chronic sexual assault. The report also indicated that her statement was coherent, clear and substantiated. Consequently, it indicated that she required long-term therapy.<sup>79</sup>

85. The day that V.R.P. underwent this examination at the Institute of Forensic Medicine of the Supreme Court of Justice, her father and presumed aggressor, H.R.A., was summoned to undergo a

<sup>71</sup> Cf. Brief presented by V.P.C. to the District Criminal Judge on November 23, 2001 (evidence file, volume XVII, annex 12 to the answering brief, folios 8213 to 8214).

<sup>72</sup> Cf. Order issued by the Jinotega District Criminal Court on November 23, 2001 (evidence file, volume XVII, annex 10 to the answering brief, folio 8204).

<sup>73</sup> Cf. Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017, and Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017. See also, Statement made by V.P.C. before the Inter-American Commission on September 27, 2007 (evidence file, volume XV, annex 32 to the submission of the case, folio 6962).

<sup>74</sup> Mental health assessment of V.R.P. conducted by the Victoria Motta Hospital in Jinotega on November 26, 2001 (evidence file, volume XV, annex 5 to the submission of the case, folio 6714).

<sup>75</sup> Cf. Forensic Medical Report No. 16273/01 of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XV, annex 4 to the submission of the case, folios 6710 to 6712).

<sup>76</sup> Cf. Forensic Medical Report No. 16273/01 of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XV, annex 4 to the submission of the case, folios 6710 to 6712).

<sup>77</sup> Cf. Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017, and Statement made by V.P.C. before the Inter-American Commission on September 27, 2007 (evidence file, volume XV, annex 32 to the submission of the case, folios 6962 and 6963).

<sup>78</sup> Cf. Forensic Medical Report No. 16273/01 of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XV, annex 4 to the submission of the case, folios 6710 to 6712).

<sup>79</sup> Cf. Psychological Report No. 16275/01 of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XV, annex 4 to the submission of the case, folios 6708 and 6709).

medical examination by the same entity, as revealed by Forensic Medical Report No.16271-2001.<sup>80</sup>

86. On February 21, 2002, the psychiatrist assigned to the case, issued a final monitoring report on V.R.P. in which she indicated that the child “will almost certainly require psychotherapeutic help until she attains her emotional and biological maturity, because the harm caused to her physical and mental health has led to long-lasting injuries and aftereffects [...]. If she does not receive therapy, she may develop suicidal ideas or sink into an endogenous depression. As a precaution in order not to cause her more harm, the revictimization of the patient must be avoided, and she must not be allowed to continue recalling the events that occurred or the harm done to her or questioning herself in this regard.”<sup>81</sup>

87. On April 22, 2002, the psychiatrist assigned to the case issued an epicrisis in which she concluded that V.R.P. suffered psychologically from post-traumatic stress disorder and recommended that she receive psychological treatment for the “prevention of the consequences of sexual abuse that could interfere in her future conduct as regards her communication and relationship with her surroundings.”<sup>82</sup> There is no record that this therapy was provided.

*b) Visual inspection and reconstruction of the events*

88. On November 29, 2001, a judicial visual inspection and reconstruction of the events was performed.<sup>83</sup> The record of the procedure reveals that the defendant’s counsel, V.P.C.’s counsel, the judge and the judge’s secretary were present, as was the psychiatrist assigned to the case. However, the presence of the respective prosecutor is not recorded.<sup>84</sup> From the description of the procedure in the record, the Court notes that V.R.P., a child of 9 years of age, was asked to recount what had happened with her father; she was asked to walk through and identify the places that she had been taken by her father to recreate what had happened; also, she had to wear the clothes she was wearing when the facts took place, and she was even asked to place herself in “the position in which she was when she awoke.”<sup>85</sup> In addition, photographs were taken of the place and the child in the position in which the judge had asked her to place herself. The Court notes that, even though the child’s father was not present with her in the procedure, he was nearby and took part in the reconstruction the same day and immediately after the participation of V.R.P. had ended.<sup>86</sup>

*c) Medical examination of the defendant*

89. Two medical examinations were conducted on the defendant to determine whether he was a

<sup>80</sup> Cf. Forensic Medical Report No. 16271-2001 on H.R.A. of the Institute of Forensic Medicine of the Supreme Court of Justice issued on November 27, 2001 (evidence file, volume XVII, annex 20 to the answering brief, folio 8244).

<sup>81</sup> Monitoring report on V.R.P. prepared on February 21, 2002, by Dr. María Delma Terán Caldera, psychiatrist of the Victoria Motta Hospital, Jinotega (evidence file, volume XVII, annex 17 to the answering brief, folios 8232 and 8233). See also, psychiatric assessment of April 22, 2002, carried out in the Victoria Motta Hospital in Jinotega (evidence file, volume XVI, annex E.3 to the brief with pleadings, motions and evidence, folio 7280).

<sup>82</sup> Psychiatric assessment of April 22, 2002, carried out in the Victoria Motta Hospital in Jinotega (evidence file, volume XVII, annex 18 to the answering brief, folios 8237 to 8239).

<sup>83</sup> Cf. Record of judicial visual inspection and reconstruction of the events issued on November 29, 2001 (evidence file, volume XV, annex 15 to the submission of the case, folios 6836 to 6841).

<sup>84</sup> Cf. Record of judicial visual inspection and reconstruction of the events issued on November 29, 2001 (evidence file, volume XV, annex 15 to the submission of the case, folio 6836).

<sup>85</sup> Record of judicial visual inspection and reconstruction of the events issued on November 29, 2001 (evidence file, volume XV, annex 15 to the submission of the case, folio 6838). See also, Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017, and Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>86</sup> Cf. Record of judicial visual inspection and reconstruction of the events issued on November 29, 2001 (evidence file, volume XV, annex 15 to the submission of the case, folio 6839).



carrier of the venereal disease detected in the child.

90. The first examination took place on November 23, 2001. It was carried out by the physician who tried to evaluate the child the first time. He concluded that "currently, the defendant does not suffer from human papillomavirus and condyloma acuminata and it is not possible to determine whether the defendant has suffered from this disease."<sup>87</sup>

91. The second examination was carried out by a forensic physician of the Institute of Forensic Medicine, who indicated that, "at the time of the forensic medical examination, no pathology is observed in the genital and surrounding area in keeping with venereal disease."<sup>88</sup> In addition, he recommended a "laboratory test to identify the presence of venereal papillomavirus in semen samples and a skin smear from the genital organs to rule out a possible pathology of being a healthy carrier of venereal papillomavirus."<sup>89</sup> The laboratory study recommended on this second occasion was never ordered.

### ***E. The preventive detention of the accused***

92. On November 30, 2001, the Jinotega District Criminal Court issued interlocutory judgment No. 714 in which it ordered the imprisonment of H.R.A.<sup>90</sup> When taking this decision, the judge considered that the crime of rape was "fully proved" by the forensic medical report; that the victim's statement was "very coherent, clear and substantiated, that it [was] corroborated by the victim's intense emotional state" and that "the presence of the human papillomavirus and condyloma acuminata indicate sexually transmitted diseases, in which the carrier may be asymptomatic and the recipient is the one who develops the disease, in this case the child."<sup>91</sup>

93. On December 6, that year, the case was referred to a court.<sup>92</sup>

### ***F. The trial by jury court and the acquittal of the accused***

94. On April 9, 2002, ten members of the jury were chosen by lottery.<sup>93</sup> Both the defendant and the plaintiff each vetoed one juror without cause. The Jinotega District Criminal Court scheduled the hearing to swear in the jury for April 10, 2002.

95. On April 10, 2002, the scheduled jury session was suspended owing "to the pressure of the public who were outside the court, for reasons of prudence."<sup>94</sup> Later the same day, a lottery was held for the ten members of the jury.<sup>95</sup> The record shows that the defendant was present during

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<sup>87</sup> Criminal judgment No. 714 issued by the Jinotega District Criminal Court on November 30, 2001 (evidence file, volume XV, annex 2.f to the submission of the case, folio 6661).

<sup>88</sup> Criminal judgment No. 714 issued by the Jinotega District Criminal Court on November 30, 2001 (evidence file, volume XV, annex 2.f to the submission of the case, folio 6661).

<sup>89</sup> Criminal judgment No. 714 issued by the Jinotega District Criminal Court on November 30, 2001 (evidence file, volume XV, annex 2.f to the submission of the case, folio 6661).

<sup>90</sup> This judgment was appealed by the defendant's counsel. However, the appeal was rejected and criminal judgment No. 714 was confirmed. *Cf.* Criminal judgment No. 89 issued by the Criminal Chamber the Northern District Appellate Court of Matagalpa on July 10, 2002 (evidence file, volume XV, annex 8 to the submission of the case, folios 6734 to 6767).

<sup>91</sup> Criminal judgment No. 714 issued by the Jinotega District Criminal Court on November 30, 2001 (evidence file, volume XV, annex 2.f to the submission of the case, folios 6652 to 6665).

<sup>92</sup> *Cf.* Judicial writ issued by the District Criminal Court on December 6, 2001 (evidence file, volume XV, annex 2.h to the submission of the case, folio 6670).

<sup>93</sup> *Cf.* Record of jury selection of April 9, 2002 (evidence file, volume XVII, annex 38 to the answering brief, folio 8310).

<sup>94</sup> Order issued by the Jinotega District Criminal Court on April 10, 2002 (evidence file, volume XVII, annex 21 to the answering brief, folio 8247).

<sup>95</sup> *Cf.* Record of jury selection of April 10, 2002 (evidence file, volume XVII, annex 38 to the answering brief, folio

this procedure, but he withdrew spontaneously. The hearing was scheduled for 3 p.m. that same day but, owing to the medical certificate presented by the defense counsel, who had a tension headache, it was suspended until another date was established.<sup>96</sup>

96. On April 11, 2002, a lottery was again held to select the ten members of the jury,<sup>97</sup> in the presence of the counsel for the accused, the accused, and the prosecutor. Both the counsel for the accused and the prosecutor each vetoed one juror, without giving a reason. The Jinotega District Criminal Court scheduled the hearing to constitute a jury for April 12, 2002.<sup>98</sup>

97. On that date, the defense counsel requested that two other lawyers be permitted to collaborate in the defense of the accused.<sup>99</sup> The following day, the prosecutor contested this request in writing and filed a similar request to be assisted by another lawyer based on the principle of equality.<sup>100</sup> That same April 12, the defense counsel's request was granted,<sup>101</sup> based on the argument that the prosecutor had given his agreement verbally. However, there is no record that a decision was taken on the similar request filed by the prosecutor.<sup>102</sup>

98. On the same day, a jury composed of four persons was constituted. Also, the designated judge was appointed president of the court and a secretary was named. The record of the jury's constitution reveals that V.P.C.'s lawyer was present and that he made no observations and filed no vetoes.<sup>103</sup>

99. V.P.C. has stated repeatedly that, when the public hearing ended and before the jury met to deliberate in secret, one of the defense counsel handed a package in a grey bag to the president of the jury, together with two pages of pink paper, which the accused asked should be read during the private session.<sup>104</sup> This was corroborated in the domestic sphere by an inspection of the case

8312).

<sup>96</sup> Cf. Writ issued by the District Criminal Court on April 10, 2002 (evidence file, volume XV, annex 2.i to the submission of the case, folio 6673); Jury summons issued by the Jinotega District Criminal Court on April 10, 2002 (evidence file, volume XV, annex 2.j to the submission of the case, folio 6675); Presentation made by the defense counsel before the said court on April 10, 2002 (evidence file, volume XV, annex 2.k to the submission of the case, folios 6677 and 6678), and Medical certificate (evidence file, volume XVII, annex 22 to the answering brief, folio 8249).

<sup>97</sup> Cf. Record of jury selection of April 11, 2002 (evidence file, volume XVII, annex 38 to the answering brief, folio 8314).

<sup>98</sup> Cf. Jury summons issued by the Jinotega District Criminal Court on April 11, 2002 (evidence file, volume XV, annex 2.l to the submission of the case, folio 6680).

<sup>99</sup> Cf. Brief of the defense counsel filed on April 11, 2002 (evidence file, volume XVI, annex E.49 to the brief with pleadings, motions and evidence, folio 7474).

<sup>100</sup> Cf. Briefs of the prosecutor filed on April 12, 2002 (evidence file, volume XVI, annexes E.50 and E.51 to the brief with pleadings, motions and evidence, folios 7476 and 7479).

<sup>101</sup> Cf. Order issued by the Jinotega District Criminal Court on April 12, 2002 (evidence file, volume XVII, annex 39 to the answering brief, folio 8318).

<sup>102</sup> In this regard, the accused's public defender asked that he be allowed to be assisted by two "doctors [in law]" and this was accepted, and the prosecutor, on that occasion, stated "that, yes, he could be assisted by two more lawyers; I think I said yes, that I did not see a problem in this, owing to the complexity of the case; but, if my memory serves me well and I don't think I am making a mistake, the [judge] told the [prosecutor] "no", and that she was going to suspend the jury, and at that time we agreed that there would not be a problem." Record of testimony of Juan Alberto Núñez Gano of February 9, 2005 (evidence file, volume XVI, annex E.52 to the brief with pleadings, motions and evidence, folio 7481). Likewise, Order issued by the Jinotega District Criminal Judge on April 15, 2002 (evidence file, volume XVI, annex D.2 to the brief with pleadings, motions and evidence, folios 7136 and 7137).

<sup>103</sup> Cf. Record of jury constitution on April 12, 2002 (evidence file, volume XV, annex 2.l to the submission of the case, folio 6681). See also, Report prepared by the case study team of the Ombudsman for Children and Adolescents of the Ombudsman's Office on March 10, 2003 (evidence file, volume XV, annex 24 to the submission of the case, folio 6892).

<sup>104</sup> Cf. Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017. See also, Statement made by V.P.C. before the Inter-American Commission, October 2002 (evidence file, volume XV, annex 7 to the submission of the case, folios 6723 and 6724).

file (*infra* para. 117) and the video (*infra* para. 118). The Court does not have the video of the public hearing, even though it requested this.

100. Regarding the jury's deliberation, the Ombudsman's Office, based on the monitoring of the trial by its officials, considered that the following supposed anomalies had occurred:

(a) the accused had three defense lawyers, including the accused who defended himself, while the victim only had a prosecutor, although we are aware that the [plaintiff's lawyer] had request the presence of a legal adviser, but this right was denied; (b) some of the members of the jury receive packages on several occasions from the accused's defense counsel; (c) the president of the jury received a closed envelope that was handed over in public by one of the accused's defense counsel who asked that its content be read by the jury in private, and this was done; (d) one of the accused's defense team questioned the presence of the Ombudsman for Children and Adolescents and other members of his office, unaware of the institution's work; that is, the mission entrusted to it by law.<sup>105</sup>

101. On April 13, 2002, the Jury Court delivered its verdict, based on their firm conviction, declaring the accused innocent of the crime of rape committed against V.R.P.<sup>106</sup> That same day, the Jinotega District Criminal Court ordered the release of H.R.A.<sup>107</sup>

102. V.P.C. and her sister filed a complaint with the Jinotega Local Criminal Court against H.R.A. due to threats they received on the evening of April 13, 2002, the date of the acquittal.<sup>108</sup>

### **G. Continuation of the proceedings and confirmation of the acquittal**

103. Following the Jury Court's decision, V.P.C.'s lawyer filed an appeal for annulment based on the supposed bribery of the members of the jury. In the same brief, the lawyer asked that the judge recuse herself from continuing to hear the case in the interests of judicial transparency, based on the following irregularities that had occurred during the proceedings: (a) allowing eight people to attend the first medical examination; (b) allowing H.R.A.'s defense team to use language that discredited V.P.C.; (c) cancelling the hearing scheduled for the morning of April 10, 2002, arguing legal reasons when, in reality, it was cancelled because there was a group of children outside the Court demanding justice in the case, and (d) not allowing the presence of all the parties involved during jury selection.<sup>109</sup>

104. On April 14, 2002, V.P.C.'s lawyer repeated the appeal for annulment and indicated that "the file has been closed with 616 pages, which do not include a pink handwritten document that the accused's defense counsel handed to the jury court [...]."<sup>110</sup>

105. In an order of April 15, 2002,<sup>111</sup> the Jinotega District Criminal Judge clarified the irregularities

<sup>105</sup> Report prepared by the case study team of the Ombudsman for Children and Adolescents of the Ombudsman's Office on March 10, 2003 (evidence file, volume XV, annex 24 to the submission of the case, folio 6892).

<sup>106</sup> Cf. Verdict No. 33 issued by the Jury Court on April 13, 2002 (evidence file, volume XV, annex 2.m to the submission of the case, folio 6683).

<sup>107</sup> Cf. Release order issued by the Jinotega District Criminal Judge on April 13, 2002 (evidence file, volume XV, annex 2.n to the submission of the case, folio 6685).

<sup>108</sup> Cf. Complaint filed by V.P.C. and M.P.C. before the Jinotega Local Criminal Court on April 15, 2002 (evidence file, volume XVI, annex E.22 to the brief with pleadings, motions and evidence, folio 7375 and file of procedure before the Commission, volume XI, folio 4047).

<sup>109</sup> Cf. Appeal for annulment filed by V.P.C.'s lawyer on April 14, 2002 (evidence file, volume XV, annex 2.o to the submission of the case, folios 6687 to 6689).

<sup>110</sup> Cf. Brief filed by V.P.C.'s lawyer with the Jinotega District Criminal Judge on April 14, 2002 (evidence file, volume XVII, annex 26 to the answering brief, folios 8261 and 8262).

<sup>111</sup> Cf. Order issued by the Jinotega District Criminal Judge on April 15, 2002 (evidence file, volume XVI, annex D.2 to the brief with pleadings, motions and evidence, folios 7136 and 7137).

that had been adduced (*supra* para. 103) and, based on the request that she recuse herself forwarded the case file to the Jinotega Deputy District Criminal Judge. The following day, the defense counsel asked the deputy judge to recuse himself from hearing the proceedings because he was supposedly biased in favor of one of the parties.<sup>112</sup> On April 17, 2002, the deputy judge denied the motives cited by the defense counsel and sent the case file to the Jinotega District Civil Judge.<sup>113</sup> The same day, the plaintiff's lawyer asked that the case be forwarded to the Appellate Court for a decision on the legal excuses filed by the original judge.<sup>114</sup> On April 22, 2002, the plaintiff's lawyer sent a new communication to the Jinotega District Civil and Criminal Judge and asked that the case be sent to the Appellate Court for a decision on who should hear the legal excuses filed by the Jinotega District Criminal Judge.<sup>115</sup> On April 26, 2002, the defense counsel asked the judge to accept the request of V.P.C.'s lawyer to submit the matter to the Appellate Court.<sup>116</sup> On April 29, 2002, the excuses presented by the District Criminal Judge were declared inadmissible, and also the defense counsel's recusal request; the order was therefore given to return the file to the said court.<sup>117</sup> On May 2, 2002, V.P.C.'s lawyer filed an appeal against this order.<sup>118</sup> On May 6, 2002, the Jinotega District Criminal Court declared that the request to send the file to the Appellate Court was inadmissible, assumed competence, and ordered the opening of the evidentiary stage of the appeal for annulment by V.P.C.'s lawyer.<sup>119</sup> The same day, the defense counsel filed an appeal for reversal of this order,<sup>120</sup> which had also been filed by V.P.C.'s lawyer. On May 7, 2002, the Jinotega District Criminal Judge order that notification be sent to the parties and to the Public Prosecution Service for their observations on the appeals for reversal, and this was done on May 8.<sup>121</sup> In his brief, V.P.C.'s lawyer indicated that the members of the Jury Court had been meeting with the judge and that it had been observed that they had received visits from family members and friends of the accused.<sup>122</sup>

106. On May 8, 2002, the Jinotega prosecutor sent a communication to the court in which she indicated that she considered it necessary that the appeal for annulment be opened to receive evidence and that the members of the jury who took part in the delivery of the verdict be summoned.<sup>123</sup> On May 10, 2002, the defense counsel referred to the appeal for annulment filed by

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<sup>112</sup> Cf. Brief filed by the defense counsel on April 16, 2002 (evidence file, volume XVI, annex D.3 to the brief with pleadings, motions and evidence, folio 7140).

<sup>113</sup> Cf. Order issued by the Jinotega Deputy District Criminal Judge on April 17, 2002 (evidence file, volume XVI, annex D.4 to the brief with pleadings, motions and evidence, folio 7142).

<sup>114</sup> Cf. Brief filed by V.P.C.'s lawyer on April 17, 2002 (evidence file, volume XVI, annex D.5 to the brief with pleadings, motions and evidence, folio 7144).

<sup>115</sup> Cf. Brief filed by V.P.C.'s lawyer on April 22, 2002 (evidence file, volume XVI, annex D.6 to the brief with pleadings, motions and evidence, folios 7146 and 7147).

<sup>116</sup> Cf. Brief filed by the defense counsel on April 26, 2002 (evidence file, volume XVI, annex D.7 to the brief with pleadings, motions and evidence, folio 7149).

<sup>117</sup> Cf. Order issued by the Jinotega District Civil Judge on April 29, 2002 (evidence file, volume XVI, annex D.8 to the brief with pleadings, motions and evidence, folio 7151).

<sup>118</sup> Cf. Brief filed by V.P.C.'s lawyer on May 2, 2002 (evidence file, volume XVI, annex D.9 to the brief with pleadings, motions and evidence, folios 7154 and 7155).

<sup>119</sup> Cf. Order issued by the Jinotega District Criminal Judge on May 6, 2002 (evidence file, volume XVI, annex D.10 to the brief with pleadings, motions and evidence, folio 7157).

<sup>120</sup> Cf. Brief filed by the defense counsel on May 6, 2002 (evidence file, volume XVI, annex D.11 to the brief with pleadings, motions and evidence, folios 7159 to 7161).

<sup>121</sup> Cf. Order issued by the Jinotega District Criminal Judge on May 7, 2002 (evidence file, volume XVI, annex D.12 to the brief with pleadings, motions and evidence, folio 7163); Brief filed by the defense counsel on May 8, 2002 (evidence file, volume XVI, annex D.13 to the brief with pleadings, motions and evidence, folio 7165), and Brief filed by V.P.C.'s lawyer on May 8, 2002 (evidence file, volume XVI, annex D.14 to the brief with pleadings, motions and evidence, folios 7167 and 7168).

<sup>122</sup> Cf. Brief filed by V.P.C.'s lawyer on May 8, 2002 (evidence file, volume XVI, annex D.14 to the brief with pleadings, motions and evidence, folio 7167).

<sup>123</sup> Cf. Note of the Jinotega prosecutor to the District Criminal Court on May 8, 2002 (evidence file, volume XV, annex

the plaintiff's lawyer.<sup>124</sup>

107. On May 13, 2002, the Jinotega District Criminal Court declared that the verdict was null in relation to paragraph 8 of article 444 of the Code of Criminal Procedure. Regarding the accusation that the members of the jury had been bribed, it based itself on the fact that "the plaintiff has doubts." Consequently, it required that a new jury be selected and a new public hearing be held.<sup>125</sup> Furthermore, a new arrest warrant was issued for the accused, and he was detained that same day.<sup>126</sup>

108. The defense team lodged an appeal against that decision on May 14, 2002.<sup>127</sup> The plaintiff's lawyer lodged an appeal for reversal against the order admitting the appeal by the defense team, which was declared inadmissible on May 15, 2002,<sup>128</sup> and the case was forward to the Appellate Court.<sup>129</sup>

109. On May 23, 2002, three members of the Jury Court filed a brief with the Northern District Appellate Court, Criminal Chamber, Matagalpa, denying the accusation of bribery by the prosecution and rejecting the decision of the Jinotega District Criminal Court declaring the nullity of the jury's verdict; they therefore requested that "an investigation be opened and that this slur against us be proved, and our statements be received."<sup>130</sup> The lawyer who lodged this brief was H.R.A.'s defense counsel.

110. On July 29, 2002, V.P.C. asked the Prosecutor General to appoint a special prosecutor to protect and ensure the rights of her daughter during the proceedings.<sup>131</sup>

111. On January 13, 2003, the Criminal Chamber of the Matagalpa Northern District Appellate Court declared the substantial and absolute nullity of the proceedings as of the order issued on May 13, 2002. This was based on the fact that "reasonable doubt" was only admissible in favor of the accused. Also, on that occasion, the Appellate Court took the judge to task for having acted in a notoriously anomalous way and understood that, as it had already indicated, the proceedings should be forwarded to the deputy judge; also, the immediate release of the accused should be ordered, and the evidentiary stage of the appeal for annulment opened.<sup>132</sup> It should be pointed out that the Criminal Chamber placed on record that the departmental assistant prosecutor "had not

2.q to the submission of the case, folio 6694).

<sup>124</sup> Cf. Brief filed by the defense counsel on May 10, 2002 (evidence file, volume XVI, annex D.15 to the brief with pleadings, motions and evidence, folios 7170 to 7173).

<sup>125</sup> Cf. Judgment issued by the Jinotega District Criminal Court on May 13, 2002 (evidence file, volume XV, annex 2.r to the submission of the case, folios 6696 and 6697).

<sup>126</sup> Cf. Arrest warrant addressed to the Police Chief on May 13, 2002 (evidence file, volume XV, annex 2.s to the submission of the case, folio 6700), and Response to the search and arrest warrant (evidence file, volume XV, annex 2.t to the submission of the case, folio 6702).

<sup>127</sup> Cf. Brief filed by the defense counsel on May 14, 2002 (evidence file, volume XVI, annex D.19 to the brief with pleadings, motions and evidence, folios 7182 and 7183).

<sup>128</sup> Cf. Brief filed by V.P.C.'s lawyer on May 14, 2002 (evidence file, volume XVI, annex D.20 to the brief with pleadings, motions and evidence, folios 7185 and 7186), and Order issued by the Jinotega District Criminal Judge on May 15, 2002 (evidence file, volume XVI, annex D.24 to the brief with pleadings, motions and evidence, folio 7197).

<sup>129</sup> Cf. Official note to the Jinotega District Criminal Judge of May 15, 2002 (evidence file, volume XVI, annex D.25 to the brief with pleadings, motions and evidence, folio 7200).

<sup>130</sup> Brief filed on May 23, 2002 (file of procedure before the Commission, volume VII, folios 2589 to 2591).

<sup>131</sup> Cf. Brief filed by V.P.C. on July 29, 2002 (evidence file, volume XVI, annex E.41 to the brief with pleadings, motions and evidence, folios 7453 and 7454).

<sup>132</sup> Cf. Judgment No. 001 delivered by the Northern District Appellate Court, Criminal Chamber, on January 13, 2003 (evidence file, volume XVII, annex 4 to the answering brief, folios 8165 to 8178), and Judicial writ issued by the Northern District Appellate Court on January 17, 2003 (evidence file, volume XV, annex 19 to the submission of the case, folio 6869).

appeared in court."<sup>133</sup>

112. Thus, the case was forwarded to the deputy judge. On May 12, 2003, V.P.C.'s lawyer filed a brief with the Deputy District Civil and Criminal Judge, requesting that he rule as soon as possible.<sup>134</sup> On May 19, 2003, V.P.C.'s lawyer asked the judge to recuse herself from hearing the case due to her "numerous occupations" and her health;<sup>135</sup> the judge therefore vetoed herself and passed the file to the Deputy District Criminal Judge, who assumed jurisdiction.<sup>136</sup> On July 11, 2003, the defense counsel asked the deputy judge – who had recused himself on a previous occasion (*supra* para. 105) – to recuse himself from hearing the proceedings.<sup>137</sup> On August 12, 2003, the deputy judge indicated that the request for recusal was inadmissible.<sup>138</sup>

113. On October 16<sup>139</sup> and November 26, 2003,<sup>140</sup> V.P.C.'s lawyer sent briefs to the deputy judge requesting that he assume jurisdiction and thus avoid "delaying justice in these proceedings," and that he process the appeal for the annulment of the verdict.

114. However, on January 21, 2004, the proceedings were forwarded to be heard by the District Civil and Criminal Court. On February 23, 2004, the judge of that court recused himself "without any reason" from hearing the case and forwarded it to the Alternate District Civil Court. The latter also recused itself from intervening on March 1, 2004, and forwarded the proceedings to the Jinotega District Criminal Court.<sup>141</sup>

115. On September 23, 2004, V.P.C. submitted a petition to the President of the Supreme Court of Justice questioning the delay in the proceedings and requesting that the case be expedited.<sup>142</sup> On October 4, 2004, V.P.C. submitted another petition to the Supreme Court of Justice owing to the delay in justice.<sup>143</sup> On November 9 and 30, 2004, V.P.C. filed briefs with the District Criminal Court in which she stated that 23 months had passed since the Appellate Court had ruled without any movement in the proceedings and, thus, a situation existed "of delay in obtaining justice."<sup>144</sup>

<sup>133</sup> Certification issued by the secretariat of the Northern District Appellate Court Sala Penal on October 7, 2002 (evidence file, volume XV, annex 21 to the submission of the case, folio 6873).

<sup>134</sup> *Cf.* Brief filed by V.P.C.'s lawyer on May 12, 2003 (evidence file, volume XVI, annex D.16 to the brief with pleadings, motions and evidence, folio 7175).

<sup>135</sup> *Cf.* Brief filed by V.P.C.'s lawyer on May 19, 2003 (evidence file, volume XVI, annex D.27 to the brief with pleadings, motions and evidence, folios 7205 and 7206).

<sup>136</sup> *Cf.* Brief filed by V.P.C.'s lawyer on July 7, 2003 (evidence file, volume XVI, annex D.28 to the brief with pleadings, motions and evidence, folio 7208).

<sup>137</sup> *Cf.* Brief filed by the defense counsel on July 11, 2003 (evidence file, volume XVI, annex D.29 to the brief with pleadings, motions and evidence, folio 7210).

<sup>138</sup> *Cf.* Order issued by the Jinotega Deputy District Criminal Judge on August 12, 2003 (evidence file, volume XVI, annex D.31 to the brief with pleadings, motions and evidence, folio 7214).

<sup>139</sup> *Cf.* Brief filed by V.P.C.'s lawyer on October 16, 2003 (evidence file, volume XVI, annex D.32 to the brief with pleadings, motions and evidence, folio 7217).

<sup>140</sup> *Cf.* Brief filed by V.P.C.'s lawyer on November 26, 2003 (evidence file, volume XVI, annex D.33 to the brief with pleadings, motions and evidence, folio 7219).

<sup>141</sup> *Cf.* Report of the State of Nicaragua on the case of the child V.R.P., Petition No. P 4408/02, presented on December 13, 2005 (evidence file, volume XV, annex 17 to the submission of the case, folios 6852 and 6853), and Order issued by the Alternate District Civil and Criminal Court by operation of law on March 1, 2004 (evidence file, volume XVI, annex D.36 to the brief with pleadings, motions and evidence, folio 7245).

<sup>142</sup> *Cf.* Petition submitted by V.P.C. to the President of the Supreme Court of Justice on September 23, 2004 (evidence file, volume XV, annex 26 to the submission of the case, folios 6901 and 6902).

<sup>143</sup> *Cf.* Letter sent by V.P.C. to the President of the Supreme Court of Justice on October 4, 2004 (evidence file, volume XVI, annex D.37 to the brief with pleadings, motions and evidence, folios 7248 and 7249).

<sup>144</sup> Letter sent by V.P.C. to the District Criminal Judge on November 9, 2004 (evidence file, volume XVI, annex D.38 to the brief with pleadings, motions and evidence, folios 7251 and 7252), and Letter sent by V.P.C. to the District Criminal Judge on November 30, 2004 (evidence file, volume XVI, annex D.34 to the brief with pleadings, motions and evidence, folios 7221 to 7225).

116. Finally, on January 13, 2005, the District Criminal Trial Court assumed jurisdiction and competence to process the case and ordered the opening of the evidentiary stage of the appeal for annulment of the verdict.<sup>145</sup>

117. In this context, on February 4, 2005, a visual inspection was conducted. During this procedure, it was recorded that "[...] the judge and the parties reviewed the court file and it was corroborated that it contained no pink handwritten document [...]."<sup>146</sup>

118. In addition, a visual inspection was made of the video of February 9, 2005. The record of this procedure indicates that:

[...] the [defense lawyer] took a silver bag and handed it to her, in the presence of the other members of the jury and of the parties present, the judge of law placed it on her left side, and opened it in the sight of the [Secretary].

[...] it can be seen that the defense lawyer [...] one of the sheets of paper that he is holding, one of them, is pink; the video is turned back to review the scene and it is verified that, indeed, it is pink; in this regard, the [defense lawyer] intervened and said: That the public defender stated that his client wishes you to receive this letter and he shows the letter and it is pink; he gives it to the judge and says; PLEASE READ IT AT YOUR PRIVATE SESSION; in the instant procedure, the [defense lawyer] says that he wants it to be placed on record that the letter was handed over openly without an envelope and it was given to the members of the jury in the presence of everyone; in the instant procedure, the [plaintiff's lawyer] says, but that letter was not read out publicly, because we have just heard that the recommendation was to read it in private session; it can be seen that there are two sheets of pink paper and the president of the jury has them [...].<sup>147</sup>

119. On August 9, 2005, the Jinotega District Criminal Trial Judge delivered a new judgment in which he declared that the appeal for substantial annulment of verdict No. 33 of the Jury Court was inadmissible and, consequently, that it was final and with full legal effect in that it declared the innocence of H.R.A. Regarding the allegations of bribery of the jury established in article 444(8), the judge considered that this had been decided and rejected in judgment No. 002 of January 13, 2003, of the Criminal Chamber of the Northern District Appellate Court of Matagalpa according to which this allegation had not been filed at the appropriate moment and had not been explicitly proved. In addition, he concluded that the legal requirements had been met in the selection of the jury and in the delivery of the first instance judgment. He also indicated that there had been no act or omission that would provide grounds for annulling the verdict. Lastly, he assessed an opinion of the Ombudsman for Children and Adolescents and indicated that there had been no irregularities during the proceedings.<sup>148</sup>

120. On August 25, 2005, the assistant prosecutor of the Public Prosecution Service filed an appeal against that judgment,<sup>149</sup> and so did V.P.C.'s lawyer.<sup>150</sup>

<sup>145</sup> Cf. Order issued by the Jinotega District Criminal Trial Court on January 13, 2005 (evidence file, volume XVI, annex D.39 to the brief with pleadings, motions and evidence, folio 7254), and Report of the State of Nicaragua on the case of the child V.R.P., Petition No. P 4408/02, presented on December 13, 2005 (evidence file, volume XV, annex 17 to the submission of the case, folios 6852 and 6853).

<sup>146</sup> Record of visual inspection carried out by the Jinotega District Criminal Court on February 4, 2005 (evidence files, volume XVII, annex 37 to the answering brief, folio 8307).

<sup>147</sup> Record of visual inspection carried out by the Jinotega District Criminal Court on February 9, 2005 (evidence files, volume XVI, annex E.54 to the pleadings and motions brief, folios 7487 to 7490).

<sup>148</sup> Cf. Judgment delivered by the Jinotega District Criminal Court on August 9, 2005 (evidence file, volume XV, annex 29 to the submission of the case, folios 6915 to 6928).

<sup>149</sup> Cf. Appeal filed by the assistant prosecutor of the Public Prosecution Service on August 25, 2005 (evidence file, volume XV, annex 30 to the submission of the case, folio 6930).

<sup>150</sup> Cf. Judgment delivered by the Criminal Chamber of the Northern District Appellate Court of Matagalpa on October 24, 2007 (evidence file, volume XV, annex 31 to the submission of the case, folios 6932 to 6952).

121. On January 24, 2007, the secretary of the Criminal Chamber of the Northern District Appellate Court certified that the proceedings were at the sentencing stage and, also, that in an order of November 3, 2005, notice had been sent to the assistant prosecutor of the Public Prosecution Service and "he had not taken advantage of his rights because he had not responded to the notice or identified offenses."<sup>151</sup>

122. On October 24, 2007, the Criminal Chamber of the Northern District Appellate Court of Matagalpa delivered judgment rejecting the appeals. Consequently, it declared that Verdict No. 33 was final and also that H.R.A. was innocent. It added that no appeal was admissible against this decision. Regarding the alleged bribery, the judgment considered, *inter alia*, that the visual inspection of the video of the contested hearing revealed that:

[...] the judge of law, who acted as president of the Jury Court, was handed a pink sheet of paper, in the sight of the parties; that that representative of the Public Prosecution Service, said that he would end his intervention if the court was not paying attention to him; that a silver package was handed in and that two members of the jury noticed this; however, the visual inspection provides no evidence that proves bribery of the members of the jury, because [...] the video provided should show the protest of the plaintiff and the prosecutor who intervened during the jury hearing [...] a situation that did not exist in the hearing described by the judge *a quo*; [...] so the probative elements related to the incident do not prove the offense of bribery [...] because the evidence provided shows incidents that occurred during the jury hearing; however, those incidents are insufficient for this Chamber to find it proved that the jury receive a gift, promise or reward for the verdict handed down in favor of the accused, and the party alleging the incident should have proved what the gift or reward consisted of, who gave it, where, to whom it was delivered, and how it was received by the Jury Court [...].<sup>152</sup>

123. The Criminal Chamber had not seen the video; rather its assertions were based on the record (*supra* para. 118). This video was not provided to the Inter-American Court, despite the Court requesting it as helpful evidence (*supra* para. 12).

124. Mr. H.R.A. died on August 29, 2008.<sup>153</sup>

#### ***H. Complaints filed by V.P.C. for irregularities in the investigation and the proceedings***

125. In addition to filing the charges against H.R.A. through her legal representatives, during the proceedings, V.P.C. took other steps to denounce presumed irregularities in the investigation and the proceedings.

##### *a) V.P.C.'s complaints against the forensic physician*

126. On November 22, 2001, V.P.C. filed a brief with the Director of the Local Comprehensive Health Care System (SILAIS) of the Department of Jinotega, in which she denounced the conduct of the forensic physician when he performed the medical examination of V.R.P.<sup>154</sup> On November 26, 2001, the Jinotega SILAIS advised her that it was unable to process the complaint, because, as he was a forensic physician appointed by the Supreme Court of Justice he was not attached to the Ministry of Health; therefore, the complaint should be lodged with the Supreme Court of Justice.<sup>155</sup>

<sup>151</sup> Certification issued by the Criminal Chamber of the Northern District Appellate Court of January 24, 2007 (evidence file, volume XVI, annex D.42 to the brief with pleadings, motions and evidence, folio 7265).

<sup>152</sup> Judgment delivered by the Criminal Chamber of the Northern District Appellate Court of Matagalpa on October 24, 2007 (evidence file, volume XV, annex 31 to the submission of the case, folios 6932 to 6952).

<sup>153</sup> *Cf.* Death certificate of H.R.A. (evidence file, volume XVII, annex 43 to the answering brief, folio 8344).

<sup>154</sup> *Cf.* Brief filed by V.P.C. with the Director of the Local Comprehensive Health Care System on November 22, 2001 (evidence file, volume XV, annex 9 to the submission of the case, folios 6769 and 6770).

<sup>155</sup> *Cf.* Communication of SILAIS Jinotega sent on November 26, 2001 (evidence file, volume XX, annex 7.b of the helpful evidence, folio 9705).



127. On April 30, 2002, V.P.C. filed a complaint against the forensic physician with the Disciplinary Committee of the Supreme Court of Justice,<sup>156</sup> and repeated this on July 22 the same year.<sup>157</sup> On July 1, 2003, V.P.C.'s lawyer presented a communication to the Disciplinary Committee of the Supreme Court of Justice in which he argued that the forensic physician had acted in a biased manner. He also indicated that the brother of the said physician had taken part in the criminal proceedings as a witness in favor of the accused and that the physician had filed a criminal action for defamation and libel against V.P.C.<sup>158</sup> According to the State, that complaint had not been processed due to the absence of evidence and, consequently, an order to archive it was issued.

*b) V.P.C.'s complaints against the departmental assistant prosecutor*

128. On July 17, 2002, V.P.C. addressed a brief to the Prosecutor General lodging a complaint against the departmental assistant prosecutor, and denouncing that she had acted negligently during the criminal proceedings for rape.<sup>159</sup> The complaint was subsequently repeated on July 29<sup>160</sup> and on August 26, 2002,<sup>161</sup> due to the absence of a reply to the first brief.

129. On October 21, 2002, V.P.C. filed a complaint against the assistant prosecutor of the Department of Jinotega before the Inspectorate of the Prosecutor General's Office adducing that the prosecutor in the case had not appeared at the second instance proceedings.<sup>162</sup> In this regard, she argued that the prosecutor had not ensured her daughter's rights. Despite this, the State reported that no complaint against the said prosecutor had been received from V.P.C. in 2002.<sup>163</sup> There is no record that this complaint was processed.

130. On November 8, 2002, V.P.C. filed a complaint against the departmental assistant prosecutor before the Disciplinary Committee of the Supreme Court of Justice.<sup>164</sup> The Disciplinary Committee officially informed the Attorney General of the complaint on January 20, 2003.<sup>165</sup> There is no record of the processing of this complaint.

*c) V.P.C.'s complaint against the judge in charge of the proceedings and the judge of law who acted as president of the Jury Court*

131. On November 8, 2002, V.P.C. filed a complaint with the Disciplinary Committee of the

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<sup>156</sup> Cf. Complaint filed with Supreme Court of Justice on April 30, 2002 (file of procedure before the Commission, volume VII, folios 2819 and 2820).

<sup>157</sup> Cf. Complaint filed with Supreme Court of Justice on July 22, 2002 (evidence file, volume XVI, annex E.27 to the brief with pleadings, motions and evidence, folios 7403 and 7404).

<sup>158</sup> Cf. Presentation made by V.P.C.'s legal representative to the Disciplinary Committee of the Supreme Court of Justice on July 1, 2003 (evidence file, volume XV, annex 25 to the submission of the case, folios 6895 to 6899).

<sup>159</sup> Cf. Complaint filed with Prosecutor General on July 17, 2002 (evidence files, volume XVI, annex E.34 to the brief with pleadings, motions and evidence, folios 7432 and 7433).

<sup>160</sup> Cf. Brief filed with the Prosecutor General on July 29, 2002 (evidence files, volume XVI, annex E.35 to the brief with pleadings, motions and evidence, folios 7435 and 7436).

<sup>161</sup> Cf. Brief filed with the Prosecutor General on August 26, 2002 (evidence files, volume XVI, annex E.42 to the brief with pleadings, motions and evidence, folio 7456).

<sup>162</sup> Cf. Complaint filed with General Inspectorate of the Public Prosecution Service on October 21, 2002 (file of procedure before the Commission, volume VII, folios 2814 to 2818).

<sup>163</sup> Cf. Certification issued by the General Inspectorate of the Public Prosecution Service on February 15, 2017 (evidence file, volume XX, annex 7.c of the helpful evidence, folio 9730).

<sup>164</sup> Cf. Complaint filed with Supreme Court of Justice on November 8, 2002 (evidence file, volume XX, annex 7.a of the helpful evidence, folios 9649 to 9661).

<sup>165</sup> Cf. Communication addressed to the Attorney General (evidence file, volume XX, annex 7.a of the helpful evidence, folio 9665).

Supreme Court of Justice alleging irregularities presumably committed by the judge in charge of the proceedings and by the judge of law who acted as president of the Jury Court. She added that one of the judges allowed H.R.A.'s defense counsel to refer to her and her daughter in "immoral terms."<sup>166</sup>

132. After the two judges had presented their rebuttals, on February 24, 2003, the Disciplinary Committee of the Supreme Court of Justice decided to close the file.<sup>167</sup>

### ***I. Legal actions filed against V.P.C. and her family members***

133. Owing to the complaints filed by V.P.C., the departmental assistant prosecutor,<sup>168</sup> the forensic physician,<sup>169</sup> a member of the Jury Court<sup>170</sup> and the judge of law who presided the Jury Court<sup>171</sup> filed legal actions against V.P.C. and her family members for the offenses of defamation and libel. The lawyers who provided legal support to these actions were related to the accused. They included the brother of the forensic physician, who was an acquaintance of H.R.A. and had testified in his favor during the proceedings.<sup>172</sup>

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<sup>166</sup> Cf. Complaint filed by V.P.C. with the Disciplinary Committee of the Supreme Court of Justice on November 8, 2002 (evidence file, volume XV, annex 23 to the submission of the case, folios 6881 to 6888).

<sup>167</sup> Cf. Decision adopted by the Disciplinary Committee of the Supreme Court of Justice on February 24, 2003 (evidence file, volume XX, annex 7.a of the helpful evidence, folio 9686).

<sup>168</sup> In December 2001, the departmental assistant prosecutor filed a criminal action against V.P.C. for defamation. There is no record of the processing of this complaint. Cf. Writ summoning V.P.C. to appear to make a statement dated December 19, 2001 (evidence file, volume XVI, annexes E.75 and E.76 to the brief with pleadings, motions and evidence, folios 7553 and 7555). See also, Brief of V.P.C. addressed to the Commission, of April 16, 2009 (evidence file, volume XV, annex 37 to the submission of the case, folio 7006), and Affidavit made by N.R.P. on October 10, 2017 (evidence file, volume XVIII, *affidavits*, folio 8379).

<sup>169</sup> On April 25, 2002, the forensic physician filed a criminal complaint against V.P.C. for defamation owing to the complaints she had filed following his attempt to perform the examination of the child V.R.P. This case ended in "abatement of the instance." Cf. Brief presented on April 25, 2002 (file of procedure before the Commission, volume VII, folios 2491 to 2493), and Certification of the Jinotega Local Criminal Court of July 23, 2009 (file of procedure before the Commission, volume XI, folio 4036). In addition, on May 21, 2002, the forensic physician filed a criminal complaint against V.P.C. for defamation. The complainant's lawyer was the brother of the forensic physician. There is no record of the processing of this complaint. Cf. Brief presented on May 21, 2002 (evidence file, volume XV, annex 35 to the submission of the case, folios 6987 to 6990). On May 22, 2002, the forensic physician filed a criminal complaint against V.P.C.'s mother for defamation and libel, for having "disparaged him before the District Criminal Judge" in her testimony. Cf. Communication of the petitioner addressed to the Commission on April 16, 2009 (evidence file, volume XV, annex 37 to the submission of the case, folio 7027). This case ended in "abatement of the instance." Cf. Certification of the Jinotega Local Criminal Court of July 23, 2009 (file of procedure before the Commission, volume XI, folio 4037).

<sup>170</sup> On May 7, 2002, a member of the Jury Court filed a criminal complaint against V.P.C. and two journalists for the offense of defamation, owing to V.P.C.'s complaints concerning bribery and their publication in the media. In this case, the individual appointed the forensic physician's brother as their lawyer. Cf. Brief filed with the Jinotega Local Criminal Judge on May 7, 2001 (evidence file, volume XV, annex 34 to the submission of the case, folios 6980 to 6982). The journalists reached an agreement in which they undertook not to mention the complainant in their newspaper articles. Cf. Record of mediation process of May 14, 2002 (file of procedure before the Commission, volume VII, folio 2584). On December 17, 2004, the abatement of the instance and the closure of the complaint for defamation against V.P.C. were declared owing to the lack of procedural action by the parties. Cf. Communication of the Jinotega Local Criminal Judge of February 1, 2005 (evidence file, volume XV, annex 36 to the submission of the case, folio 6992).

<sup>171</sup> On May 8, 2002, the judge of law who presided the Jury Court filed a criminal complaint against V.P.C. and her sister for defamation and libel. Cf. Brief presented on May 8, 2002 (evidence file, volume XV, annex 34 to the submission of the case, folios 6983 to 6985). The complainant's lawyer was also H.R.A.'s defense counsel. On August 25, 2003, this action was archived owing to absence of procedural activity. Cf. Communication of the Jinotega Local Criminal Judge of February 1, 2005 (evidence file, volume XV, annex 36 to the submission of the case, folio 6992).

<sup>172</sup> Cf. Preliminary statement made by H.R.A. on November 21, 2001 (evidence file, volume XV, annex 2.d to the submission of the case, folios 6640 and 6644), and Presentation made by V.P.C.'s legal representative to the Disciplinary Committee of the Supreme Court of Justice on July 1, 2003 (evidence file, volume XV, annex 25 to the submission of the case, folio 6897).

**J. V.P.C. and her daughters leave for the United States of America**

134. On December 6, 2002, V.P.C. left Nicaragua with her two daughters, V.R.P. and N.R.P.,<sup>173</sup> and went to the United States where they were granted asylum.<sup>174</sup>

135. Once they were settled in the United States, V.R.P. started receiving psychiatric treatment in October 2003, owing to "her severe symptoms related to the sexual abuse she had suffered."<sup>175</sup> These symptoms consisted in depression, anxiety, hypervigilance, and self-mutilating behavior.

136. In 2003, when they were already settled in the United States, V.P.C. indicated that she "ha[d] received an anonymous communication in which someone advised [her] that they knew where [she] was and that they would be arriving soon; the United States Postal Inspection Service and the Department of Children and Families, through the Child Protection Service investigator, intervened to protect [her] daughter from possible death threats that might arise owing to the general neglect and lack of care to which the Nicaraguan judicial authorities ha[d] subjected the whole family."<sup>176</sup>

137. Subsequently, on April 1, 2008, V.R.P. had to be hospitalized in Miami for more than 15 days to treat her post-traumatic stress disorder.<sup>177</sup> The child's psychological problems had already been indicated by psychological and psychiatric diagnoses and reports in Nicaragua during and after the criminal proceedings for rape.<sup>178</sup>

138. Since they left the country, V.P.C. has returned to Nicaragua on two occasions, while V.R.P. has never gone back.<sup>179</sup>

**VIII  
MERITS**

139. In this chapter, the Court will examine the merits of the case. In this case, the Court must examine the alleged international responsibility of the State based on its international obligations derived from the American Convention and, in particular, the Convention of Belém do Pará, in

<sup>173</sup> Cf. Report on the migratory movements of V.P.C. and V.R.P. issued by the Director of the Nicaraguan Immigration Department on May 6, 2014 (evidence file, volume XVII, annex 41 to the answering brief, folios 8334 to 8336).

<sup>174</sup> Cf. Presentation made by V.P.C.'s legal representative to the Disciplinary Committee of the Supreme Court of Justice on July 1, 2003 (evidence file, volume XV, annex 25 to the submission of the case, folios 6897 and 6898); Decision of the Immigration Court of Miami, Florida, of September 23, 2003 (evidence file, volume XV, annex 40 to the submission of the case, folios 7055 a 7058), and Decisions of the Immigration Court of Miami, Florida, of March 22, 2005 (evidence file, volume XV, annex 39 to the submission of the case, folios 7050 to 7053).

<sup>175</sup> Communication of Kristi House, non-governmental organization based in Miami, Florida, of January 3, 2005 (evidence file, volume XV, annex 41 to the submission of the case, folio 7060).

<sup>176</sup> Communication of the petitioner to the Commission of November 24,, 2003 (evidence file, volume XV, annex 38 to the submission of the case, folio 7048).

<sup>177</sup> Cf. Certification of hospitalization of V.R.P. in Miami Children's Hospital dated April 3, 2008 (evidence file, volume XVI, annex E.20 to the brief with pleadings, motions and evidence, folio 7359), and Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>178</sup> Cf. Psychological report of the Institute of Forensic Medicine, Supreme Court of Justice of Nicaragua, of November 27, 2001 (file of procedure before the Commission, volume III, folio 1099); Psychiatric diagnosis of January 25, 2002 (evidence file, volume XVI, annex E.5 to the brief with pleadings, motions and evidence, folios 7289 and 7290); Follow-up report on the child V.R.P. prepared on February 21, 2002, by Dr. María Delma Terán Caldera, psychiatrist of the Victoria Motta Hospital, Jinotega (evidence file, volume XVII, annex 17 to the answering brief, folios 8232 and 8233), and Psycho-social report on the household of V.P.C. prepared by the Ministry of the Family for the purposes of the proceedings to dissolve the marital ties between V.P.C. and H.R.A. dated July 11, 2002 (file of procedure before the Commission, volume VIII, folios 3281 to 3290).

<sup>179</sup> Cf. Report on the migratory movements of V.P.C. and V.R.P. issued by the Director of the Nicaraguan Immigration Department on May 6, 2014 (evidence file, volume XVII, annex 41 to the answering brief, folios 8334 to 8336).

relation to a child who, at eight years of age, was the victim of rape committed by a non-state actor. According to the arguments presented, the international responsibility of the State of Nicaragua was constituted by a series of acts and omissions in relation to the rape by the State, which had failed to fulfill its the duty of enhanced due diligence and special protection, and that had been of such significance that they resulted in a situation of revictimization which severely breached various rights of the presumed victims.

140. Consequently, the Court will proceed as follows in order to examine the arguments presented: first, it will examine the arguments concerning the obligation to investigate and the duty of enhanced due diligence and special protection, and also in relation to judicial guarantees in the case of the trial by jury and the reasonable time, together with the obligations established in Article 7(b) of the Convention of Belém do Pará. It will then examine the arguments concerning the supposed discrimination in access to justice for reasons of sex and gender, and the presumed victim's condition of being a person in development, pursuant to Articles 1(1) and 24 of the American Convention, and refer to the alleged situation of revictimization of the child and her direct family. Then, the Court will consider the arguments of the representatives with regard to Articles 12(1), 17(1), 19 and 22(1) of the American Convention. Lastly, it will analyze the alleged violations of the personal integrity of the family members under Article 5 of the American Convention.

**VIII-1**  
**RIGHTS TO PERSONAL INTEGRITY,<sup>180</sup> PRIVATE AND FAMILY LIFE,<sup>181</sup> RIGHTS OF THE CHILD,<sup>182</sup> EQUALITY BEFORE THE LAW,<sup>183</sup> JUDICIAL GUARANTEES<sup>184</sup> AND JUDICIAL PROTECTION,<sup>185</sup> IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE RIGHTS AND NOT TO DISCRIMINATE,<sup>186</sup> AND ALSO TO ARTICLE 7(B) OF THE CONVENTION OF BELÉM DO PARÁ<sup>187</sup>**

141. The Court will divide its analysis into four sections. First, the Court will focus on the issue of whether the investigations and the criminal proceedings opened by the State in the domestic

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<sup>180</sup> Articles 5(1) and 5(2) of the Convention establish that: “[e]very person has the right to have his physical, mental, and moral integrity respected,” and “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”

<sup>181</sup> Article 11(2) of the Convention establishes that: “[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”

<sup>182</sup> Article 19 of the Convention stipulates that: “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.”

<sup>183</sup> Article 24 of the Convention establishes that: “[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”

<sup>184</sup> Article 8(1) of the Convention stipulates that “[t] Every 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.”

<sup>185</sup> The pertinent part of Article 25 of the Convention establishes that: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights 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. 2. The States Parties undertake: (a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State. [...]

<sup>186</sup> Article 1(1) of the Convention stipulates that: “[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

<sup>187</sup> Article 7(b) of the Convention of Belém do Pará establishes that “[t]he States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: [...] (b) apply due diligence to prevent, investigate and impose penalties for violence against women.”

sphere based on the complaint for rape filed by V.R.P.'s mother complied with the duty of enhanced due diligence and non-revictimization in investigations and criminal proceedings for the rape of a female child.<sup>188</sup> It will also analyze whether Nicaragua acted with a gender- and child-based perspective and adopted the special measures of protection required to ensure the rights of V.R.P. during the investigation and criminal proceedings for the facts of this case. Then, the Court will examine the applicability of the requirements of due process to the jury trial model in effect in Nicaragua at the time of the facts and the alleged violation of the guarantee of impartiality and the duty to provide the reasoning for decisions, as well as with regard to the reasonable time. Lastly, it will develop the requirements to ensure access to justice under equal conditions for a child victim of sexual violence and will refer to revictimization as a form of institutional violence.

**A. Enhanced due diligence and special protection in investigations and criminal proceedings concerning sexual violence against children and adolescents and the duty of non-revictimization**

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

142. The **Commission** considered that the judicial proceedings for the rape of V.R.P. were not conducted with due diligence in order to clarify the facts and punish the perpetrator. The Commission found that, owing to the omissions and irregularities in the investigation, the State failed to ensure the rights to personal integrity, privacy, dignity and autonomy of V.R.P. In addition, owing to the way in which the investigation was conducted and the consequent impunity in which the facts remain, the State also violated the personal integrity of V.R.P., as well as essential aspects of her privacy, dignity and autonomy. The Commission considered that this case was emblematic of the situation of institutional violence, lack of protection and revictimization by the State against women and girls who were victims of sexual violence and rape and who have recourse to the system of justice. The Commission also alleged that the particular circumstances of the case called for the most rigorous standards of action by the authorities, both in the investigation and to establish a situation of protection for the victim and her family that would ensure everything necessary to avoid her revictimization and achieve her rehabilitation. As indicated by the Commission, the State did not comply with these enhanced obligations based on the best interests of the child and her right to be heard.

143. In particular, the Commission underscored that the State had violated due diligence because: (a) even though, private medical consultations had determined that V.R.P. had been a victim of sexual assault, the State ordered a further medical examination, which was not performed as soon as possible and was attempted on three occasions, instead of taking measures to ensure that the information available at the time was relevant for the proceedings; (b) the treatment received from the forensic physician responsible for conducting the medical examination of the child was denigrating and violent, and the State failed to prove that the physician in question was impartial, suitable and trained to perform this type of examination on female children victims of sexual violence; (c) the irregular conduct of the physician, denounced domestically, constituted a serious act of revictimization and a fresh act of sexual violence against V.R.P.; (d) the State failed to demonstrate that V.R.P. and her mother had been offered the possibility of expressing their preference as to the sex of the health care personnel who would treat her; (e) during the medical examination, there was an unjustified presence of non-medical personnel, which caused V.R.P. to be fearful; (f) the State has not justified the absolute and strict necessity for V.R.P.'s participation in the visual inspection and reconstruction of the events, which was carried out in a way that revictimized her, because the judge asked the child to place herself in the position in which, according to her account, her aggressor had placed her; (g) there is no information on special

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<sup>188</sup> Although this judgment refers to a female child who was a victim of sexual violence, the jurisprudential criteria developed herein are applicable to all children and adolescents without any distinction.

measures adopted to protect V.R.P. as a child victim of sexual violence, and she was not provided with psychological support during the procedure to reconstruct the events; (h) during the criminal proceedings on the child's rape, the State did not provide V.R.P. with the necessary health care services to safeguard her physical and mental health when the authorities became aware of the facts, maintaining that Nicaragua was a poor State, a justification that is incompatible with the principles of international law; (i) the State also failed to offer special protection by providing support during the proceedings and by measures that sought her rehabilitation and social reinsertion, as well as that of her family, and (j) there was no permanent and effective participation by a specialized entity to protect V.R.P.'s rights.

144. The Commission also considered that the lack of medical attention, added to the situation of impunity, exacerbated V.R.P.'s mental health, increasing the aftereffects of the rape and making the inadequate response of the state authorities more evident. In this regard, the Commission observed that the State had conducted criminal proceedings that were plagued with shortcomings and instances of revictimization, to which the V.R.P. was subjected for a significant portion of her childhood. Consequently, the Commission considered that the State had violated the right to judicial guarantees and judicial protection, established in Articles 8(1) and 25(1), in relation to Article 1(1) of the American Convention, as well as Article 7(b) of the Convention of Belém do Pará to the detriment of V.R.P. and V.P.C. It also concluded that the State had failed to comply with its obligation as guarantor of the rights to personal integrity, privacy, dignity and autonomy of V.R.P., and was therefore responsible for the violation of Articles 5(1), 11(2) and 19 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of V.R.P.

145. The **representatives** indicated that the State had been unable to respond effectively to the presumed victim. They argued that the State had directly violated the child's personal integrity because it had exposed her to an unnecessary and unwise revictimization by performing a medical assessment of her body in the presence of several people, even some who were not involved in the investigation, thus infringing V.R.P.'s dignity and privacy, and employing mental and moral violence. According to the representatives, V.P.C. had not requested the medical team created for the first medical examination, rather it was the judge in charge of the case who had requested this. The representatives also indicated that the judge of the case also revictimized V.R.P. during the procedure to reconstruct the events, because she asked V.R.P. to place herself in the position in which she was raped and recreated the child's traumatic experience. They added that, even though the mother had requested this procedure, it was incumbent on the State to determine the most protective measures that could be adopted, and that the implementation of the procedure could not be considered V.P.C.'s responsibility. The representatives underlined that the both forensic physician and the judge were unqualified to participate in cases such as this one, because they failed to provide treatment that was appropriate to the victim's condition, based on the best interests of the child. According to the representatives, the actions of the physician and the judge subjected V.R.P. to acts of violence a second time, without the State having adopted special measures of protection and assistance based on her condition as a female child, making her the victim of violence a second time, and this also constituted institutional violence. They considered that the State had not ensured the best interests of the child or endeavored to protect V.R.P. in order to safeguard her subsequent development, including the care required for both her physical health (as a result of the human papillomavirus and other injuries) and her mental health; rather, the State had increased the child's trauma in violation of its obligation to provide enhanced protection. Based on these arguments, the representatives concluded that the State had violated Articles 1(1), 5(1), 11, 19 and 24 of the American Convention, as well as Article 7(b) of the Convention of Belém do Pará.

146. The **State** underlined that the rape of V.R.P. was not committed by a state agent or by someone acting with the State's acquiescence and that, since the obligation to investigate was of means and not of results, the judicial authority had conducted a diligent and effective investigation.

Regarding the medical examinations performed during the criminal proceedings and the revictimization, it indicated that the phrases that the forensic physician had allegedly uttered against the child during his evaluation did not appear in the file of the proceedings, or in V.P.C.'s communications addressed to the Director of the Victoria Motta Hospital, or in the file of the complaint against this physician. The State considered that no documents existed indicating that the physician had uttered these expressions, and the State found it "concerning" that undocumented statements were brought up many years later. The State asserted that V.R.P.'s reluctance to be examined was not due to the actions of the forensic physician, but to the traumatic situation she had experienced, which could be corroborated by the testimony of the first two doctors who had evaluated her privately. The State also argued that the experts requested by the child's mother were present during the forensic medical evaluation. Regarding the suitability, independence and impartiality of the medical personnel who performed this procedure, the State affirmed that they were qualified to conduct this evaluation because they had met the requirements and qualifications to be forensic physicians under the domestic norms in force. The State indicated that, based on the alleged conduct of the forensic physician that was detrimental to V.R.P., complaint proceedings had been instituted, but these were not processed due to lack of evidence; it added that the said physician no longer worked for the Judiciary as he had renounced this position.

147. Regarding the visual inspection and reconstruction of the events, the State indicated that this was conducted in keeping with the Procedural Code at that time and at the request of V.P.C. During the reconstruction, the child was accompanied by her mother, V.P.C., and was supported by the psychiatrist assigned to monitor her. The State indicated that the case file did not record the presence of the accused during this procedure, a measure that was taken to safeguard the child's integrity. The State also denied that V.R.P. was revictimized and mistreated during the procedure.

148. The State contested the assertion that V.R.P. had not received psychological or psychiatric support and argued that, from the moment the judicial authority became aware of the rape, it ordered the intervention of a psychiatrist to evaluate V.R.P. The State also stressed that the child was referred to the Institute of Forensic Medicine for a physical and mental evaluation, and she was provided with support during the visual inspection. It underscored that, in this specific case, the State had taken the necessary care to ensure the physical and mental health of V.R.P., through the Victoria Motta Hospital. The State indicated that the medical care was constant; however, it could not be provided once V.P.C. and her daughter had left the country, because the State was unable to provide the recommended treatment outside Nicaragua, and this could not be attributed to it.

149. Finally, the State indicated that, in the instant case, it had complied with the standards of due diligence in investigations into the perpetration of sexual offenses, because: (a) V.R.P.'s statement had been taken in a comfortable and safe environment; she had been provided with privacy and a climate of trust, and her mother was present; (b) V.R.P.'s statement was clear and precise and she was free to explain what happened; she was not asked revictimizing questions, and was not summoned to provide a second statement, limiting the need to repeat it; (c) she was provided with medical, hygienic and psychological care as soon as the facts were known, and the psychiatrist assigned to her monitored her throughout the proceedings; (d) immediately after the complaint had been filed, a medical and psychological examination of V.R.P. was required by suitable and qualified personnel; (e) a series of investigative procedures were conducted and the accused was arrested; (f) access to free legal assistance was provided; (g) the proceedings were kept confidential to preserve the victim's privacy, and (h) in order to avoid revictimization, and in accordance with the psychiatrist's report that recommended trying to avoid the victim continuing to recall the events, the State determined that V.R.P. should not play any further role in the domestic proceedings.

## A.2 Considerations of the Court

150. The Court has established that, pursuant to the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all of this under the general obligation of those State to ensure the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>189</sup> 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.<sup>190</sup>

151. 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 as a mere formality preordained to be unsuccessful, or as a measure taken by private interests that depends on the procedural initiative of the victims or their family members, or on the private contribution of probative elements. This obligations remains "whosoever the agent who may eventually be attributed with the violation, even private individuals because, if their acts are not investigated in earnest, they would to a certain extent be abetted by the public authorities, and this would engage the international responsibility of the State."<sup>191</sup> In addition, due diligence requires that the investigating agent conduct all those actions and inquiries required to achieve the result sought. To the contrary, the investigation is not effective in the terms of the Convention.<sup>192</sup>

152. 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 reinforced for those States that are parties, by the obligations derived from the specific inter-American treaty, the Convention of Belém do Pará. Article 7(b) of this Convention specifically obliges the States Parties to apply due diligence to prevent, investigate, punish and eradicate violence against women. Thus, when an act of violence is committed against a woman, by either a state agent or a private individual, it is especially important that the authorities in charge of the investigation conduct it with determination and effectiveness, taking into account the duty of society to reject violence against women and the obligation of the State to eradicate this and to ensure that victims have confidence in the institutions established by the State for their protection.<sup>193</sup>

153. Thus, the Court has established that States must adopt comprehensive measures to comply with due diligence. In particular, they must have an appropriate legal protection framework, which is enforced effectively, and prevention policies and practices that allow it to act effectively in response to reports. The prevention strategy must be comprehensive; in other words, it must prevent the risk factors and, also, strengthen the institutions so that they can provide an effective response.<sup>194</sup>

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<sup>189</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 91, and *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of August 24, 2017. Series C No. 339*, para. 147.

<sup>190</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs. Judgment of September 18, 2003. Series C No. 100*, para. 114, and *Case of Gutiérrez Hernández et al. v. Guatemala, supra*, para. 147.

<sup>191</sup> *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of November 19, 2015. Series C No. 307*, para. 143.

<sup>192</sup> 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 Pacheco León et al. v. Honduras, supra*, para. 75.

<sup>193</sup> 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. 193, and *Case of Gutiérrez Hernández et al. v. Guatemala, supra*, para. 149.

<sup>194</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 258, and *Case of Favela Nova Brasília v. Brazil, supra*, para. 243.



154. In cases of sexual violence and rape involving adult women, the Court has established a series of criteria that States must follow to ensure that the investigations and criminal proceedings that are undertaken are conducted with due diligence.<sup>195</sup> In the instant case, the Court has the opportunity to refer to the obligations of a State when the investigations and the criminal proceedings are conducted in the context of a case of rape committed against a child. Consequently, the Court will adopt an intersectoral approach that takes into account the age and gender of the child.

155. The Court considers that, notwithstanding the criteria established in cases of sexual violence and rape perpetrated against adult women, the States must adopt, in the context of observance of Article 19 of the American Convention, special and particular measures in cases where the victim is a child or an adolescent, especially in cases of sexual violence and, above all, rape. Consequently, in this case, and throughout this judgment, the Court will examine the presumed violations of the rights of a child, not only based on the international instruments concerning violence against women, but will also examine them "in light of the international *corpus juris* for the protection of children" (*supra* para. 42), and this should also serve to define the content and scope of state obligations when the rights of children and adolescents are analyzed<sup>196</sup> and, in this particular case, the increased state obligation of due diligence. The Court will also apply the four guiding principles of the Convention on the Rights of the Child; these are: the principle of non-discrimination,<sup>197</sup> the principle of the best interest of the child,<sup>198</sup> the principle of respect for the right to life, survival and development,<sup>199</sup> and the principle of respect for the opinion of the child in all proceedings that

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<sup>195</sup> Among other matters, a criminal investigation into rape requires: (i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and inspiring confidence; (ii) the victim's statement should be recorded to avoid the need to repeat it, or to limit this to the strictly necessary; (iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such attention aimed at reducing the consequences of the rape; (iv) a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes; (v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and the proper chain of custody of the evidence, and (vi) access to advisory services or, if applicable, free legal assistance at all stages of the proceedings should be provided. Also, in cases of presumed acts of violence against women, the criminal investigation should include a gender perspective and be conducted by official who have received training on similar cases and on providing attention to victims of discrimination and gender-based violence. *Cf. Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 455; *Case of Fernández Ortega et al. v. Mexico, supra*, paras. 194, 251 and 252; *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs. Judgment of November 20, 2014. Series C No. 289*, paras. 242 and 252, and *Case of Favela Nova Brasília v. Brazil, supra*, para. 254.

<sup>196</sup> *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, paras. 194 and 195, and *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs. Judgment of November 25, 2013. Series C No. 272*, para. 217.

<sup>197</sup> Article 2 of the Convention on the Rights of the Child establishes the obligation of the States to respect and ensure the rights set forth in that instrument to each child within their jurisdiction without discrimination of any kind, which "requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures." Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6)*, UN Doc. CRC/GC/2003/5, November 2003, para. 12, and Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, UN Doc. CRC/C/GC/13, April 18, 2011, para. 60.

<sup>198</sup> Article 3(1) of the Convention on the Rights of the Child establishes the obligation that the best interest of the child are a primary consideration in all actions concerning children. *Cf. Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para 6)*, *supra*, para. 12; Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence, supra*, para. 61, and Committee on the Rights of the Child, *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1)*, UN Doc. CRC/C/CG/14, May 29, 2013.

<sup>199</sup> Article 6 of the Convention on the Rights of the Child recognizes the child's inherent right to life and the States parties' obligation to ensure to the maximum extent possible the survival and development of the child, in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development.

affect her, so that her participation is guaranteed,<sup>200</sup> as pertinent to identify the special measures required to make the rights of children and adolescents effective when they are victims of crimes of sexual violence.

156. The special measures of protection that the State must adopt are based on the fact that children and adolescents are considered to be more vulnerable to human right violations, and this will also be determined by different factors, such as age, the particular conditions of each one, and their level of development and maturity,<sup>201</sup> among other matters.<sup>202</sup> In the case of female children, this vulnerability to human rights violations may be framed in and increased by factors of historical discrimination<sup>203</sup> that have contributed to the fact that women and girls suffer greater levels of sexual violence,<sup>204</sup> especially within the family.<sup>204</sup> With regard to the institutional response in order to

*Cf. Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6), supra, para. 12, and Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all violence, supra, para. 62.*

<sup>200</sup> Article 12 of the Convention on the Rights of the Child establishes the child's right to express his or her views freely in "all matters affecting the child," those views being given due weight, taking into account their age and level of maturity. *Cf. Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6), supra, para. 12; Committee on the Rights of the Child, General Comment No. 12: The right of the child to be heard, UN Doc. CRC/C/GC/12, July 20, 2009, and Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all violence, supra, para. 63.*

<sup>201</sup> The Committee on the Rights of the Child has indicated that "[a]t a universal level all children aged 0-18 years are considered vulnerable until the completion of their neural, psychological, social and physical growth and development. Babies and young children are at higher risk due to the immaturity of their developing brain and their complete dependency on adults. Both girls and boys are at risk, but violence often has a gender component." *Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all violence, supra, para. 72.f).*

<sup>202</sup> *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02, supra, para. 61, and Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.. Advisory Opinion OC-21/14, supra, para. 71.*

<sup>203</sup> In this regard, the preamble to the Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly in Resolution 48/104 of December 20, 1993, recognizes "that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." Also, the United Nations Special Rapporteur on violence against women, its causes and consequences identified the factors of historical discrimination that maintain the situation of greater vulnerability of women to acts of violence, when indicating that, "[t]he Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women provide a comprehensive international framework in which gender-based violence against women is the manifestation of the historical unequal power relationship between women and men. [...] The persistence of systemic gender-based violence against women, even in States that have proclaimed zero tolerance of violence against women, indicates that gender-based violence is deeply entrenched in our still predominantly patriarchal societies and accepted as "just the way things are." *Report of the Special Rapporteur on violence against women, its causes and consequences, June 13, 2017, UN Doc. A/HRC/35/30, paras. 21 and 100.* The Committee on the Elimination of Discrimination against Women has also referred to this when asserting that: "gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated." *Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. July 26, 2017, UN Doc. CEDAW/C/GC/35, para. 10.*

<sup>204</sup> The Committee on the Rights of the Child has indicated that the gender component implicit in all forms of violence determines that "girls may experience more sexual violence at home than boys." *Committee on the Rights of the Child, General Comment No. 13: The right of the child to freedom from all violence, supra, para. 19.* In the case of Nicaragua, according to data provided by the Model for comprehensive care for victims of gender-based violence in Nicaragua, citing figures from the Institute of Forensic Medicine, "sexual and intrafamily violence, owing to its dimensions, should be considered a public health problem, as revealed by the following indicators from 2011: [...] 84% of the victims of [sexual violence] are under the age of 18 years. [...] The statistics from the Police Stations for Women and Children indicate that the departments where there is most violence against women and children are Managua, Chinandega, Matagalpa, León, Granada, Carazo, Masaya, Esteli, Jinotega, RAAN and RAAS." UNFPA, Model for comprehensive care for victims of gender-based violence in Nicaragua, Managua, 2012 (evidence file, volume XXI, annex 9.d to the helpful evidence, folio 10976). In addition, according to UNICEF data, "[i]n Nicaragua, girls and adolescents are at greater risk of being victims of sexual violence. The Institute of Forensic Medicine reported 6,069 cases of sexual violence in 2013. 88% of the victims were women and 82% were children and adolescents. 51% children of 13 years of age and 83% were female children." *Cf.*

ensure access to justice for victims of sexual violence, the Court notes that children and adolescents may face different obstacles and barriers of a legal and financial nature that infringe the principle of their progressive autonomy as subjects of rights, or that do not guarantee legal assistance that allows them to assert their rights and interests in the proceedings that concern them. Such obstacles not only contribute to the denial of justice, but are discriminatory, because they do not allow them to exercise the right of access to justice in equal conditions. The foregoing reveals that the obligation to ensure rights acquires particular importance when female children are victims of a crime of sexual violence and take part in investigations and criminal proceedings, as in this case.

157. Indeed, it should be recalled that the Convention of Belém do Pará considered it pertinent to emphasize that State policies to prevent, punish and eradicate violence against women should take into account the situation of vulnerability to violence that a female child or adolescent could suffer. Article 9 of this Convention establishes that the States Parties shall take special account of the vulnerability of women to violence by reason of being under the age of 18, so that in cases in which a female child or adolescent is the victim of violence against women, in particular sexual violence or rape, the state authorities must take particular care when conducting the domestic investigations and proceedings, as well as when adopting measures of protection and support during the proceedings and afterwards, in order to achieve the victim's rehabilitation and reinsertion.

*A.2.a The essential components of the duty of enhanced due diligence and special protection*

158. The particular importance mentioned above results in the State's obligation to organize the system of justice in a way that the actions of the authorities in conformity with due diligence entail the adoption of a series of measures and the implementation of proceedings that are adapted to children and adolescents. The Court has already indicated that the special protection derived from Article 19 of the Convention means that the State's observance of the guarantees of due process results in differentiated components and guarantees in the case of children and adolescents based on the recognition that they do not participate in proceedings in the same conditions as an adult.<sup>205</sup> The system of justice adapted to children and adolescents entails justice that is accessible and appropriate to each of them, and that takes into consideration not only the principle of the best interests of the child, but also their right to participation, without any discrimination, based on their capacities that are in constant evolution, according to their age, maturity and level of understanding. In essence, as the Court has indicated previously, although due process and its correlative guarantees are applicable to everyone, in the case of children and adolescents their exercise supposes, owing to the special conditions of the latter, the adoption of certain specific measures in order to ensure access to justice in equal conditions, to guarantee effective due process of law, and to ensure that the best interests of the child constitute the primary consideration in all the administrative or judicial decisions adopted.<sup>206</sup>

159. The Court recalls that States have the duty to enable the child or adolescent to take part in each and every different stage of the proceedings. To this end, he or she has the right to be heard

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UNICEF, "La violencia existe aun cuando no la puedas ver. Iniciativas de fin a la violencia" [Violence exists, even when you cannot see it: Initiatives to end violence]. Available at <http://www.unicef.org.ni/publicacion/180/iniciativas-de-fin-la-violencia-en-nicaragua/>

<sup>205</sup> Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra*, para. 96, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 114.

<sup>206</sup> Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra*, paras. 96 and 98, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 115.

with due guarantees and within a reasonable time (*infra* para. 283) by the competent authority. This right must be interpreted in light of Article 12 of the Convention on the Rights of the Child,<sup>207</sup> which contains appropriate provisions, so that the participation of the child or adolescent is adapted to its condition and does not prejudice its true interests.<sup>208</sup> In this regard, expert witness Cillero Bruñol indicated that, in practice, this meant “establishing a series of conditions for the interviews, the participation of children in any kind of procedure in the proceedings, taking all the measures with their consent and [...] assessing the child’s opinions based on his or her understanding and maturity, but always basing the assessment made in any decision taken on the child’s opinion and considering the child’s best interests.”<sup>209</sup>

160. The participation in criminal proceedings of children and adolescents who are victims of a crime may be necessary to contribute to the development of these proceedings, especially when there are no other witnesses to the perpetration of the crime. However, if this participation is conceived only in terms of the evidence they may provide, it does not reflect their status as subjects of law, because they should consider themselves legitimated to act in their own interests as a participant in the proceedings. To this end, from their first contact with the justice process and throughout that process, the child should be promptly and adequately informed about the procedure, as well as on the availability of legal assistance and health services and other available measures of protection.<sup>210</sup>

161. The Court considers that a harmonious and comprehensive interpretation of the right to be heard of children and adolescents, together with the principle of progressive autonomy contributes to ensure legal assistance to child victims in criminal proceedings. Thus, access to justice entails not only providing the necessary mechanisms for children and adolescents to be able to denounce offenses, but also includes the possibility of their playing an active role in judicial proceedings, speaking for themselves, and with legal counsel, to defend their rights, according to their age and maturity.<sup>211</sup> To overcome barriers to access to justice (*supra* para. 156), the legal assistance of a

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<sup>207</sup> Article 12 of the Convention on the Rights of the Child establishes that: “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

See also, Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, *supra*, paras. 62 to 64, which indicates that “[t]he child victim and child witness of a crime must be given an opportunity to fully exercise her or his right to freely express her or his view in accordance with United Nations Economic and Social Council resolution 2005/20, ‘Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.’”

<sup>208</sup> *Cf. Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, *supra*, para. 99, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 122.

<sup>209</sup> Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>210</sup> *Cf. Economic and Social Council Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guidelines 19 and 20; Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6)*, *supra*, para. 24, and Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, *supra*, para. 64.

<sup>211</sup> In this regard, see: Human Rights Council, UN Doc. A/HRC/25/L.10, March 25, 2014, paragraph 9 [“Reaffirms the need to respect all legal guarantees and safeguards at all stages of all justice processes concerning children, including due process, the right to privacy, the guarantee of legal aid and other appropriate assistance under the same or more lenient conditions as adults, and the right to challenge decisions with a higher judicial authority”] and paragraph 13(k) [Ensuring that all children have access to legal and other appropriate assistance, including by supporting the establishment of child-sensitive legal aid systems”]. Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, *supra*, para. 64 [“The right of the child victim and witness is also linked to the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which “questioning” is conducted, existing support mechanisms in place for the child when submitting a complaint and

lawyer specialized in childhood and adolescence, with the authority to become a party to the proceedings, to contest judicial measures, file appeals and perform any other procedural act to defend the child's rights during the proceedings, must be free and provided by the State, regardless of the financial resources of the parents and their opinion.<sup>212</sup>

162. In this regard, expert witness Cillero Bruñol indicated that:

A fundamental issue that has been gaining ground throughout Latin America [...] is the independent judicial representation of the female child [...]. There must be someone, apart from the prosecutor in the specific criminal case [...] who represents the interests of that child and, in addition, probably the existence of independent non-jurisdictional organs, such as ombudspersons, that can effectively review such cases.<sup>213</sup>

163. The Court notes that child victims, in particular of sexual violence, may suffer severe physical, psychological and emotional consequences due to the event that violated their rights, as well as a new victimization at the hands of the organs of the State owing to their participation in the criminal proceedings, the function of which is precisely to protect their rights. Thus, if it is considered that the participation of the child or adolescent is necessary and may contribute to gathering probative material, it is essential that revictimization is avoided at all times and the procedures and proceedings in which their participation is considered to be strictly necessary are limited, avoiding the presence or interaction with the perpetrator in the procedures ordered.<sup>214</sup> This

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participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal”]; Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para 6)*, *supra*, para. 24 [“For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance”]; Committee on the Rights of the Child, *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art.3, para.1)*, UN Doc. CRC/C/GC/14, May 29, 2013, para. 96 [“The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies.. In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative, in addition to a guardian or representative of his or her views, when there is a potential conflict between the parties in the decision”], and Committee on the Rights of the Child, *General Comment No. 20 on the implementation of the rights of the child during adolescence*, UN Doc. CRC/C/GC/20, December 6, 2016, para. 23 [“In accordance with article 12 of the Convention, States parties should introduce measures to guarantee adolescents the right to express views on all matters of concern to them, in accordance with their age and maturity, and ensure they are given due weight, for example, in decisions relating to their education, health, sexuality, family life and judicial and administrative proceedings. [...] The measures should be accompanied by the introduction of safe and accessible complaint and redress mechanisms with the authority to adjudicate claims made by adolescents, and by access to subsidized or free legal services and other appropriate assistance”], and UNICEF-UNODC, *Handbook for Professionals and Policymakers on Justice in matters involving child victims and witnesses of crime*, 2010, pp. 54-5 [“Assistance during the participation of child victims and witnesses in the justice process should include access to legal assistance. [...] However, child victims’ and witnesses’ right to effective assistance goes further than the presence of such support persons. [...] Most civil law countries recognize the right of child victims to legal assistance. The assistance is free of charge for beneficiaries who cannot afford to pay their counsel”].

<sup>212</sup> Cf. UNODC, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2013, Principle 2 [“Responsibilities of the State. 15. States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system”] and Guideline 1 [“Provision of Legal Aid. 41. Whenever States apply a means test to determine eligibility for legal aid, they should ensure that: [...] (C) Persons urgently requiring legal aid at police stations, detention centres or courts should be provided preliminary legal aid while their eligibility is being determined. Children are always exempted from the means test”].

<sup>213</sup> Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>214</sup> 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. 201, and Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guideline 31.b). See

Court has already stressed that rape is an extremely traumatic experience that can have severe consequences and cause great physical and mental harm; it leaves the victim “physically and emotionally humiliated,” a situation that it is difficult to overcome with the passage of time, contrary to other traumatic experiences.<sup>215</sup> In the case of child victims of sexual violence, the impact can be exacerbated and they may suffer an emotional trauma that differs from that suffered by an adult with extremely profound effects, in particular when the victim’s relationship with the perpetrator is based on trust and authority, as in the case of a father. According to expert witness Stola, when the father is the perpetrator of the sexual abuse it causes extremely serious harm to the victim’s psyche, “because the person who should be providing care has caused extremely serious damage, not only to the child, but also to the whole group, because it is an abuse that the whole group experiences, as an attack against the family.”<sup>216</sup> Consequently the Court emphasizes the importance of the adoption of a care protocol addressed at reducing the consequences on the biopsychosocial well-being of the victim.<sup>217</sup>

164. In addition, bearing in mind the best interests of the child, it is necessary not only to avoid revictimization, but also, by providing special protection and specialized support, to create the appropriate conditions for the child or adolescent to play an effective role in the criminal proceedings. The State’s actions must be addressed at providing the enhanced protection of the child’s rights, by the multidisciplinary and coordinated actions of the State agencies involved in protection and psychosocial support, and investigation and prosecution, including the Public Prosecution Service, the judicial authorities, health professionals, social and legal services, and the national police force, from the moment the State becomes aware of the violation of the child’s human rights, and continuously, until those services cease to be necessary, so as to avoid the child’s participation in the criminal proceedings causing new harm and additional trauma, revictimizing him or her.<sup>218</sup>

165. Consequently, in cases of sexual violence, the State must, when it becomes aware of the facts, provide immediate, professional assistance, both medical and psychological and/or psychiatric, by professionals who are qualified in the care of victims of this type of crime and with a gender and child-based perspective.<sup>219</sup> The support must be maintained during the criminal proceedings, endeavoring to ensure that it is the same professional who accompanies the child or adolescent. It is all important that the justice procedure and the support services take into account, without discrimination of any kind, the age, level of maturity and understanding, gender, sexual orientation, socio-economic status, aptitudes and capabilities of the child or adolescent, as well as

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also, Expert opinions provided by Enrique Oscar Stola and Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>215</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 311, and *Case of Favela Nova Brasília v. Brazil, supra*, para. 255.

<sup>216</sup> Expert opinion provided by Enrique Oscar Stola before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>217</sup> Cf. Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence, supra*, para. 57(b)

<sup>218</sup> Cf. Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guideline 23, and UNODC, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2013, guideline 11.c). See also, Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>219</sup> The Court has indicated that, in cases of violence against women, as soon as the alleged acts have been reported it is necessary that a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes. This examination must be performed in accordance with protocols specifically addressed at documenting evidence in cases of gender-based violence. Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 194, and *Case of Favela Nova Brasília v. Brazil, supra*, para. 254. See also, World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 81 and 82 and *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, p. 18.

any other factor or special need.<sup>220</sup> All of this, in order to provide victims with the necessary support and services, based on their experience and understanding and the violations suffered. Therefore, it is understood that it is essential to ensure the existence of specific services and protection for victims of certain crimes, such as those involving sexual violence, especially rape.<sup>221</sup>

166. Consequently, in order to ensure the right to be heard, States must guarantee that the proceedings take place in an environment that is not intimidating, hostile, insensitive or inappropriate for the age of the child and that the personnel responsible for receiving the victim's account are duly qualified, so that the victim feels respected and safe when expressing his or her opinion in an appropriate physical, mental and emotional environment.<sup>222</sup> Children and adolescents must be treated with tact and sensitivity throughout the criminal proceedings.<sup>223</sup> An effort must be made to explain the reasons for and utility of the procedures that will be conducted or the nature of the expert reports to which they will be subjected, always based on their age, level of maturity and development, and in keeping with their right to information.<sup>224</sup>

167. The state authorities must give due weight to the victims' views, always respecting their privacy and the confidentiality of the information if appropriate, always avoiding their participation in an excessive number of interventions or their exposure to the public, adopting the necessary measures to avoid causing them suffering during the proceedings and subjecting them to further harm.<sup>225</sup> The requirement of qualified personnel, including administrative, judicial and prosecutorial authorities, and health personnel also means that this personnel will communicate with the children and adolescents using language and terminology that is appropriate to age and non-stigmatizing, offensive or discriminatory, that will allow them to recount the events that occurred or their experiences in a manner of their choice.<sup>226</sup>

168. In this regard, the Court finds that, if it is considered pertinent that the child or adolescent testify as a victim of an offense, the interview should be conducted by a qualified psychologist or a professional in a similar field duly qualified in taking this type of statement. This professional will allow the children or adolescents to choose how they wish to express themselves and in a way that is adapted to their requirements, and it is possible that they may not be questioned directly by the Court or the parties.<sup>227</sup> The interview will seek to obtain precise, reliable and complete information

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<sup>220</sup> Cf. Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, *supra*, para. 54(b).

<sup>221</sup> Cf. Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guidelines 8, 10 to 14, 16, 17, 19, 21 to 31 and 40; Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, *supra*, paras. 51 and 54, and World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, pp. 15 to 22.

<sup>222</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico*, *supra*, para. 201, and *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14, *supra*, para. 123. See also, Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard*, *supra*, para. 34, and Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, *supra*, paras. 51 and 54(b).

<sup>223</sup> Cf. *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guideline 10, and Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, *supra*, para. 54(b).

<sup>224</sup> Cf. *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guidelines 19 and 30.b).

<sup>225</sup> Cf. Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, *supra*, para. 51.

<sup>226</sup> Cf. World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, pp. 20 and 21.

<sup>227</sup> Cf. Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guideline 31(c). See also, UNICEF and Asociación por los Derechos Civiles (ADC), *Guía de buenas prácticas para el abordaje de niños/as, adolescentes víctimas o testigos de abuso*

about what happened through the victim's account. To this end, the interview rooms should provide an environment that is safe and not intimidating, hostile or inappropriate (*supra* para. 166), and that offers them privacy and inspires confidence.<sup>228</sup> In addition, it is necessary to ensure that children and adolescents are not interviewed more than strictly necessary, based on their best interests, to avoid revictimization or a traumatic impact.<sup>229</sup> The Court underscores that several countries have adopted, as a best practice, the use of special devices, such as the Gesell Chamber or closed circuit television (CCTV) that enable the authorities and the parties to follow the statement of the child or adolescent from another room in order to minimize any revictimizing effects.<sup>230</sup> Such best practices to guarantee the rights of child victims during their statements in judicial proceedings have been implemented to different degrees by States Parties to the American Convention such as Argentina,<sup>231</sup> Bolivia,<sup>232</sup> Brazil,<sup>233</sup> Chile,<sup>234</sup> Colombia,<sup>235</sup> Costa Rica,<sup>236</sup> Ecuador,<sup>237</sup> El Salvador,<sup>238</sup> Guatemala,<sup>239</sup> Honduras,<sup>240</sup> Mexico,<sup>241</sup> Nicaragua,<sup>242</sup> Paraguay,<sup>243</sup>

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*sexual y otros delitos* [Manual of best practices for treating child and adolescent victims or witness of sexual and other offenses], September 2013, pp. 41 and 42.

<sup>228</sup> The Court has indicated, in cases of adult women, that it is necessary that the statement of a victim of acts of sexual violence or rape the victim's statement should be taken in a safe and comfortable environment, providing privacy and inspiring confidence, and that the victim's statement should be recorded to avoid the need to repeat it, or to limit this to the strictly necessary. This statement should include, with the victim's consent: (i) the date, time and location of the act of sexual violence perpetrated, including a description of the type of surface on which the assault occurred; (ii) the name, identity and number of assailants; (iii) the nature of the physical contacts and detailed account of violence inflicted; (iv) use of weapons and restraints; (v) use of medications, drugs, alcohol, or other substances; (vi) how clothing was removed, if applicable; (vii) details of actual or attempted sexual activity; (viii) use of condoms or lubricants; (ix) any subsequent activities that may alter evidence, and (x) details of any symptoms that have developed since the assault. *Cf. Case of Fernández Ortega et al. v. Mexico, supra*, para. 194, and *Case of Espinoza González v. Peru, supra*, para. 249. See also, World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 36 and 37. The Court considers that, although these standards may be applicable in cases of violence against children and adolescents, other increased standards must be taken not account when interviewing the such as the obligation of non-revictimization. In this regard, see, World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, p. 20.

<sup>229</sup> *Cf. Case of Rosendo Cantú v. Mexico, supra*, para. 201; Committee on the Rights of the Child, *General Comment No. 12: The right of the child to be heard, supra*, para. 24; Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guidelines 23 and 31(a), and World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, p. 20.

<sup>230</sup> *Cf. Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guideline 30(d).

<sup>231</sup> In Argentina, the use of the Gesell Chamber was incorporated into the Code of Criminal Procedure in articles 250 bis and 250 ter by Law 25,852, adopted on December 4, 2003, promulgated on January 6, 2004. See also, UNICEF and Asociación por los Derechos Civiles (ADC), *Guía de buenas prácticas para el abordaje de niños/as adolescentes víctimas o testigos de abuso sexual y otros delitos*, September 2013.

<sup>232</sup> In Bolivia, the use of the Gesell Chamber was regulated by the Comprehensive Law against the smuggling and trafficking of persons, Law No. 263 of July 31, 2012, especially in articles 29(2) and 30(7).

<sup>233</sup> In Brazil, closed circuit television (CCTV) is used. In 2003, the Children and Adolescents Court of Porto Alegre, Rio Grande do Sul, initiated a procedure called "*Testimony without harm.*" On November 23, 2010, the National Council of the Judiciary issued Recommendation No. 33, advising the use of the "Special deposition" in judicial proceedings for child victims or witnesses of violence. On April 4, 2017, Brazil adopted Law No. 13,431 which regulates special interviews by means of the "Special deposition."

<sup>234</sup> In Chile, the first Gesell Chamber was implemented in 2012 as a pilot project. On January 9, 2018, Law No. 21, 057 was promulgated establishing video recorded interviews and other safeguard measures for child victims of sexual offenses.

<sup>235</sup> *Cf.* In Colombia, the Gesell Chamber and video recording were implemented on July 12, 2013, by Law No. 1652.

<sup>236</sup> In Costa Rica, the Gesell Chamber has been implemented since 2005. Also, in Circular No. 24 – 2012 of February 14, 2012, the Supreme Court of Justice adopted the Manual on the use of Gesell Chambers. There is also a protocol for the use of interview rooms.

<sup>237</sup> In Ecuador, in 2014, the Council of the Judicature in Resolution 117-2014 established the "Protocol for the use of the Gesell Chamber".

<sup>238</sup> In 2009, El Salvador inaugurated its first Gesell Chambers.

<sup>239</sup> In 2013, the Supreme Court of Justice of Guatemala, in Decision No. 16-2013, issued the manual for the use and functioning of the Gesell Chamber, closed circuit television and other tools to receive the statements of children and



Peru,<sup>244</sup> Dominican Republic<sup>245</sup> and Uruguay.<sup>246</sup> Furthermore, video recording the statements of child victims is recommended so that they do not have to be repeated. These technological tools not only avoid revictimizing the child victim and impairing evidence, but also guarantee the accused's right of defense.

169. With regard to the physical examination, the authorities must avoid, insofar as possible, that victims are subjected to more than one physical evaluation, which could be revictimizing.<sup>247</sup> In these cases, the medical examination must be performed by a professional with extensive knowledge and experience<sup>248</sup> in cases of sexual violence against children and adolescents, who will try and minimize or avoid causing them additional trauma or revictimizing them.<sup>249</sup> It is recommendable that the victim or, if appropriate their legal representative, is able to choose the sex of the examiner<sup>250</sup> and that the examination is performed by a specialist in pediatric and

adolescents who were victims and/or witnesses.

<sup>240</sup> In 2015, in Decree No. 22-2015, Honduras amended its Code of Criminal Procedure, and article 237(b) established that: "[v]ulnerable persons shall participate in the proceedings in a space or room with a unidirectional mirror or one that is especially conditioned or in the Gesell Chamber or by other similar means, providing a psychologist and, in those places where there are none, a professional trained in this field, and also a translator when necessary. These procedures shall be video-recorded, or conducted or recorded using closed circuit television, Gesell Chambers or other similar means and recorded by any audiovisual or technical means. This procedure shall be conducted in accordance with the formalities of evidence submitted prior to trial."

<sup>241</sup> In Mexico, according to information provided by the Federal Council of the Judicature, some of the country's justice centers have special rooms with Gesell Chambers. Also, Mexico's laws on human trafficking offenses mention the appearance of victims using the Gesell Chamber in article 74 of the General Law to prevent, punish and eradicate offenses related to the trafficking of persons and for to protect and assist victims of such offenses of June 14, 2012.

<sup>242</sup> In Nicaragua, the first Gesell Chambers was created in 2012 in the North Atlantic Autonomous Region.

<sup>243</sup> In Paraguay, under the organic law of the Public Prosecution Service No. 1562/00, the Victims' Assistance Center, which performs "all the functions of assisting victims of punishable acts in the corresponding criminal proceedings," has four Gesell Chambers. Also, according to Forensics Office of the Supreme Court of Justice of Paraguay, "[t]he Gesell Chamber is designed to avoid the revictimization of vulnerable persons, thus complying with the provisions of Decision No. 633 [2010] ratifying the 100 Brasilia Rules, in order to produce pre-trial evidence effectively and/or take statements in oral trials, thus avoiding the need for such persons to make repeated statements with the aforementioned consequences."

<sup>244</sup> In Peru, in 2016, the Public Prosecution Service prepared a procedural manual for the single interview with victims under Law No. 30364 to prevent, punish and eradicate violence against women and members of the family group, and male child and adolescent victims of violence. Article 242 of this law, adopted on November 23, 2015, established that the statements of children and adolescents shall be taken with the intervention of psychologists in Gesell Chambers or interview rooms set up by the Public Prosecution Service, and that they shall be filmed and recorded to avoid the revictimization of the victims.

<sup>245</sup> On December 20, 2007, the Supreme Court of Justice of the Dominican Republic, in Resolution No. 3687-2007 on the adoption of minimum procedural rules to obtain the statements of child victims, witnesses or co-accused in ordinary criminal proceedings, required the implementation of the Gesell Chamber and closed circuit television.

<sup>246</sup> In Uruguay, the Code of Criminal Procedure adopted by Law No. 19,293 of December 19, 2014, establishes, in its articles 160 and 164 on underage witnesses and the statement of the victim, that in order to respect their rights and obtain their testimony in the proceedings, one or more of the following mechanisms must be adopted: "glass screens to hide the witness from the accused or other elements that constitute a physical barrier to this end [or] providing testimony from a room adjacent to the court by closed circuit television or another technology with a similar effect." Gesell Chambers exist in the offices of the Forensic Institute, the special family courts, and the Social Welfare Department.

<sup>247</sup> Cf. Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017, and World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, p. 21.

<sup>248</sup> Cf. Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>249</sup> According to the World Health Organization, "[i]n conducting physical examinations, health care providers should seek to minimize additional harm, trauma, fear and distress and respect the autonomy and wishes of children or adolescents." Cf. World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, p. 21. See also, UNICEF and Asociación por los Derechos Civiles (ADC), *Guía de buenas prácticas para el abordaje de niños/as, adolescentes víctimas o testigos de abuso sexual y otros delitos*, September 2013, pp. 33 and 34.

<sup>250</sup> Cf. World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical*

adolescent gynecology with specific training in performing forensic medical examinations in cases of sexual abuse and rape.<sup>251</sup> In addition, the medical examination must only be performed following the informed consent of the victim, or their legal representative, in accordance with their level of maturity, taking into account the right of the child to be heard, in an appropriate place, respecting intimacy and privacy, and permitting the victim to be accompanied by a person of their confidence.<sup>252</sup> The necessity of a gynecological examination should be considered based on a case-by-case analysis, taking into account the time that has passed since the moment at which it is alleged the sexual violence occurred. Consequently, the Court considers that the request for a gynecological examination should be justified in detail and, if it is not required or it is not possible to obtain the informed consent of the victim, the examination should be omitted, but this can never serve as an excuse to discredit and/or prevent an investigation.<sup>253</sup>

170. That said, the Court considers that the State's due diligence does not only encompass the enhanced measures of protection before and during the investigations and the criminal proceedings, but should also cover the measures to be adopted subsequently in order to achieve the recovery, rehabilitation and social reintegration of the child or adolescent,<sup>254</sup> taking into account their right to survival and integral development.<sup>255</sup> Those measures must also be extended to the family of the victims, as appropriate. In other words, medical and psychosocial care must be provided immediately as soon as the facts are known and must be continued, if required, after the investigation process.

171. Bearing in mind the standards described above, and based on the pertinent articles of the American Convention and the Convention of Belém do Pará and in light of the international *corpus juris* for the protection of children and adolescents, the Court will now examine whether, during the investigations and criminal proceedings for the rape of V.R.P., the State violated its obligation of enhanced due diligence, special protection and non-revictimization, as well as the rights to personal integrity, and private and family life of V.R.P. To this end, it will examine whether the investigation procedures and the judicial proceedings were adapted to the relevant standards that have been described or whether, to the contrary, they subjected the victim to revictimization. In this regard, the Court considers it important to stress that, in cases of sexual violence, it has emphasized that the investigation must try insofar as possible to avoid revictimization or that the victim has to relive the profoundly traumatic experience.<sup>256</sup> This acquires special relevance in the case of female children owing to the State's enhanced obligation of due diligence and their greater situation of vulnerability having been victims of sexual violence. In this regard, the Court will focus on the following procedures and proceedings: (i) the forensic medical examination to which V.R.P. was subjected; (ii) V.R.P.'s statement; (iii) the participation of V.R.P. in the visual inspection and reconstruction of the events, and (iv) the lack of support and comprehensive care for V.R.P.

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*Guidelines*, 2017, p. 21.

<sup>251</sup> Cf. Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>252</sup> Cf. Economic and Social Council Resolution 2005/20, *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, UN Doc. E/2005/INF/2/Add.1, July 22, 2005, guidelines 19 and 30.d); World Health Organization, *Responding to children and adolescents who have been sexually abused. WHO Clinical Guidelines*, 2017, p. 21, and Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017. See also, UNICEF and Asociación por los Derechos Civiles (ADC), *Guía de buenas prácticas para el abordaje de niños/as, adolescentes víctimas o testigos de abuso sexual y otros delitos*, September 2013, pp. 33 and 34.

<sup>253</sup> Cf. *Case of Espinoza Gonzáles v. Peru*, *supra*, para. 256. See also, World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 18, 43 and 58.

<sup>254</sup> Cf. Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, *supra*, paras. 52 and 53.

<sup>255</sup> Cf. Committee on the Rights of the Child, *General Comment No. 13: The right of the child to freedom from all violence*, *supra*, paras. 15, 59 and 62.

<sup>256</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 196, and *Case of Espinoza Gonzáles v. Peru*, *supra*, para. 256.

*A.2.b The forensic medical examination to which V.R.P. was subjected*

172. The Court underscores that this case refers to the rape of an eight-year-old child by her father, who was in a situation of power over her, not only because he constituted a figure of authority to her but, above all, because of the trust that a child places in the person who is supposed to protect her. The Court notes that the criminal complaint filed by V.P.C. was the result of the child's physical symptoms and, as she had problems to defecate and pain in the anal area, she was taken to see two doctors. They both concluded that their medical findings corresponded to the fact that V.R.P. had been a victim of sexual abuse and had suffered anal penetration (*supra* para. 71).

173. Even though V.R.P. had been subjected to two medical examinations by private doctors and that, based on their findings, it was concluded that she had been raped, the State considered that this information did not provide sufficient proof, and it ordered a further medical examination by a forensic physician.<sup>257</sup> The Court notes that attempts were made to subject V.R.P. to this examination on three occasions owing to her refusal to submit to the gynecological examination because of the degrading conditions in which it was being conducted (*supra* paras. 77 and 78). On the third occasion, the gynecological examination was conducted after having sedated the child. The Court notes that the State did not consider, as a measure of protection, according probative sufficiency to the existing medical opinions, which could have avoided exposing the child to reliving the traumatic experience; nor did it respect her right to be heard with regard to the implementation of this procedure based on her age, and level of maturity and development. The Court finds that subjecting the child to gynecological examinations repeatedly did not respond to the objective of minimizing the trauma resulting from rape, but rather increased it. In sum, the Court considers that, in the circumstances of this case, the need to conduct another gynecological examination was not justified.

174. Nevertheless, the Court also stresses that a series of omissions and shortcomings were committed in the implementation of the first forensic medical examination that were incompatible with the requirements of strict due diligence: (i) there is no record that either the child or her mother were offered information on what the examination consisted of or what would be done; (ii) no choice was offered as to the sex of the examiner;<sup>258</sup> (iii) it was not verified whether the forensic physician assigned to the case had received special training in treating underage victims, specifically young children, or whether he was a gynecologist qualified to conduct this type of examination in cases of sexual abuse and rape; (iv) despite the presence of a psychiatrist, it is not clear what her role was and, specifically, the support provided to V.R.P. in relation to this procedure;<sup>259</sup> (v) the examination was not conducted in a gynecology space, but rather, according

<sup>257</sup> V.P.C. stated before this Court that the forensic medical examination was ordered by the judge, even though she had informed the judge that an epicrisis from the hospital existed; moreover, the judge ordered a procedure with the presence of a medical team. *Cf.* Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017. In addition, expert witness Miguel Cillero Bruñol indicated that: "the same examination was repeated twice more, which is also against all the standards considering that, from the outset, there was a private report. All the international standards, including those of the WHO, recommend that a single examination is sufficient; one that is conducted based on the appropriate protocols and it is the State's responsibility that this examination, even if it is conducted in a private clinic, be valid for the proceedings and that the victim does not have to submit to any other kind of procedure." Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>258</sup> It should be pointed out that, for the second medical examination that it was not possible to complete, a female assistant forensic physician was designated, as requested by V.P.C.; she was a forensic physician of the Police Station for Women and Children with experience in victims of sexual abuse. *Cf.* Request of the Jinotega Departmental Prosecutor of November 23, 2001 (evidence file, volume XVII, annex 12 to the answering brief, folio 8215). Also, the forensic medical examination in Managua was conducted under sedation by a female forensic physician.

<sup>259</sup> *Cf.* Judicial order of November 22, 2001 (evidence file, volume XVI, annex E.11 to the brief with pleadings, motions and evidence, folios 7308 and 7309). V.P.C. stated before this Court that the psychiatrist was present during the first

to V.P.C., in a place like “the morgue of a hospital, because there were aluminum slabs [...] and it was place where a lot of people were going in and out,”<sup>260</sup> and (vi) an excessive number of health care personnel were present.

175. In this regard, the Court considers that it was extremely important not only that the physician was qualified to treat a nine-year-old child rape victim, but also that the interview rooms and, in particular, the place for medical examinations represented a safe and appropriate environment that was not intimidating, hostile or insensitive for the child. Hence the importance of surroundings that provide a child with the necessary confidence and protect her intimacy and privacy.

176. In this regard, the Court considers that the presence of numerous persons during the gynecological examination of a child of nine years of age, a victim of rape, is contrary to the relevant standards, because the child is naked, exposing her genitals to a group of people who should not have been present in a procedure of this nature, and this entailed arbitrary interference in her intimacy and privacy. The Court finds that this type of examination should be performed once only, by a physician with training in this regard, qualified to examine child victims of sexual abuse and rape, and in the presence of only those persons who are strictly necessary (*supra* para. 169). The Court understands that this procedure, which was particularly serious and contrary to due diligence, exposed V.R.P. to a situation of re-experiencing the existing trauma and denotes the lack of professionalism of the forensic physician responsible for the procedure. The Court considers it irrelevant that the mother had requested the presence of all those who took part in this examination<sup>261</sup> and this does not undermine the State’s responsibility, because it is the State that should adopt the necessary measures of protection to ensure that its institutions act respecting the principle of the best interests of the child and avoid procedures that may involve elements that make the victim relive the trauma and constitute an act of institutional violence.

177. Added to this, the statements of V.R.P. and V.P.C. before this Court, and also the complaints against the forensic physician filed in the domestic sphere, reveal that the actions of the health official during the procedure were revictimizing, contrary to the best interests of V.R.P. and her right to be heard, and contravened the duty of enhanced protection owed to child victims of sexual violence. Indeed, the Court notes that V.P.C. filed a complaint with the Director of the Local Comprehensive Health Care System (SILAIS) of the Department of Jinotega, in which she advise that the medical professional who intervened had “behaved in an unethical, grotesque and vulgar manner when examining her daughter and that he did not even have the right to give her a sedative.”<sup>262</sup> She also filed a similar complaint against this physician before the Disciplinary Committee of the Supreme Court of Justice (*supra* para. 127). In addition, she not only asked that the assistant forensic physician conduct the procedure owing to the actions of the initial physician, but also stressed that “[the physician] was annoyed, which made [her] daughter nervous and she

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medical procedure at her request. However, her statements reveal that, following the alleged mistreatment by the forensic physician, the psychiatrist merely informed the judge that “this should not have been done [to the child].” *Cf.* Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>260</sup> Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>261</sup> It should be clarified that, according to the evidence in the file, it was the judge in charge of the case who asked that a medical team be set up. V.P.C. asked that the same doctors should be present during the second attempt to perform the medical examination so that other personnel would not be appointed, to thus protect her daughter’s rights. *Cf.* Brief of V.P.C. filed with the District Criminal Court on November 23, 2001 (evidence file, volume XVII, annex 12 to the answering brief, folio 8213). Also, on October 21, 2002, V.P.C. filed a complaint before the Prosecutor General adducing that, during the first forensic medical examination, the judge allowed more than 10 people to be present and failed to take any measure to avoid revictimizing her daughter. *Cf.* Complaint filed by V.P.C. before the Prosecutor General on October 21, 2002 (evidence file, volume XV, annex 22 to the submission of the case, folio 6877).

<sup>262</sup> Complaint filed by V.P.C. before the Director of the Local Comprehensive Health Care System on November 22, 2001 (evidence file, volume XV, annex 9 to the submission of the case, folio 6769).

therefore refused to let him, specifically, examine her.”<sup>263</sup> V.P.C. stated that the physician did not allow her to put a blanket under her daughter to alleviate her injuries, and when V.R.P. refused to submit to the examination, screaming and crying, the physician indicated that “why won’t she let herself be examined, normally girls from the countryside allow it, they come here, they open their legs and I examine them and they don’t complain [...]. What will you do when I examine your anus?”<sup>264</sup> These statements were corroborated by V.R.P.’s statement before this Court, and she also stressed that, owing to the mistreatment and brusqueness of the doctor when he examined her, she felt “as if she had been raped, but they told [her] that the examination had to be done so that [her] father would not get out [of prison].”<sup>265</sup>

178. The Court considers that, although a dispute exists with regard to the precise wording and content of the terms used by the forensic physician against V.R.P. (*supra* para. 146), it has been proved that the child flatly refused to undergo the examination and the medical professional tried to continue against the V.R.P.’s will, without taking her opinion or consent into account.<sup>266</sup> V.R.P.’s statement in the private hearing before this Court even reveals that the judge asked her to cooperate by indicating that, if the procedure was not conducted and she did not cooperate, her father would go free. On at least two occasions (*supra* paras. 126 and 127), V.R.P.’s mother filed complaints in the domestic sphere in this regard and, according to the information provided by the State, the complaint filed with the Supreme Court of Justice was not processed due to lack of evidence, owing to which the case was closed (*supra* para. 127). The fact that these complaints were filed, following the revictimizing actions of the forensic physician, reveals that V.P.C. was not satisfied with his professional competence, and the State not only failed to respond to her complaints, but blamed the child for failing to cooperate in the implementation of the procedure.

179. Consequently, the Court understands that the forensic physician did not conduct the medical evaluation appropriately, considering that it involved a child victim of rape, causing her to relive the traumatic situation instead of protecting her and providing her with mechanisms of containment that made her feel safe, understood and listened to during the procedure in order to avoid her revictimization.<sup>267</sup> Moreover, the Court finds that the use of force to continue the examination in view of the victim’s refusal, clearly constituted an act of institutional violence of a sexual nature.

180. Lastly, the Court has verified that, the same day that a female forensic physician conducted the examination under sedation in Managua after V.R.P. have given her consent,<sup>268</sup> her father, the presumed perpetrator, was summoned to submit to a medical examination by the same entity (*supra* para. 91). In this regard, V.P.C. stated during the public hearing that they went “to the Institute of Forensic Medicine and, unexpectedly, at the moment [they] arrived, the accused was also in the room, as the judge had ordered him to come to be examined [...]” V.P.C. indicated that they tried to avoid her daughter seeing her aggressor, but she might have seen him.

<sup>263</sup> Brief of V.P.C. filed with the District Criminal Court on November 23, 2001 (evidence file, volume XVII, annex 12 to the answering brief, folio 8213).

<sup>264</sup> Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017. In the domestic sphere, V.R.P.’s grandmother stated that her granddaughter did not feel comfortable with the medical examination because she felt that “the doctor’s fingers in her private parts were hurting her and she couldn’t bear the burning sensation in front and behind.” Statement made on November 23, 2001 (evidence file, volume XVI, annex E.12 to the brief with pleadings, motions and evidence, folio 7313).

<sup>265</sup> Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017.

<sup>266</sup> *Cf.* Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017.

<sup>267</sup> Expert witness Enrique Oscar Stola considered that the first medical examination constituted a serious act of institutional violence to the detriment of V.R.P. because the forensic physician “made no effort to establish the minimum empathy, care; also the number of people present, judicial officials who were not going to make absolutely any contribution to the evaluation and, nevertheless, were present. This eliminated privacy and caused the victim to relive the trauma.” Expert opinion provided by Enrique Oscar Stola before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>268</sup> *Cf.* Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017.

181. In this regard, the Court emphasizes that the two expert witnesses who testified during the public hearing in this case agreed that the domestic authorities – in this specific case, the judge in charge of the investigation – should have adopted the necessary measures of protection to avoid the victim having any type of contact with her aggressor, as this was revictimizing.<sup>269</sup> Specifically, expert witness Enrique Oscar Stola indicated that:

[...] never, neither boys, nor abused girls, nor women who are suffering extreme gender-based violence must meet their aggressors, never. When this happens, the only thing that the victim perceives is the immense power that the aggressor has; it is a matter of power that is in play [...]. Therefore, he should be summoned another day. The victims must go to the judicial offices knowing that they are safe, that they will never meet the aggressor. The mere fact that they know that he is on another floor of the building causes them anxiety, concern and a great deal of tension. That is revictimizing, whatever a person's age.<sup>270</sup>

182. The Court considers that whether or not the child saw her father in the offices of the Institute of Forensic Medicine is irrelevant, because the judicial authority should have taken the necessary steps – for example, summon him on another occasion – to prevent this happening. The mere possibility of a meeting as the result of the lack of strict due diligence in the actions of the judicial authorities during the investigations procedures consisted in an act of revictimization and an act of institutional violence.

#### *A.2.c V.R.P.'s statement*

183. The Court notes that V.R.P.'s statement was received on November 21, 2001, in the presence of her mother and before the District Criminal Judge, in her offices and with the participation of a health professional with specially training in providing support in this type of case.<sup>271</sup> The Court finds that, depending on the case and the need to receive a child's statement if she agrees to it, it should be done in conditions that provide a safe environment. The Court considers that the purpose of V.R.P.'s statement was to obtain precise, reliable and complete information on the facts denounced. The judge in the case asked whether V.R.P. felt she had been offended, why and by whom. In response, the child's statement reveals that her account was free and given in her own words. However, the Court note the V.R.P. was summoned to the judge's offices to testify as if she had been an adult; the interview was not conducted in an environment especially adapted to this purpose and by a professional specifically trained to question, interact and conduct an exchange with a child. Thus, such interviews should be conducted by psychologists or professionals in similar disciplines who have received specific training to receive such statements. The Court considers that none of these safeguards were provided to V.R.P. during the statement she made in the domestic criminal proceedings.

#### *A.2.d The participation of V.R.P. in the visual inspection and reconstruction of the events*

184. On November 29, 2001, the visual inspection was carried out in the place where V.R.P. was raped and the events were reconstructed with the child's direct participation (*supra* para. 88).

<sup>269</sup> Cf. Expert opinion provided by Enrique Oscar Stola before the Inter-American Court during the public hearing held on October 16 and 17, 2017, and Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>270</sup> Expert opinion provided by Enrique Oscar Stola before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>271</sup> Cf. Statement by V.R.P. of November 2, 2001 (evidence file, volume XVII, annex 9 to the answering brief, folios 8201 and 8202).

185. The Court has indicated that female children who are victims of a crime, especially of rape, should only take part in the procedures that are strictly necessary (*supra* para. 163). The Court finds that, in cases such as this, every effort should be made to avoid revictimization or a traumatic impact. Consequently, it is especially serious that, in this case, the judicial authorities permitted V.R.P., who was nine years of age – in other words a young child – to take part in a visual inspection and reconstruction of the events. Due to her participation, V.R.P. had to relive experiences that were extremely painful and traumatic; had to again recount the facts, even though she had already done this before the judge in her statement, and even had to again experience the act of placing herself in the position in which she recalled finding herself when she awoke after the abuse to which she had been subjected, a moment that was photographed.

186. V.R.P. informed this Court that her participation in the said procedure meant reliving an extremely traumatic situation, which made her feel “as if [she] was there again, the same feelings, the same pain, the same things. She also indicated that, when they went to Managua, she hid and covered herself when they passed by the place where she was sexually abused, because she never wanted to see the place again. V.R.P. also recounted how, despite this, against her will and without her consent, the judge asked her to take part in the procedure in order to keep her father in prison, and she even saw him when they arrived at the place for the reconstruction of the facts. Indeed, she told this Court that “the judge said that if the procedure were not carried out, [her] father would be set free. [... so, she] simply did what they asked in order to be able to leave that place and, after all that, [her] father was released.” She added that she not only had to return to the same location and place herself in the same position in which she was abused, but they made [her] wear the clothes that [she] was wearing that day.<sup>272</sup>

187. Both the expert witnesses who provided their opinions to this Court indicated that the participation of V.R.P. in the procedure of the visual inspection and reconstruction of the events constituted a serious act of institutional violence. Expert witness Enrique Oscar Stola asserted that it was “the first time in [his] 40-year professional career [that he had seen] that a raped child, [...] was taken to the place to reconstruct the events; that should not have been done [...]. Everything that was done [was] revictimizing. This included, making her take up the position she was in when she was sexually assaulted or the fact that there are photographs [...] of that traumatic situation. Having to relive that traumatic situation was of no help to her, the only thing it did was deepen the trauma.” He added that “a child or a young women who has been raped, abused, or a woman who has been violated, never has to go and recreate the experience.”<sup>273</sup>

188. Meanwhile, expert witness Miguel Cillero Bruñol indicated that “the reconstruction of the events, as an evidentiary procedure that is generally not recommended, has been almost eliminated from comparative law in those cases in which we are in the presence of female child victims of sexual offenses and, also, the conditions in which that reconstruction of the events was carried out, in this case in particular, denote an extreme lack of care and professionalism, in the sense that it was carried out exactly as if the victim had been an adult.”<sup>274</sup>

189. Additionally, V.R.P. stated before this Court that she had informed the psychiatrist who accompanied her of her refusal to take part in the reconstruction of the events, and the psychiatrist informed the judge, who decided to continue with the procedure, and even indicated that, if it was not carried out, the child’s father would be released from prison.<sup>275</sup> The Court considers that, in

<sup>272</sup> Cf. Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017.

<sup>273</sup> Expert opinion provided by Enrique Oscar Stola before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>274</sup> Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>275</sup> Cf. Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017.

addition to being revictimizing, the procedure did not find it relevant that the child, with her maturity and based on her level of development and understanding of the facts, could consent or have an opinion regarding her wish to take part in it. The judge even, once again, established the need for the child to participate because, to the contrary, her father would be released (*supra* para. 178), and this obliged V.R.P. to take part against her will. Consequently, the Court considers that the participation of V.R.P. was conceived only in terms of evidence and not taking into consideration her situation as a titleholder of rights, whose opinions should have been taken into account.

190. Furthermore, there was no authority present in the procedure who could have protected the child's rights, because neither the prosecutor in the case nor any other authority specialized in her protection was present. Even though the psychiatrist was present during the procedure, accompanying the child, this professional was not in a position of authority to prevent the participation of V.R.P., or to avoid the revictimizing effect or the prejudicial experiences relived by the child. In addition, the state authorities should have avoided V.R.P.'s father taking part in the reconstruction of the facts on the same day as his daughter, because his presence near the place made it possible that they would meet and, thus, placed the victim in an increased situation of vulnerability.

191. The Court understands that, even if, pursuant to the laws in force at the time, the procedure of visual inspection and reconstruction of the events was necessary, this could have been carried out based on the facts recounted by V.R.P. and without the need for her direct participation. The Court considers that, if the judge in charge of the case had been specifically trained in this regard, based on the characteristics of the case and V.R.P.'s situation, she would not have required V.R.P. to participate in a procedure of this nature in order to avoid violating the provisions of the American Convention and the Convention of Belém do Pará concerning measures of protection in judicial proceedings.

192. Moreover, the Court considers that the fact that it was V.R.P.'s mother who requested the reconstruction of the events, does not exempt the State of Nicaragua from responsibility, because as mentioned above, it is the state authorities who must decide which procedures should be carried out, and to conduct the investigations and gather the evidence while providing the necessary measures of protection to ensure the well-being and care of the child. The fact that the State has tried to transfer the responsibility for the reconstruction of events with the participation of V.R.P. to her mother constituted a way of blaming her and victimizing her and this, in turn, entailed failure to comply with its duty of enhanced diligence.

193. Based on the above, the Court concludes that the participation of V.R.P. in the procedure of visual inspection and reconstruction of the events constituted a serious violation of the duty of enhanced diligence and special protection and constituted an act of secondary victimization and institutional violence.

*A.2.e The lack of support and comprehensive care for the child V.R.P.*

194. The Court has emphasized that comprehensive care for a child victim relates not only to the actions of the judicial authorities during the criminal proceedings in order to protect her rights and ensure that her participation does not revictimize her, but also to the fact that this care must be comprehensive and multidisciplinary before, during and after the investigation and the criminal proceedings. The Court has also considered that a coordinated and integrated approach is required that provides different services to care for and support the child in order to safeguard her actual well-being and future development (*supra* para. 164).

195. In this regard, expert witness Miguel Cillero Bruñol stated before this Court that:



One of the most evident aims of the legal reforms in Latin America linked to the creation of codes and statutes for the protection of the rights of children and adolescents [...] involves [...] fundamental issues: the coordination of all assistance actions – and this is included in all the laws – and means the coordination of the special protection systems for child victims or those whose rights have been violated with the overall policy system; a complete system of justice that is appropriate to the needs of children, particularly [...] as regards evidentiary aspects and, fundamentally, aspects related to medical examinations or reparations; a system of specific therapies and specific therapeutic assistance for such victims to treat their traumas, and finally, a series of specific conditions under which the family of that child will be provided with the necessary support to maintain the family unit (when this is appropriate and not contrary to the child's best interests) or else alternative solutions to reconstruct those family ties.<sup>276</sup>

196. The Court has been unable to verify from the file in this case that, following the filing of the complaint, the State, through any of its institutions, required the immediate participation of a qualified professional in order to inform the victim or her family about how the procedures and the process would evolve, about the availability of health care and individual and family group psychosocial therapy, and about the specialized institutions that existed to provide support.

197. The Court also notes that the only action taken by the State as a measure of support consisted in the appointment of a psychiatrist on November 23, 2001, to “monitor the V.R.P., in order to, opportunistically, prepare a report on her emotional state” (*supra* para. 80). The psychiatrist took part in the following procedures and issued the following reports: (a) on November 26, 2001, she made an out-patient psychiatric evaluation in the Victoria Motta Hospital in Jinotega, after which she concluded that the V.R.P.'s version of the facts was reliable, clear and truthful; that V.R.P. suffered from post-traumatic stress, and that she recommended that V.R.P.'s genital injuries be examined under anesthesia in the Institute of Forensic Medicine in Managua; (b) she was present during the visual inspection and reconstruction of the events and during the attempt to conduct the first forensic medical examination; (c) on February 21, 2002, she issued a monitoring report on V.R.P. in which she recommended that the child “will almost certainly require psychotherapeutic help, until she attains her biological and emotional maturity, because the harm caused to her physical and mental health has led to long-lasting injuries and aftereffects [...]. If she does not receive therapy, she may develop suicidal ideas or sink into an endogenous depression. Therefore, as a precaution in order not to cause her further harm, the revictimization of the patient must be avoided, and she must not be allowed to continue recalling the events that occurred or the harm done to her or questioning herself in this regard,” and (d) on April 22, 2001, she issued an epicrisis in which she concluded that V.R.P. suffered from psychological post-traumatic stress and recommended psychological treatment to “prevent the aftereffects of sexual abuse that could interfere in her future conduct as regards her communication and relationship with her surroundings.”

198. The Court has verified that the initial psychological evaluation of V.R.P. on November 27, 2001, made by a psychologist of the Institute of Forensic Medicine at the request of the criminal judge in the case (*supra* para. 84), indicated that the child would require long-term therapy. Also, the subsequent evaluations made by the psychiatrist repeated this recommendation owing to the psychological effects and the post-traumatic stress diagnosed. There is no record that the State provided this psychological treatment through its public health institutions despite these clear indications that it was required. Furthermore, it is not clear whether the psychiatrist provided V.R.P. with therapy continually so that the child could begin a process of rehabilitation and reintegration because, following her appointment on November 23, 2001, and until April 22, 2002, when psychological therapy commenced, the evidence provided to the Court shows that she only treated V.R.P. on a very few occasions.

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<sup>276</sup> Expert opinion provided by Miguel Cillero Bruñol before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

199. Although V.R.P., V.P.C. and N.R.P. left Nicaragua on December 6, 2002, the Court notes that almost eight months passed without the child or her family receiving psychological treatment. The Court underscores that V.R.P., who is now 25 years of age, continues to suffer from the psychological effects of the rape and the lack of opportune and continuing medical care that the State should have provided to assist her in recovering from the post-traumatic stress that was diagnosed. In addition, V.R.P.'s family group did not receive continuing psychotherapeutic treatment either; they also requires measures of comprehensive care so that they could provide a family environment that favored the child's recovery and reintegration.

200. In addition, according to the State, the National Council for the Comprehensive Care and Protection of Children and Adolescents requested the Ministry of the Family to prepare a biopsychosocial report on V.R.P. to help her recover from the effects of the rape.<sup>277</sup> The Ministry then asked the civil judge to respond to the request for annulment of the acquittal filed by V.P.C., "so that the delay in justice does not violated her human rights."<sup>278</sup> However, the State did not advise whether the said report was prepared, or whether any actions were taken as a result of this.

201. The Court notes that the Ombudsman's Office monitored the criminal proceedings for the child's rape and issued a report underlining various irregularities in the proceedings (*supra* para. 100). However, according to the information provided to the Court, this institution did not have competence to represent V.R.P.'s interests during the criminal proceedings in the case, which could have avoided the revictimizing actions to which V.R.P. was subjected during the course of these proceedings.

202. In conclusion, the Court considers that the State did not provide comprehensive care and support to the V.R.P. during the proceedings or subsequently in order to contribute to her recovery, reintegration and rehabilitation.

#### *A.2.f Conclusion*

203. Based on the foregoing considerations, the Court concludes that the State is responsible for the violation of the rights to personal integrity, judicial guarantees, private and family life, and judicial protection, by both acts and omissions, pursuant to Articles 5(1), 8(1), 11(2) and 25(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 19 of this instrument, as well as for the failure to comply with the obligations derived from Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C.

### **B. Application of the requirements of due process to jury trials**

#### *B.1 Arguments of the parties and of the Commission on impartiality*

204. The **Commission** emphasized the existence of reports of irregularities in the jury selection and the acquittal issued in April 2002. The Commission noted the petitioners' arguments regarding: (i) the unjustified suspension of the trial on two occasions; (ii) the violation of the right of defense due to the rejection of the prosecution's request for the participation of two additional lawyers during the trial, and (iii) the presumed delivery of an envelope to the jury and to the judge by one of the defense lawyers at the end of the hearing. The Commission added that the State had failed to duly clarify the serious doubts that had arisen concerning possible corruption and pressure

<sup>277</sup> Cf. Communication addressed to the Ministry of the Family on April 30, 2002 (evidence file, volume XVII, annex 18 to the answering brief of the State, folio 8235).

<sup>278</sup> Communication addressed to the District Civil Judge on April 30, 2002 (evidence file, volume XVII, annex 18 to the answering brief of the State, folio 8236).

exerted by the perpetrator from his alleged position of power because he had been associated with the local judiciary at one time.

205. The **representatives** argued that the State had failed to guarantee a trial that was transparent and free of influences. To the contrary, the trial reflected political influence, prejudices based on the religious beliefs of the victim's mother, and the violation of the victim's right of defense because she was not given the opportunity to contradict the content of the pink sheets of paper handed to the jury to be read in private. Similarly, they pointed to the denigrating attitude of the judge towards the victim's mother due to the way in which she treated V.P.C. by allowing the defense counsel to use words that discredited her, and by not allowing her to be present when the jury was selected, which affected the impartiality and transparency of the trial. In addition, they indicated that the judge did not allow the prosecution to have the same number of lawyers as she allowed the defense.

206. The **State** indicated that it was not responsible for the verdict issued by the citizens who composed the Jury Court who, after discussing the evidence provided during the plenary stage of the proceedings, did not find anything that proved H.R.A.'s responsibility, based on their sound judgment and firm conviction. It also stressed that no complaint had been filed about the jury selection, and V.P.C.'s lawyer had not filed any challenge or veto.

207. Regarding the rescheduling of the hearing, the State argued that the suspension of the jury on two occasions was due, in the first case, to prudence and, in the second, because it had been agreed by the parties, including V.P.C.'s lawyer. The second rescheduling occurred because the defense counsel had presented a medical certificate ordering him to rest as he was not in a condition to attend the trial; therefore, the judge had decided to suspend the proceedings in order not to affect the right of defense and because it was justified.

208. Likewise, regarding the incident of the possible corruption of the jury, the State indicated that an evidentiary stage had been opened with regard to the incident and the parties were able to participate extensively; the testimony of all those involved was received; the video was analyzed and the case file was inspected in the presence of the parties who were able to present their arguments, and a ruling was made in this regard. In the record of the inspection of the case file, it was indicated that the file did not contain the pink handwritten document handed to the jury by the accused's defense lawyer, and that the parties involved in the proceedings stated that they had not observed any anomaly or protest during the oral and public stages of the trial; therefore it was decided not to annul the verdict.

209. In addition, regarding the supposed political influence referred to by the representatives, the State indicated that this had not been proved, either in the domestic sphere or before the Commission, so that it constituted a subjective and unfounded assertion. It also emphasized that the State of Nicaragua is a laic State.

*B.2 Arguments of the parties and of the Commission on the obligation to justify decisions*

210. Regarding the April 2002 decision on acquittal, the **Commission** emphasized that no grounds were provided for this and no other element in the case file indicates the reasons whereby the jury reached that decision. The Commission recalled that the obligation to provide the grounds for decisions results from the guarantees of due process, not only as regards the very legitimacy of the decision and the defense of the accused, but also as regards the expectation of access to justice of victims of human rights violations. In addition, it indicated that the obligation to provide the reasons for decisions is a guarantee related to the correct administration of justice, and demonstrates to the parties that they have been heard and, in those cases in which the decision

can be appealed, allows them to contest the decision and obtain another examination of the matter before a higher court.

211. The Commission specified that "in relation to victims of violence and rape, compliance with this obligation requires that victims, who have denounced undergoing an extremely traumatic experience, may obtain a serious and detailed explanation of how their testimony was taken into consideration, and not a brief and/or prejudiced determination that their truth was not considered credible," and this relates to the way in which the testimony of a victim of sexual violence and rape should be assessed, since it is fundamental evidence in the proceedings. The Commission added that, since the case relates to a young child, her testimony should have been assessed from a gender perspective and based on the general principle of her best interests. It also asserted that, even in the case of proceedings conducted by jury courts, States must ensure compliance with the obligation that every judicial decision must reveal, by the reasoning, how the opinion of the child involved in the proceedings has been considered. The State indicated that the decision was adopted based on the domestic laws in force; however, the Commission understood that domestic law cannot be asserted to exempt the State from complying with its international obligations.

212. The Commission noted that, following the acquittal, V.P.C.'s representative filed different remedies contesting the flaws and irregularities in the proceedings. Based on the available information, the Commission observed that these remedies were not effective because they did not offer V.R.P. and her mother the possibility of having their arguments analyzed appropriately or ensure that the necessary corrective measures would be taken in the investigation.

213. The **representatives** referred to this Court's case law which has indicated that the obligation to justify decisions is one of the "due guarantees" included in Article 8(1) to safeguard the right to due process. The representatives added that the victim was unable to know the grounds on which the verdict of innocence was based. They argued that, in this case, 15 years after the verdict that acquitted the presumed victim's aggressor, it has not been possible to obtain an explanation of the facts, reasons, norms and evidence on which the jury based itself to take the decision – within 15 minutes – that did not accord credibility to the "clear and coherent" account by V.R.P. of her father's guilt. They indicated that, in addition, it had not been possible to know whether the arguments submitted by the prosecutor had been taken into consideration, whether the jury had analyzed the evidence or whether, to the contrary, it was the contents of the sheet of pink paper they received from one of the defense counsel with the instructions to read it in private that influenced their decision, or whether it was truly and effectively the prevailing political influence on the administration of justice in the country that was revealed in this case. They concluded that a simple reading of the verdict, contained on half a page of paper, led to the conclusion that it was a decision that lacked any grounds, that was "plainly arbitrary," and that failed to comply with the standards established by the Court.

214. Added to the above, the representatives considered that not only was it impossible to know the reasons for the "not guilty" verdict but, in addition, the victims were not provided with a remedy that would have allowed them to seek an effective reconsideration of the case. Moreover, the State was unable to guarantee the punishment of the perpetrator of the trauma of sexual abuse, or the investigation and punishment of those who acted with negligence or irregularity during the proceedings, and those who contributed to the child's revictimization.

215. The **State** indicated that, in Nicaragua, the jury system is not an exceptional mechanism under its domestic law; rather, it exists in many countries of the world, and the jury is a judge of the facts and never of the law. It added that, at the time of the facts, Nicaragua's domestic law – article 22 of the Code of Criminal Procedure – established that "ordinary offenses that warrant more severe punishment than merely corrective measures, shall be submitted to the consideration of the jury court, which shall issue its verdict based on firm conviction, ruling on the responsibility

of the accused, declaring him innocent or guilty. Based on this verdict, the district judge shall issue a judgment acquitting him or imposing the punishment.” It also indicated that the jury court was “exempted from providing the grounds for its decision, which was taken based on sound logic and firm conviction.” The law did not impose on the juror any type of rule that should be applied in the assessment of the different probative elements, and the conviction reached by the juror was not subject to any kind of pre-established formality. It added that, owing to the legal framework for the operation of the jury court, the members should not be asked for the reasons why they reached the conviction to condemn or acquit a person subject to a criminal proceedings. It underscored that the Commission’s observation that the April 2002 decision should have been reasoned led to confusion because what was issued at that time was a jury court verdict, declaring the innocence of H.R.A., and not an interlocutory judgment. Verdicts did not require reasoning. Therefore, the State indicated that the jury did not have either the obligation or the duty to provide the reasons or the grounds for its decision, because the truth of the proceedings was determined based on the moral conviction, conscience and free will of the peoples’ jury. Lastly, the State clarified that, according to article 309 of the Code of Criminal Procedure at the time, the verdict was written according to a precise pre-established formula.

### B.3 Considerations of the Court

216. The dispute that the Court will address in this section relates to the arguments concerning impartiality and the duty to provide the reasoning for rulings, mainly as regards the actions of the Jury Court, which was the body responsible for hearing the plenary stage and imparting justice in this case. This leads the Court to refer to the issue of the applicability of the guarantees of due process to the model of trial by jury in force in Nicaragua at the time of the facts (*infra* paras. 227 to 235), and then to analyze this specific case.

217. The Court has defined due process of law as the series of requirements that should be observed in procedural instances to ensure that the individual may defend his rights appropriately when any type of state act may have harmed them.<sup>279</sup> Thus, Article 8 of the Convention includes a system of guarantees that condition the exercise of the State’s *ius puniendi* and seek to ensure that the accused is not subjected to arbitrary decisions, because “due guarantees” must be observed that ensure the right to due process, whatever the proceedings concerned.<sup>280</sup>

218. In this case, the person deemed to be the presumed victim of the violation of these guarantees is not the person accused of the offense, the original beneficiary of the whole enlightened apparatus that sought to put a limit to the State’s punitive powers, but rather the victim of the offense and her mother. The Court recalls that the “due guarantees” of Article 8(1) of the Convention protect the right to due process of the accused and, in cases such as this one, they also safeguard the right of access to justice of the victim of an offense or their next of kin, and the right to know the truth of the family.<sup>281</sup>

219. In principle, there is nothing to exclude the judicial guarantees established in the American Convention from being applicable to the system of trial by jury, because those who drafted the

<sup>279</sup> Cf. *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 69, and *Case of Pollo Rivera et al. v. Peru. Merits, reparations and costs*. Judgment of October 21, 2016. Series C No. 319, para. 209.

<sup>280</sup> Cf. *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights*, Advisory Opinion OC-11/90, August 10, 1990. Series A No. 11, para. 28, and *Case of Ruano Torres et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 152.

<sup>281</sup> Cf. *Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 17, 2015. Series C No. 306, paras. 156 and 157, and *Case of Acosta et al. v. Nicaragua, supra*, para. 133.

Convention were not thinking of a specific criminal procedural system. Indeed, the Court has already affirmed that:

The Convention does not endorse any specific criminal procedural system. It gives the States the liberty to determine which one they prefer, as long as they respect the guarantees established in the Convention itself, and in domestic law, other applicable international treaties, customary law, and the peremptory provisions of international law.<sup>282</sup>

220. The organs of the European regional system and the universal system have ruled similarly. For example, in the *Case of Taxquet v. Belgium*, the European Court of Human Rights noted that:

[...] several Council of Europe member States have a lay jury system, guided by the legitimate desire to involve citizens in the administration of justice, particularly in relation to the most serious offences. [...] This is just one example among others of the variety of legal systems existing in Europe [...], and it is not the Court's task to standardise them. A State's choice of a particular criminal justice system is in principle outside the scope of the supervision carried out by the Court at European level, provided that the system chosen does not contravene the principles set forth in the Convention.<sup>283</sup>

The Contracting States enjoy considerable freedom in the choice of the means calculated to ensure that their judicial systems are in compliance with the requirements of Article 6. The Court's task is to consider whether the method adopted to that end has led in a given case to results which are compatible with the Convention, while also taking into account the specific circumstances, the nature and the complexity of the case. In short, it must ascertain whether the proceedings as a whole were fair.<sup>284</sup>

221. Meanwhile, the Human Rights Committee has indicated that:

[...] the Covenant does not confer the right to trial by jury in either civil or criminal proceedings, rather the touchstone is that all judicial proceedings, with or without a jury, comport with the guarantees of fair trial.<sup>285</sup>

222. The Court notes that various States Parties to the Convention have adopted the institution of the jury as a form of court in their criminal procedural systems; a model that, today, continues to extend throughout the region. The origins and reasons for this can be traced back to the historical, social and cultural development of the legal systems of the countries of the region, as well as to the value assigned to lay participation in the administration of justice as a judicial policy option. Trial by jury has also been conceived as a way of inspiring society with confidence in the judicial system, as a way to democratize and bring the imparting of justice closer to the people, according it a fundamental role in offenses that relate to public order

223. Of the 35 member countries of the Organization of American States (hereinafter "the OAS"), 21 States<sup>286</sup> have established trial by jury, and the classic model<sup>287</sup> is the one that is most used in

<sup>282</sup> *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs*. Judgment of June 20, 2005. Series C No. 126, para. 66.

<sup>283</sup> EHCR, *Case of Taxquet v. Belgium* [GS], No. 926/05. Judgment of November 16, 2010, para. 83. See also, EHCR, *Case of Achour v. France* [GS], No. 67335/01. Judgment of March 29, 2006, para. 51.

<sup>284</sup> EHCR, *Case of Taxquet v. Belgium* [GS], *supra*, para. 84.

<sup>285</sup> Human Rights Committee, *Saso John Wilson v. Australia* (Communication No. 1239/2004). Decision on admissibility adopted on April 1, 2004, UN Doc. CCPR/C/80/D/1239/2004, April 29, 2004, para. 4.4. See also, Human Rights Committee, *Kavanagh v. Ireland* (Communication No. 819/1998), UN Doc. CCPR/C/71/D/819/1998, decision adopted on April 4, 2001, para. 1.1.

<sup>286</sup> Antigua and Barbuda, Argentina (the system applies in three of the country's 23 provinces: namely, Buenos Aires, Córdoba and Neuquén, while in another two provinces, Río Negro and Chaco, it is still at the implementation stage, and there are plans to extend it to others), Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Dominica, El Salvador, Granada, Guyana, Haiti, Jamaica, Nicaragua, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and the United States of America

<sup>287</sup> This is characterized by the lay jury and the professional judge having different functions. The former must deliberate on the case and issue a verdict of guilt or innocence, and the latter determines the sentence applicable if the jury finds the accused guilty.

the region. The Nicaraguan Constitution establishes the need to ensure the peoples' participation in the judicial system, delegating to the legislator the way in which this mandate is put in practice. Following the adoption of the 1879 Code of Criminal Procedure, the peoples' participation has been channeled by the system of trial by jury in criminal proceedings.

224. The criminal trial model adopted by a State is not innocuous, because it will have a direct impact on the organic design and the architecture of the system of judicial guarantees. For example, the system for the assessment of the evidence will evidently shape the framework of evidentiary substantiation and, ultimately, the requirement of reasoning, or the way in which the reasoning of the decision is expressed. However, as already mentioned, the American Convention does not establish a specific model for criminal trials (*supra* para. 219).

225. The preceding assertion does not mean that trial by jury systems are subject to the discretion of state policy or that domestic law has preeminence over the requirements of the Convention, but rather that the design of the procedural system should respond to the guarantees required by the American Convention. It is in this regard that the Court must exercise control of conventionality to examine whether the proceedings, as designed and implemented by the State, are adapted to the standards established in Article 8.

226. In sum, in each case, the Court must assess "the circumstances of a particular case or proceeding – its significance, its legal character and its context in a particular legal system,"<sup>288</sup> in order to determine the impact and scope of the required guarantees and their conformity with the American Convention. Within this framework, the Court will describe the development of the plenary stage of the criminal proceedings in Nicaragua at the time of the facts, and will then examine the alleged lack of impartiality and the jury's failure to provide the reasoning for its verdict.

### *B.3.a Nicaraguan criminal procedure legislation on juries at the time of the facts*

227. The basis for trial by jury in Nicaragua can be found in its 1987 Constitution. Article 166 of this instrument establishes that "[t]he administration of justice shall be organized and shall operate with the participation of the people, to be determined by law. The members of the courts of justice, whether or not they are lawyers, have equal powers in the exercise of their jurisdictional functions."<sup>289</sup>

228. To comply with the constitutional mandate, the requirement of the people's participation in the judiciary was channeled procedurally through the jury mechanism. The system was implemented throughout the country under both the Code of Criminal Procedure – the criminal procedure law in force and applied during the trial in this case – and in the subsequent Criminal Procedure Code, Law No. 406 – the criminal procedure law currently in force.

229. Since the criminal proceedings in this case were conducted under the provisions of the Code of Criminal Procedure in force at the time,<sup>290</sup> the Court will describe how trials by jury functioned. In particular, in the case of trials by jury, the Code of Criminal Procedure established that those "ordinary offenses that warrant more severe punishment than simple corrective measures shall be submitted to the consideration of the jury court."<sup>291</sup> The jury, constituted on the basis of lists of

<sup>288</sup> *Exceptions to the Exhaustion of Domestic Remedies* (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights, Advisory Opinion OC-11/90, *supra*, para. 28).

<sup>289</sup> Article 166 of the Nicaraguan Constitution (evidence file, volume XVII, annex 1 to the answering brief, folio 8017).

<sup>290</sup> According to the State, this Code was in force from 1879 to the entry into force of the Criminal Procedure Code on December 23, 2002.

<sup>291</sup> Article 22 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8028).

citizens “proposed by themselves,”<sup>292</sup> issued its verdict based on its “firm conviction” with regard to the responsibility of the accused, declaring him innocent or guilty.

230. At the plenary stage, the judge called a hearing to make a random selection of a list of ten citizens who could constitute the Jury Court,<sup>293</sup> one of whom could be vetoed by each party without giving any reason.<sup>294</sup> At the same time, the judge of law who would form part of the Jury Court was appointed, and the place, date and time of the public hearing established.<sup>295</sup> Prior to the public hearing, the Jury Court was constituted, on which occasion the parties could veto any of the jurors based on evident or demonstrable cause.<sup>296</sup> The veto was decided by the judge during the same session, and no further veto or challenge was admissible.<sup>297</sup> The judge of the case chose the four citizens who, together with the judge of law, would compose the Jury Court.<sup>298</sup> The judge of the case was also able to replace the jury, *ex officio*, in certain circumstances.<sup>299</sup>

231. Once the jury had been installed, and having been sworn in,<sup>300</sup> a president and a secretary were elected from among the members.<sup>301</sup> Then, the public hearing was held,<sup>302</sup> following which the members of the jury met in a closed session in order to deliberate “the main fact and each of its circumstances.”<sup>303</sup> When the jury had retired, the president gave them the following warning, which had to be written out in bold type and attached to the wall of the room where the jury met:

The law does not require the jury to tell how they reached their conviction, or establish rules they must abide by to presume the certainty of the facts. The law only stipulates that they question themselves, and seek in the sincerity of their conscience the impression made on their minds by the evidence submitted against and in defense of the accused. The law does not say, you will consider true any fact that has been affirmed by a certain number of witnesses; the law only asks you a single question, that summarizes all your duties: “Are you firmly convinced?”<sup>304</sup>

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<sup>292</sup> Article 23 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8028).

<sup>293</sup> *Cf.* Article 274 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8066).

<sup>294</sup> *Cf.* Article 275 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8066).

<sup>295</sup> *Cf.* Article 275 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8066).

<sup>296</sup> *Cf.* Article 277 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8066).

<sup>297</sup> *Cf.* Article 277 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8066).

<sup>298</sup> *Cf.* Articles 278 and 284 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folios 8066 and 8067).

<sup>299</sup> *Cf.* Article 282 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8067).

<sup>300</sup> Article 290 of the Code of Criminal Procedure establishes that:

Once the jury has been constituted, the judge shall swear them in as follows: “Do you promise before God and before men to examine with scrupulous care the proceedings that will be submitted to your consideration; not to betray either the interests of the accused or those of society which is accusing him; not to let yourselves be influenced by hate or by antipathy, by malice, by fear or by affection; to make a decision following your conscience and firm conviction with the impartiality and resolve that behoves a free and honest man? Each member of the jury called on individually by the Judge shall answer: “I promise” (Art. 24 of this instrument).

(evidence file, volume XVII, annex 2 to the answering brief, folio 8068).

<sup>301</sup> *Cf.* Article 291 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8068).

<sup>302</sup> *Cf.* Articles 292 to 303 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folios 8068 and 8069).

<sup>303</sup> *Cf.* Articles 304 and 306 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folios 8069 and 8070).

<sup>304</sup> *Cf.* Article 305 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8069).



232. Subsequently, and once the proceedings had been discussed sufficiently, by a secret vote based on their firm conviction, the jury decided on the guilt or innocence of the defendant.<sup>305</sup> The jury voted in secret and without interruption until it achieved a verdict, which required four similar votes, and a juror who dissented could provide the reasons for his vote in a separate document.<sup>306</sup>

233. Article 309 of the Code of Criminal Procedure established a formula for drafting the verdict,<sup>307</sup> which was handed to the judge.<sup>308</sup> When the judge had received the jury's verdict, if it was an acquittal, he release the accused immediately.<sup>309</sup> To the contrary, "[i]f it [was] a guilty verdict, eight days after it was issued, the judge deliver[ed] a sentence under his responsibility, whether or not he [was] a lawyer, applying to the culprit or culprits the punishment established by law; and if this should be graduated, at the corresponding level and in the appropriate terms, according to the circumstances of the offense."<sup>310</sup> Subsequently, the judge referred the case file of any sentences that were appealed to the respective Appellate Court, within three days of notification of the judgment. The same referral was required if the verdict was an acquittal.<sup>311</sup>

234. The Code established the following as grounds for substantial nullities, specific to a jury verdict or declaration:<sup>312</sup>

- 1a. If the matter is not one on which a jury must intervene.
- 2a. If a summons is not issued for the random selection of the members of the Jury Court.
- 3a. If the veto of the jurors has not been admitted in the cases in which the law permits vetoes.
- 4a. If the jurors fail to take the oath established by this law.
- 5a. If the verdict or declaration is not written or signed in the terms established by law.
- 6a. If a person who has not been randomly selected forms part of the jury in the case; even if they are on the list of jurors drawn up by the municipality.
- 7a. If it is proved that the judge cheated when randomly selecting jury members.
- 8a. If the jurors have been bribed.
- 9a. If the Jury Court has been constituted with a greater or lesser number of members than established by this law.
- 10a. If a person alien to the proceedings has attended the secret deliberations of the jury.
- 11 a. If more than eight hours passes between the random selection of the jurors and the public hearing.
- 12a. If one or more jurors cast their vote depending on chance.
- 13a. If any person included in art. 16 of the Jurors' Law (art. 56, Jurors' Law, September 21, 1897) is a member of the Court.

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<sup>305</sup> Cf. Article 307 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8070).

<sup>306</sup> Cf. Article 307 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8070).

<sup>307</sup> Article 309 of the Code of Criminal Procedure establishes that:

The verdict shall be written in the following precise formula: "In the city of ... (name of the city, the hour, date, month and year). The jury, having examined this case, declares: (if it is an acquittal) that so-and-so is or is innocent of the offense or offenses for which their detention was ordered: (if it is a guilty verdict) that so-and-so is guilty of the offense or offenses, for which their detention was ordered, so-and-so his accomplice and so-and-so, his accessory." If the person is acquitted of one offense and convicted of another, they should both be clearly indicated (Art. 43 of this law).

(evidence file, volume XVII, annex 2 to the answering brief, folio 8070).

<sup>308</sup> Cf. Articles 310 and 311 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8070).

<sup>309</sup> Cf. Article 321 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8072).

<sup>310</sup> Article 322 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8072).

<sup>311</sup> Cf. Article 326 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8073).

<sup>312</sup> Article 444 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folios 8090 a 8091).

235. The effect of substantial nullities was to annul the proceedings; thus, the judge or court ordered that the case be returned to, and include, the first valid action. In the case of nullities specific to the verdict, the case had to be returned to the stage of a new jury selection in order to constitute the jury before issuing the summons to the hearing.<sup>313</sup>

236. The Nicaraguan Code of Criminal Procedure was repealed and replaced by the Nicaraguan Criminal Procedure Code, which entered into force in December 2002.

237. The State advised that, currently, “proceedings for crimes of rape or other sexual offenses must be heard and decided by judges of law and not by jury courts, taking into account the need to decide them technically and to include the grounds for decisions.”

238. It is now true that the possibility of a case of sexual violence being submitted to trial by a peoples’ jury has been eliminated. Article 565 of the Criminal Code in force in Nicaragua (Law No. 641) establishes that, *inter alia*, crimes of domestic and intrafamily violence and crimes against sexual liberty and integrity shall be conducted by a technical judge. In addition, in January 2012, Law No. 779 was adopted – “Comprehensive law to combat violence against women and amendments to Law No. 641 Criminal Code,” which entered into force in June that year. According to the grounds for the adoption of the law, the new legislation was based on evidence that “the existing laws to halt gender-based violence against women have not achieved the expected results for the effective protection of their life, liberty and personal integrity, so that it is essential to promulgate a special autonomous law, that addresses this problem comprehensively, defining as crimes and punishing the different expressions of violence against women.”<sup>314</sup> In particular, as relevant for this case, in relation to the implementation of the system of trials in cases of gender-based violence and cases of sexual violence in particular, the law establishes the creation of special district courts for cases of violence,<sup>315</sup> composed of a technical judge with special training in this area.<sup>316</sup>

### *B.3.b The guarantee of juror impartiality*

239. This Court has established that impartiality requires that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.<sup>317</sup> Recusals and excusals are procedural instruments that protect the right to be

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<sup>313</sup> Cf. Article 446 of the Code of Criminal Procedure (evidence file, volume XVII, annex 2 to the answering brief, folio 8091).

<sup>314</sup> Preambular paragraph I of Law No. 779, “Comprehensive law to combat violence against women and amendments to Law No. 641 Criminal Code” (evidence file, volume XX, annex 3 of the helpful evidence, folio 9457).

<sup>315</sup> Article 30 of Law No. 779 establishes:

Special bodies. Special District Courts for cases of violence are created, composed of a judge with special training in this area. There must be a minimum of one Special District Court for cases of violence in each departmental capital and Autonomous Region and in municipalities in which, owing to their location, it is difficult to access the courts located in the departmental capitals.

Interdisciplinary teams shall be created attached to the Special District Courts for cases of violence composed of, at least, a psychologist and a social worker, responsible for providing specialized assistance to victims to support the jurisdictional function of the hearings and to monitor and control the measures of protection imposed by the court.

(evidence file, volume XX, annex 3 of the helpful evidence, folio 9464).

<sup>316</sup> Article 56 of Law No. 779 establishes that: “[t]rials for the offenses referred to in this law shall be conducted with a technical judge” (evidence file, volume XX, annex 3 of the helpful evidence, folio 9468).

<sup>317</sup> 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. 56, and *Case of Acosta et al. v. Nicaragua, supra*, para. 172.

tried by an impartial body. The guarantee of impartiality means that the members of the court have no direct interest, preconceived position, preference for one or other of the parties, are not involved in the dispute, and inspire the necessary confidence in the parties to the case, as well as in the citizens in a democratic society.<sup>318</sup> Personal or subjective impartiality is presumed unless there is evidence to the contrary consisting, for example, in the demonstration that a member of a tribunal or a judge has personal prejudices or biases against the litigants. Meanwhile, objective impartiality consists in determining whether the contested judge has offered convincing proof that eliminates legitimate fears or well-founded suspicions of his partiality.<sup>319</sup> The Court notes that these standards are also applicable to the members of the jury.<sup>320</sup>

240. In this regard, the European Court of Human Rights has affirmed that, whatever the procedural trial system implemented, "it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused. To that end, it has constantly stressed that a tribunal, including a jury, must be impartial from an objective as well as a subjective point of view."<sup>321</sup> "The personal impartiality of a judge or a jury must be presumed until there is proof to the contrary,"<sup>322</sup> according to the circumstances of the specific case.<sup>323</sup>

241. Indeed, the Court emphasizes that, when analyzing the objective aspect of impartiality, the personal capacities of the judges or their convictions regarding the specific case or their possible relationships with the parties are not in question, but rather facts that, in an objective observer, could reasonably justify a lack of confidence in those who are responsible for the important mission of imparting justice in a specific case.

242. In this regard, the European Court has specified that:

Under the objective test, it must be determined whether, quite apart from the judges' personal conduct, there are ascertainable facts which may raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to proceedings.<sup>324</sup>

243. The Court considers that this case does not involve subjective factors that would affect the impartiality of the court *ab initio* – in this case constituted by the judge in charge of the case, the judge of law who presided the Jury Court, and the members of the jury; rather the arguments are related to the objective aspect of impartiality. Consequently, the Court will now examine the alleged facts and other elements in order to determine whether a well-founded fear existed that called into question the exercise of the functions of the judge in charge of the proceedings and of the Jury Court in this specific case.

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<sup>318</sup> Cf. *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela*, *supra*, para. 56, and *Case of Acosta et al. v. Nicaragua*, *supra*, para. 172.

<sup>319</sup> Cf. *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela*, *supra*, para. 56, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 233.

<sup>320</sup> Both the European Court of Human Rights and the Human Rights Committee have expressed similar opinions. Cf. ECHR, *Case of Gregory v. The United Kingdom*, No. 22299/93. Judgment of February 25, 1997, paras. 22 to 25, and *Case of Sanders v. The United Kingdom*, No. 34129/96. Judgment of May 9, 2000, paras. 22 to 25. See also, Human Rights Committee, *Case of Mulai v. Guyana* (Communication No. 811/1998), UN Doc. CCPR/C/81/D/811/1998, decision adopted on July 20, 2004, para. 6.1, and *Dole Chadee and Others v. Trinidad and Tobago* (Communication No. 813/1998), UN Doc. CCPR/C/63/D/813/1998, decision adopted on July 29, 1998, para. 10.1.

<sup>321</sup> Cf. ECHR, *Case of Hanif and Khan v. The United Kingdom*, Nos. 52999/08 and 61779/08. Judgment of December 20, 2011, para. 138.

<sup>322</sup> Cf. ECHR, *Case of Hanif and Khan v. The United Kingdom*, *supra*, para. 139.

<sup>323</sup> Cf. ECHR, *Case of Hanif and Khan v. The United Kingdom*, *supra*, para. 140.

<sup>324</sup> Cf. ECHR, *Case of Pabla Ky v. Finland*, No. 47221/99. Judgment of June 22, 2004, para. 27.

244. In the instant case, the arguments regarding lack of impartiality related, above all, to the following factual matters: (i) the fact that the hearing was suspended twice, allegedly without justification; (ii) the fact that V.P.C. was not allowed to take part in one of the hearings on the random selection of the jury; (iii) the fact that the plaintiff's lawyer was not allowed to be assisted by another lawyer, and (iv) the fact that occurred at the end of the public hearing and before the jury had left to conduct its secret deliberations: the delivery to the presiding judge of a silver-grey bag and some sheets of pink paper sent by the accused to be read in the private session.

245. The Court notes that the main procedure during which the possible impartiality of the jury can be eliminated is their random selection which, in the Anglo-Saxon systems is known as *voir dire*. This procedure is especially relevant in cases of sexual violence to establish whether jurors have prejudices and false beliefs in this regard that could have a negative impact on their assessment of a specific case based on prejudices and myths present in the social imaginary. In the case of Nicaragua, this procedure included the possibility of vetoing a juror without cause (*supra* para. 230).

246. Regarding the suspension of the hearing on two occasions (*supra* para. 95), the Court notes that, as indicated by the State, there are no aspects that could objectively indicate that this harmed the court's impartiality.

247. Another of the alleged irregularities in the proceedings was that V.P.C. was not allowed to be present in a hearing for the random selection of the jury, which had presumably prevented her from vetoing some of the members. The Court notes that her official legal representative was present.<sup>325</sup> However, no facts or circumstances that could have constituted justification for vetoing any of the members of the jury were specified and that were unknown to her lawyer and that he was therefore unable to affirm at that time. Consequently, the Court does not find that any irregularity existed in this specific case, especially as the members of the jury constituted at that time did not form part of the Jury Court for the public hearing.

248. Furthermore, the Court notes that, regarding the composition of the Jury Court, the parties were able to present vetoes with and without justification, as established in the Code of Criminal Procedure (*supra* para. 230), and that they made use of this right during all the jury selections, except the final one. It is a fact that V.P.C.'s lawyer did not veto any of the jurors randomly selected for the public hearing and who would issue the verdict. The Court also notes that the jurors were not questioned with regard to their opinion on matters that could be conditioned by stereotypes and social prejudices, an aspect that was not expressly established in Nicaragua's laws. All this is indicative of the fact that, regarding the composition of the jury, there were no subjective doubts or elements that had an impact on the impartiality of its members prior to the public hearing. Moreover, no special circumstance was alleged with regard to the procedure for this random selection that could have called into question the subjective impartiality of the jurors.

249. Regarding the fact that the plaintiff's lawyer was not allowed to be assisted by another lawyer, the Court notes that, from its case file, it does not appear that the judge in charge of the case issued a written response to this request, as she did with regard to the defense's request (*supra* para. 97). However, it was indicated that the answer was given orally without any reaction questioning this. The Court understands, in any case, that this circumstances would not cause particular harm to the guarantee that is being analyzed.

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<sup>325</sup> In the order of April 15, 2002, the judge indicated that V.P.C. was represented by her lawyer, so that the random jury selection procedure was not violated. *Cf.* Order issued by the Jinotega District Criminal Judge on April 15, 2002 (evidence file, volume XVI, annex D.2 to the brief with pleadings, motions and evidence, folios 7136 and 7137).

250. That said, the Court finds that there are two aspects that, according to the allegations, had sufficient importance to give rise to the plaintiff's well-founded fear of partiality: the delivery to the judge who presided the jury of the silver-grey bag and two sheets of pink paper sent by the accused to be read in private session.

251. In this regard, the Court considers that, even though it does not have the video of the hearing,<sup>326</sup> the existence of these two elements is not disputed because both were verified in the inspection procedure conducted on the video (*supra* para. 118) and by the Ombudsman's Office (*supra* para. 100). Therefore, the Court considers that it has been established that a silver-grey plastic bag was handed to the judge of law who presided the jury and also two sheets of pink paper written by the accused to be read by the jury in private. However, uncertainty remains regarding the content of both the bag and the sheets of pink paper.

252. Although both V.P.C. and the judge of law have given their version of the events<sup>327</sup> relating to the silver-grey plastic bag, this Court has no way of establishing what it contained. In addition, the case file does not contain the pink sheets of paper, so that it is impossible to know their content.

253. Nevertheless, the Court considers that, in themselves, these facts constitute convincing evidence that would allow any objective observer to doubt the impartiality of the members of the Jury Court. Moreover, they caused the victim and the plaintiff to have a legitimate fear of partiality that it has not been possible to dissipate because the contents of the bag was not revealed and the message on the sheets of pink paper was not read out in the presence of the parties. Furthermore, the State failed to investigate the reports of possible bribery based on this incident, beyond the decision taken following the appeal for annulment (*supra* para. 107). Consequently, the Court finds that, in this case, the fear was objectively justified, which constitutes a violation of the guarantee of objective impartiality established in Article 8(1) of the Convention.

*B.3.c The duty to provide the grounds for a decision and the guarantees against an arbitrary verdict*

254. The Court has indicated that "the duty to provide the grounds for a decision is one of the 'due guarantees' included in Article 8(1) to safeguard the right to due process."<sup>328</sup> The Court has

<sup>326</sup> The State was asked to submit the video as helpful evidence, and it indicated that the law in force at the time did not establish that hearings should be video recorded. It added that it was unable to provide this video owing to the 15 years that had passed since the case was lodged before the Inter-American Commission in 2002. However, it noted that the record of the inspection that the State had provided to the Court proved that the said video had existed and had been inspected by the parties to the proceedings.

<sup>327</sup> V.P.C. indicated that: "[w]hen the hearing had almost lasted 23-24 hours, the secretary came in; the judge was there, the one who was always in charge of the case, and although he says that she was recused or she was not recused, she always came back; the case passed from one judge to another, but the cases always came back to her and, at that moment, they brought a silver-grey bag that appeared to contain a wad of banknotes, because there is the video that the judge inspected, and one of the perpetrator's lawyers went up to the jury and said: 'look, members of the jury, here's this envelope to be read in a private session.' Then, at that moment, do you understand what I am saying, he was asked, please show the document, and they said that it had been indicated that it should be read in the private session. Also, they did not want to show what was in that bag, but when they went in to deliberate, at that time, they took the bag and they took the document. When they came out and afterwards, the bag and the document should have been added to the documentation because it was part of the case file, but it never appeared. This is why an appeal for annulment was filed owing to the bribery of the members of the jury [...]. It was a silver-colored bag, so that it was opaque, do you follow me, it appeared to be sealed, but you could see the outside, because it was a bag that contained money and there was a video; I don't know what happened to that video, but the video disappeared in the court." Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017. Meanwhile, the judge of law indicated in her rebuttal of the complaint against her: "that on April 13, between 10.30 and 11 a.m., owing to an urgent personal necessity because I was menstruating, my husband sent me a grey-colored bag which said Lucky Strike with clothes, underpants and sanitary pads." Rebuttal presented on January 29, 2003 (evidence file, volume XX, annex 7.a of the helpful evidence, folios 9666 to 9669).

<sup>328</sup> *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela, supra*, para. 78, and *Case of the*

stipulated that the reasoning “is the exteriorization of the reasoned justification that allows a conclusion to be reached”<sup>329</sup> and entails a rational presentation of the reasons that led the judge to take a decision. The relevance of this guarantee relates to the correct administration of justice and avoidance of arbitrary decisions. In addition, the reasoning accords credibility to legal decisions in a democratic society and demonstrates to the parties that they have been heard.<sup>330</sup>

255. This is closely related to another aspect that highlights the value of the reasoning as a guarantee and this is that, in cases in which it is possible to appeal the decision, it provides the possibility of contesting the decision and obtaining a fresh examination of the matter before a higher court. The Court has indicated that “the grounds for the judicial decision must be provided to be able to guarantee the right of defense.”<sup>331</sup> However, the Court has also indicated that the obligation to provide a reasoned decision does not require a detailed answer to every argument of the parties, but may vary according to the nature of the decision and, in each case, it is necessary to examine whether the guarantee has been fulfilled.<sup>332</sup>

256. In the criminal jurisdiction, as a guarantee for the accused, it is also addressed at ensuring the principle of the presumption of innocence because it allows the individual subjected to the punitive powers of the State to understand the reasons why it was possible to obtain a conviction with regard to the accusation and the criminal responsibility, and also how the evidence was assessed to disprove any suggestion of innocence, and only thus to confirm or refute the accusation.<sup>333</sup> This allows the presumption of innocence to be disproved and criminal responsibility to be determined beyond any reasonable doubt, and also makes it possible to exercise the right to defense by the ability to appeal a conviction.

257. That said, the Court finds it pertinent to clarify that the grounds for the decisions adopted by the organs responsible for imparting justice are relevant not only for the person accused of the offense, but also allow the citizen to control government acts – in this case, the administration of justice – and exposes them to scrutiny. In the case of juries, this aspect is understood to be covered by the direct participation of the citizenry.

258. The Court considers that the Commission’s argument that the fact that no reasons were provided for a verdict of acquittal implied, *per se*, a violation of Article 8(1) of the American Convention, is a general and abstract assertion that cannot be admitted without further arguments or an analysis of the historical, social and cultural context in which the different models of criminal trials in the countries of the American continent were developed and, in particular, how the jury court was conceived in Nicaragua. This is because, historically and customarily, the verdict of a traditional jury did not require presentation of the reasoning or the grounds because the assessment of the evidence was based on the firm conviction of the jurors.<sup>334</sup> The Court notes that the Commission did not present reasons that explained the particularities of the jury mechanism

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*Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 168.

<sup>329</sup> *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 107, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 168.

<sup>330</sup> *Cf. Case of Apitz Barbera et al. (“First Contentious Administrative Court”) v. Venezuela*, *supra*, para. 78, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 168.

<sup>331</sup> *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 118, and *Case of Zegarra Marín v. Peru*, *supra*, paras. 147 and 155.

<sup>332</sup> *Cf. Case of Apitz Barbera et al. (“First Contentious Administrative Court”) v. Venezuela*, *supra*, para. 90, and *Case of Zegarra Marín v. Peru*, *supra*, para. 178.

<sup>333</sup> *Cf. Case of Zegarra Marín v. Peru*, *supra*, paras. 147 and 155.

<sup>334</sup> Nevertheless, comparative law includes the experiences of Switzerland and Spain, which require the jury to provide the reasons for their verdict. *Cf. ECHR, Case of Taxquet v. Belgium* [GS], *supra*, paras. 56 to 58.

from a procedural optic or, in particular, regarding its regulation in Nicaragua, when raising the issue of its conformity with the Convention.

259. The Court finds, as has the European Court of Human Rights, that the absence of the reasons for the verdict does not, of itself, violate the guarantee of a reasoned decision.<sup>335</sup> There are reasons behind every verdict, even though in accordance with the essential nature of the jury, these are not expressed. But, in light of the evidence and the discussions during the hearing, the verdict should allow those evaluating it to reconstruct the logical process behind the jury's decision and the jury will have acted arbitrarily if it is not possible to make this reconstruction using a rational approach.

260. Some of the OAS Members State that use the system of trial by jury expressly establish different guarantees prohibiting arbitrary decisions. The judge's instructions to the jury are established in the procedural laws of Canada,<sup>336</sup> the United States,<sup>337</sup> Nicaragua now,<sup>338</sup> Panama,<sup>339</sup> El Salvador,<sup>340</sup> and the Argentine provinces of Buenos Aires,<sup>341</sup> Chaco,<sup>342</sup> Neuquén<sup>343</sup> and Río Negro.<sup>344</sup> The laws of Panama establish that the technical judge gives the jury a questionnaire with the matters to be decided, and the jury has to provide their answers in writing, and this document is added to the case file.<sup>345</sup> Meanwhile, the laws of the Argentine province of Buenos Aires<sup>346</sup> establish that, when a guilty verdict is clearly contrary to the evidence provided to the proceedings, the judge may annul that verdict and order new proceedings with another court. In addition, the possibility of vetoing or challenging jurors, with or without cause, is recognized in the systems of Panama<sup>347</sup> and the Argentine provinces of Chaco,<sup>348</sup> Córdoba<sup>349</sup> and Río Negro.<sup>350</sup> Also, the laws of the United States,<sup>351</sup> Nicaragua,<sup>352</sup> and the Argentine provinces of Buenos Aires,<sup>353</sup> Chaco,<sup>354</sup>

<sup>335</sup> Cf. EHCR, *Case of Saric v. Denmark*, No. 31913/96. Admissibility decision of February 2, 1999, pp. 14 and 15.

<sup>336</sup> Cf. Article 650.1 of the Criminal Code of Canada.

<sup>337</sup> Cf. Rule 30 of the Federal Rules of Criminal Procedure of the United States of America.

<sup>338</sup> Cf. Articles 194, 298, 316, 317 and 318 of Law No. 406, Criminal Procedure Code of the Republic of Nicaragua.

<sup>339</sup> Cf. Articles 2358.8 and 2358(1)2 of the Judicial Code of the Republic of Panama.

<sup>340</sup> Cf. Article 411 of the Criminal Procedure Code of El Salvador.

<sup>341</sup> Cf. Articles 371 bis and 371 ter of the Criminal Procedure Code of the province of Buenos Aires (Provincial Law No. 11,922 and amendments). Article 210 establishes that the decision of the jury is based on their firm conviction; however, its Article 106 adds that: "[i]n the case of trial by jury, the judge's instructions to the jury constitute full and sufficient motivation of the verdict."

<sup>342</sup> Cf. Articles 53 and 68 to 71 of Chaco Provincial Law No. 7661. Also, article 92 establishes that "[t]he judgment shall be in accordance with the rules of the Criminal Procedure Code of the province of Chaco, with the following amendment: instead of the grounds for the decision on the proven facts, the guilt of the accused and the legal definition, it shall contain the transcript of the instructions given to the jury on the provisions applicable to the case and the verdict of the jury." Also, article 83 established that: "[i]f the verdict is so flawed that the judge is unable to determine the jury's intention to acquit or to convict the accused of the offense for which the accused could be convicted based on the charges, the judge, having obtained the opinion of the parties, may instruct the jury to reconsider the said verdict and express its intention clearly. However, if the jury persists in giving a flawed verdict, that verdict shall be accepted and the judge shall issue an acquittal."

<sup>343</sup> Cf. Articles 205 and 206 of Law No. 2784, Criminal Procedure Code of the province of Neuquén.

<sup>344</sup> Cf. Articles 201 and 202 of the Criminal Procedure Code of Río Negro.

<sup>345</sup> Cf. Articles 2374 to 2377 of the Judicial Code of the Republic of Panama.

<sup>346</sup> Cf. Article 375 bis of the Criminal Procedure Code of the province of Buenos Aires (Provincial Law No. 11,922 and amendments).

<sup>347</sup> Cf. Article 2344.3 of the Judicial Code of the Republic of Panama.

<sup>348</sup> Cf. Articles 34 to 40 and 43 of Chaco Provincial Law No. 7661. Article 29.2 of this law also establishes, as a guarantee of civic representation, that "[w]hen the jury must be composed of men and women of the indigenous peoples, half of those summoned to the hearing as potential jurors shall be members of the respective indigenous people."

<sup>349</sup> Cf. Articles 18, 23 and 24 of Córdoba Provincial Law No. 9182.

<sup>350</sup> Cf. Article 194.3 of the Criminal Procedure Code of Río Negro.

<sup>351</sup> Cf. Rule 24 of the Federal Rules of Criminal Procedure of the United States of America.

<sup>352</sup> Cf. Article 296 of Law No. 406, Criminal Procedure Code of the Republic of Nicaragua.

Neuquén<sup>355</sup> and Río Negro<sup>356</sup> establish a special hearing or specific procedural moment, prior to the oral trial, for jury selection (*voir dire*), during which the parties have the right to veto or challenge potential jurors based on questions they may ask on circumstances that could affect a juror's impartiality.<sup>357</sup> The laws of the United States<sup>358</sup> and of the Argentine province of Chaco<sup>359</sup> establish the possibility for the parties or the judge, following the verdict, to ask each juror whether the verdict had been reached unanimously. The laws of the Argentine province of Córdoba<sup>360</sup> also establish training courses for members of the public in order to inform them about the judicial function of the jury and the proper performance of jury duty. Attending and passing these courses is not considered a requirement for exercising jury duty, but it does confirm suitability to do so.

261. In this regard, the European Court of Human Rights has determined that the system of decisions based on firm conviction does not, in itself, violate the right to a fair trial provided that, based on the proceedings as a whole, the person concerned – in the case cited the accused – can understand the reasons for the decision.<sup>361</sup> The European Court made clear that:

Seeing that compliance with the requirements of a fair trial must be assessed on the basis of the proceedings as a whole and in the specific context of the legal system concerned, the Court's task in reviewing the absence of a reasoned verdict is to determine whether, in the light of all the circumstances of the case, the proceedings afforded sufficient safeguards against arbitrariness and made it possible for the accused to understand why he was found guilty.<sup>362</sup>

262. Firm conviction is not an arbitrary criterion. The free assessment made by the jury does not differ substantially from the assessment that a technical judge can make; it merely does not articulate it. Ultimately, any court (whether technical or lay), must reconstruct a past event and, to this end, it must use methodological logic which anyone is capable of doing, because this does not depend on whether or not the individual has legal training or education. Everyone who has to reconstruct a past event, consciously or unconsciously, uses the historical method; that is, they first delimit the evidence they will take into account (heuristics); then they assess whether that evidence is not substantively false (external evaluation); then they assess the plausibility of the content of the evidence (internal evaluation) and, finally, they reach a synthesis. Anyone assessing a jury's verdict must necessarily follow this path, and it is not sufficient to reject any different opinion on the evaluations. To reject a jury's verdict, it is necessary to verify that the synthesis completely diverged from this methodological logic, which is what happened in this case.

263. Consequently, the Court considers that it must analyze whether the criminal proceedings as a whole offered mechanisms of protection against arbitrariness that allowed the reasons for the verdict to be understood – not merely by the accused, but also by the victim and the plaintiff. Essentially, the need for the accused and the victim of the offense or the plaintiff to understand the

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<sup>353</sup> Cf. Article 338 quáter of the Criminal Procedure Code of the province of Buenos Aires (Provincial Law No. 11,922 and amendments).

<sup>354</sup> Cf. Articles 23, 26, 32, 33 and 34 of Chaco Provincial Law No. 7661.

<sup>355</sup> Cf. Articles 197 and 198 of the Criminal Procedure Code of the province of Neuquén (Provincial Law No. 2784). Article 198.6 establishes, as a guarantee of diversity, that "[t]he jury shall be composed, including substitutes, by an equal number of men and women. An attempt shall be made to ensure, at a minimum, that half the jury belong to the same social and cultural environment as the accused. Also, insofar as possible, an attempt shall be made to ensure that the jury includes older persons, adults and young people."

<sup>356</sup> Cf. Article 194.3 of the Criminal Procedure Code of Río Negro.

<sup>357</sup> Cf. Articles 33 and 34 of Chaco Provincial Law No. 7661.

<sup>358</sup> Cf. Rule 31.d of the Federal Rules of Criminal Procedure of the United States of America.

<sup>359</sup> Cf. Article 85 of the Chaco Provincial Law No. 7661.

<sup>360</sup> Cf. Article 51 of Córdoba Law No. 9182.

<sup>361</sup> Cf. ECHR, *Case of Lhermitte v. Belgium*, No. 34238/09. Judgment of November 29, 2016, para. 80.

<sup>362</sup> ECHR, *Case of Taxquet v. Belgium* [GS], *supra*, para. 93.



reasons for the decision of guilt or innocence adopted by the jury in its verdict is fully in force "as a vital safeguard against arbitrariness."<sup>363</sup>

264. That said, it should be underscored that criminal proceedings in cases of sexual violence entail a series of specific technical difficulties that make them challenging to prosecute. Usually there is little evidence about what happened, the accused affirms his innocence, and the discussion is circumscribed to one person's word against another's. To this is added the prejudices and preconceived ideas and stereotypes in relation to sexual violence inherent in the patriarchal system that exist in the social imaginary. Juries are susceptible of transferring such prejudices and ideas to the proceedings and being influenced by them when assessing the credibility of the victim and the guilt of the accused, and this is especially true of people who do not have special training with regard to this type of offense.

265. Consequently, in the case of a trial by jury, some systems establish, as best practices, measures that mitigate the impact of such conditions. For example, they establish the provision of expert evidence, known as counterintuitive evidence, addressed at providing information to the jury on the particularities of the facts they are trying, to enable jurors to assess the evidence as objectively as possible. Also, the technical judge is assigned the function of instructing the jury on how to analyze specific evidence in the proceedings, or questions are established that the jury must answer in its verdict. In addition, some systems provide for a special stage, known in the Anglo-Saxon system as *voir dire*, for jury selection prior to the trial during which the parties have the possibility of vetoing those persons who they consider may be biased or unsuitable to try the case.

266. Therefore, taking into account the system of trial by jury in force in Nicaragua at the time of the events, under which the no reasons were given for the verdict, and the fact that the offense in question concerned sexual violence, the Court must determine whether, under the terms of the American Convention, the proceedings as a whole offered sufficient protection against arbitrariness, so that the parties could understand the result of the process as a reasonable consequence of the evidence obtained during the preliminary investigation stage and presented during the public hearing.

267. The Court notes that the Code of Criminal Procedure did not contain any explicit regulation concerning the professional judge's instructions to the jury, or include questions that the jury had to answer in its verdict, or incorporate any reference to counterintuitive evidence, all measures that could have contributed to the reasonableness of a decision and, ultimately, could have acted as guarantees against an arbitrary decision (*supra* para. 265), especially in this case that concerned a crime of sexual violence committed against a child.

268. This assertion is corroborated by the words of the judge of law and president of the Jury Court, who stated in her rebuttal of the complaint filed against her by V.P.C. that:

Regarding the verdict, at no time had [she] influenced the Jury Court; the members, as a conscientious tribunal voted based on their firm conviction without [her] having had to intervene at any moment to clarify a legal technical concept because there was no need, no one asked for this; they were all convinced that the forensic medical reports did not prove that the accused was the transmitter of the disease that the child suffered from and this was the reason that the vote, conducted just once, unanimously declared the accused innocent.<sup>364</sup>

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<sup>363</sup> Cf. ECHR, *Case of Taxquet v. Belgium* [GS], *supra*, para. 90, 91 and 92.

<sup>364</sup> Rebuttal presented on January 29, 2003 (evidence file, volume XX, annex 7.a of the helpful evidence, folios 9666 to 9669).

269. In sum, the Court finds that the proceedings did not provide sufficient guarantees to scrutinize the jury's decision and, consequently, ensure that the decision was not arbitrary. It is therefore reasonable to conclude that the verdict that rejected the guilt of the accused could not be foreseen by the victims because it was unrelated to the facts, the evidence described in the accusation, and the evidence received in the domestic proceedings.

270. Consequently, the Court concludes that, in this case, the criminal proceedings, as a whole, did not ensure that the victims could understand the reasons why H.R.A. was acquitted, in violation of Article 8(1) of the Convention.

### *B.3.d Conclusion*

271. Based on the preceding considerations, the Court concludes that, during the proceedings and trial held by the Jury Court, the guarantees of due process relating to objective impartiality and the prohibition of arbitrariness were not respected and, therefore, the State is responsible for the violation of Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument and Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C.

## **C. Reasonable time**

### *C.1 Arguments of the parties and of the Commission concerning reasonable time*

272. The **Commission** alleged, with regard to the complexity of the matter, that the State failed to justify the delay in the criminal proceedings based on this factor. Regarding the participation of the interested parties, the Commission observed that V.P.C. played an active role in the proceedings, monitoring and furthering the investigation, complaining on repeated occasions about the delay in conducting procedures and the long periods of procedural inactivity. Regarding the conduct of the judicial authorities, the Commission identified various procedural omissions in the procedures conducted. It also observed that, following the April 2002 acquittal, almost six years passed until the proceedings concluded. The Commission underlined that, according to the documentation submitted, more than one judge had excused themselves from hearing the case alleging that they had some kind of affinity with the accused, and the State itself had recognized that one judge excused himself from hearing the case "without any reason." The Commission indicated that, in view of this situation, the State should have taken measures to avoid the mechanism of excusation becoming a factor that led to delay and impunity in this case. Regarding the fourth element, the Commission considered that, owing to the situation of V.R.P., as a child victim of rape, the State had an enhanced obligation to respect and ensure her rights, and this was not reflected in the way in which the investigation and the criminal proceedings were conducted. Lastly, the Commission stressed that the State itself had acknowledged the delay in the proceedings without providing any justification.

273. The **representatives** added that the evidence was not complex because it was only necessary to conduct medical, psychological and fact-finding studies. In addition, there was only one presumed perpetrator and one victim in the case. Regarding the procedural activity of the person concerned and the conduct of the judicial authorities, the representatives indicated that the unnecessary referrals of the proceedings to individuals who had already ruled on the case, the excuses presented by the judges without justification or a long time after they had received the case, the appointment and replacement of the judges, and the existence of prolonged periods during which the case was unjustifiably inactive, merely awaiting a decision, could be attributed to the State; therefore, it did not act within a reasonable time. The representatives argued that, although the jury's verdict was issued 4 months and 23 days after the complaint was filed, 5 years, 6 months and 11 days elapsed, from the moment of the jury's verdict to that of the final judgment;

and a total of 5 years, 11 months and 4 days from the time of the complaint until the judgment on the appeal for annulment, which meant that the time was unreasonable.

274. The **State** indicated that, in this case, the criminal proceedings consisted of two stages: the preliminary investigation stage, which according to the Code of Criminal Procedure was 10 days if the accused had been detained and 20 days if he had not been detained, and the plenary stage that commenced with the first hearings after the identification of the accused and statement of the charges, and this stage concluded with the final judgment when it was heard by the Jury Court who, based on firm conviction, issued their verdict. According to the State, judgment was delivered in 4 months and 23 days from the filing of the complaint until the verdict of the Jury Court. It considered that this duration was reasonable, bearing in mind the proceedings in force in Nicaragua at the time. In addition, the State affirmed that the Commission had committed an error by extending the duration of the proceedings based on other procedural actions and situations such as the appeals, procedural issues, and decisions, which revealed an unfamiliarity with legal and technical aspects of the Nicaraguan procedural system. Regarding the actions of the authorities, the State indicated that the stage of procedural issues and appeals following the final judgment derived from the jury's verdict lasted 5 years, 6 months and 10 days, which included a judgment of the Supreme Court, decisions of judicial authorities, and the procedural activity of the parties.

### C.2 Considerations of the Court

275. The Court has indicated that the right of access to justice means that everything necessary to discover the truth of what happened and to punish those responsible must be done within a reasonable time.<sup>365</sup> The Court considers that the proceedings end when a definitive and final judgment is delivered that exhausts the jurisdiction and that, particularly in criminal matters, the reasonable time should include the whole proceedings, including any appeals that may be filed.<sup>366</sup> The Court has considered that a prolonged delay may, in itself, constitute a violation of judicial guarantees.<sup>367</sup>

276. Even though it is true that, in order to analyze the reasonable time, the Court must generally consider the overall duration of the proceedings until the final judgment is delivered,<sup>368</sup> in certain special situations it may be pertinent to make a specific assessment of the different stages.<sup>369</sup>

277. In this regard, the Court notes that there is no dispute between the parties regarding the duration of the proceedings from the criminal complaint until the acquittal by the Jury Court. The dispute is based on the time that passed during the appeals stage of the case. In this regard, the Court notes that the appeals stage lasted five years, six months and eleven days, from the acquittal (April 13, 2002) until that decision was final (October 24, 2007). Therefore, it must examine whether this delay was justified.

<sup>365</sup> 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 Pacheco León et al. v. Honduras, supra*, para. 118.

<sup>366</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Wong Ho Wing v. Peru, supra*, para. 209.

<sup>367</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Acosta et al. v. Nicaragua, supra*, para. 177.

<sup>368</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits, supra*, para. 71, and *Case of Pacheco León et al. v. Honduras, supra*, para. 159.

<sup>369</sup> Cf. *Case of the Afrodescendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2013. Series C No. 270, para. 403, and *Case of Vereda La Esperanza v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 341, para. 194.

278. The elements that this Court has established in order to determine whether the time is reasonable are: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities, and (d) the effects on the legal situation of the person involved in the proceedings.<sup>370</sup> The Court recalls that it is the State that must justify, based on those criteria, the reason why it has required the time that has passed in order to process the case and, if it does not do so, the Court has broad attributes to reach its own conclusions in this regard.<sup>371</sup> The Court also finds it relevant to note that the criminal proceedings involved a child victim of sexual violence and, therefore, this requires the guarantee of reasonable time established in Article 8(1) of the American Convention to be examined together with the State's duty to act "without delay" and with due diligence to investigate and punish the violence against the child, established in Article 7(b) of the Convention of Belém do Pará.

279. This Court has taken different factors into account to determine the *complexity of the matter*, such as the complexity of the evidence, the plurality of procedural subjects or the number of victims, the time that has passed since the violation, and the context in which this occurred.<sup>372</sup> The Court notes that, in this case, there was only one victim of the act to be investigated and that there was only one perpetrator. In addition, during the criminal proceedings, various procedures were conducted over a short period of time, including the victim's statement, the statement of the accused, witness statements, medical examinations, and the visual inspection and reconstruction of the events. Therefore, the Court notes that the matter was not complex.

280. Regarding the *procedural activity of the interested party*, the Court notes that V.P.C. took steps to advance procedures throughout the proceedings. For example, on November 20, 2001, V.P.C. filed a complaint against H.R.A. for the crime of the rape of her daughter, V.R.P. (*supra* para. 72), and, on July 29, 2002, she requested the intervention of a special prosecutor to protect and guarantee her daughter's rights during the proceedings (*supra* para. 110). There is also evidence that, on several occasions, she called into question the delay in the proceedings and demanded that the case be expedited (*supra* para. 115).

281. With regard to the *conduct of the judicial authorities*, the Court has understood that, as they are in charge of the proceedings, they have the duty to undertake and direct the criminal investigation in order to individualize, prosecute and punish, as appropriate, all those responsible for the facts.<sup>373</sup> In this case, the state authorities were not diligent in investigating the acts of sexual violence against V.R.P., and did not take into account the effects of the duration of the appeal stage of the criminal proceedings – almost six years following the jury's acquittal verdict.

282. This has been verified because, during the appeal stage, there were prolonged periods of inaction, without the facts revealing any explanation or justification by the authorities in charge of the proceedings. Indeed, in this case it is sufficient to note that there was no activity whatsoever between the referral of the case to the Appellate Court on May 15, 2002 (*supra* para. 108), and the declaration of the nullity of the proceedings issued on January 13, 2003 (*supra* para. 111); in other words, eight months of inactivity. The Court also notes that, following the recusals requested by the parties, the last of which was rejected on August 12, 2003 (*supra* para. 112), two judges excused themselves without any justification (on February 23 and March 1, 2004) (*supra* para.

<sup>370</sup> Cf. *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 182.

<sup>371</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 182.

<sup>372</sup> Cf. *Case of Genie Lacayo v. Nicaragua, supra*, para. 78, and *Case of Pacheco León et al. v. Honduras, supra*, para. 122.

<sup>373</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 211, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 145.

114) and, subsequently, there was no action in the case until January 13, 2005, the date on which the District Criminal Trial Court assumed jurisdiction and competence to process the case and ordered the opening to evidence of the appeal for the annulment of the verdict. In other words, an 18-month period of jurisdictional inactivity. Lastly, the Court notes that, on August 9, 2005, the appeal against the verdict was rejected and, on August 25, 2005, both the prosecutor and V.P.C. appealed that decision. It was only two years and two months later – on October 24, 2007 – that the Appellate Court delivered judgment. Consequently, even if only periods of inactivity in excess of six months are taken into consideration, there was a period of more than four years and four months of total inactivity. Consequently, the essential reason for the prolongation of the proceedings was the different periods of inactivity by the authorities.

283. Regarding *the effects on the legal situation of the person involved in the proceedings*, the Court has established that, if the passage of time has a relevant effect on the legal situation of this person, the proceedings must advance with greater diligence to ensure that the case is decided as soon as possible.<sup>374</sup> Since the case involved a child victim of sexual violence, the Court finds that an obligation of celerity was increased.

284. In the instant case, the Court considers that the evidence in the case file confirms the severe effects of the sexual violence on V.R.P.'s physical and mental health, and her subsequent need for medical and psychological treatment. Therefore, if the judicial authorities had taken into account the vulnerable situation of V.R.P., it should have been evident that the case called for greater diligence by the judicial authorities, because the main objective of the judicial proceedings – which was to investigate and punish the perpetrator of the sexual violence suffered by V.R.P., and to obtain the necessary treatment for the traumatic events experienced by the child – depended on their brevity. On this basis, the Court considers that it has been sufficiently proved that the prolongation of the proceedings in this case had a real and significant impact on the presumed victim's legal situation because the delay in the judicial resolution of the case affected her daily life.

285. Having analyzed the four elements for determining the reasonableness of the time, the Court concludes that the judicial authorities did not act with the due diligence and celerity required by the vulnerable situation of V.R.P., a child victim of sexual violence and, for this reason, the proceedings exceeded a reasonable time and this violated the right to judicial guarantees established in Article 8(1) of the American Convention, in relation to Articles 1(1) and 19 of this instrument and Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C.

**D. The principle of equality and non-discrimination in the access to justice of the child V.R.P. and institutional violence**

*D.1 Arguments of the parties and of the Commission*

286. The **Commission** emphasized that the State was faced with a serious act of sexual violence against a female and a child, which constituted an expression of the socially prevalent discrimination against women. As such, the State had the obligation not only to refrain from revictimizing or discriminating against the victim during the investigation and the criminal proceedings, but also to conduct an investigation that took into account its enhanced duty to consider V.R.P.'s two-fold vulnerability as a female and as a child victim of sexual violence. However, several aspects of the investigation revealed that the State had not complied with this duty; for example, the conduct of the forensic physician responsible for the first examination of V.R.P., as well as that of the judge in charge of the proceedings, who requested the direct participation of the child and that she place herself in the position in which she had been raped by

<sup>374</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Pacheco León et al. v. Honduras, supra*, para. 120.

the perpetrator, without any type of psychological support. The Commission also recalled that the influence exerted by discriminatory socio-cultural patterns might cause a victim's credibility to be questioned during criminal proceedings in cases of violence. It considered that the State had not proved that, when determining the responsibility of the presumed perpetrator, it had taken V.R.P.'s consistent statements into consideration, or indicated how it had assessed the available evidence. The Commission considered that there was enough evidence to conclude that the impunity in which the case remains was due precisely to the lack of due diligence. Thus, it concluded that, if the situation of impunity in a case of violence against a female child is due to the acts and omissions of the State, this impunity itself constitutes a perpetuation of the discrimination revealed by the violence, as well as a form of discrimination as regards access to justice. On this basis, the Commission concluded that the State was responsible for the violation of the principle of equality and non-discrimination established in Article 24 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of V.R.P. The Commission also considered that the deficient conduct of the physician constituted a serious act of revictimization and a renewed act of sexual violence against V.R.P., so that "this act of sexual abuse committed by a state official, taking into account the suffering it caused," should be considered by the Court under Article 5(2) of the Convention. The Commission reached the same conclusion with regard to the visual inspection and reconstruction of the events, and asked the Court to examine this under Article 5(2) of the Convention.

287. The **representatives** argued that the State had submitted the child V.R.P. to physical and mental violence by the actions of its officials, making her the victim of abuse on two fronts, without considering the enhanced duty of the State to adopt special measures of protection and assistance in favor of the child, and disregarding her condition as a female. The representatives agreed with the Commission in stating that the State had failed to comply with its enhanced duty to take into account the two-fold vulnerability of V.R.P., violating the right to non-discrimination established in Article 24.

288. The **State** argued that there had been no denigrating or revictimizing attitudes shown towards V.R.P.; to the contrary, the domestic proceedings had been conducted with due diligence. This was based on the fact that various procedures and expert examinations had been executed in the domestic sphere to obtain the greatest possible amount of evidence to prove what happened and the responsibility of the perpetrator. Nevertheless, based on its firm conviction, the Jury Court had delivered a verdict of innocence. The State underlined that the victim had been provided with psychological support during the proceedings and that the judge in charge of the case had taken her statement into account and, on that basis, had delivered an interim judgment ordering the pre-trial detention of H.R.A.

#### *D.2 Considerations of the Court*

289. The Court recalls that, at the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*. The legal structure of national and international public order is based on this and it permeates the whole legal system. States must refrain from executing actions that, in any way, are addressed, directly or indirectly, at creating situations of discrimination *de jure* or *de facto*. Thus, while the general obligation of 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." In sum, the Court has affirmed that, if a State discriminates in the respect or guarantee of a right established by the Convention, it would be violating Article 1(1) and the substantive right in question. If, to the contrary, the discrimination refers to an unequal protection by domestic law or its application, the fact must be examined under Article 24

of the American Convention.<sup>375</sup> Consequently, States have the obligation not to introduce discriminatory regulations into their legal system, to eliminate any regulations of a discriminatory nature, to combat practices of this type, and to establish laws and other measures that recognize and ensure the effective equality of everyone before the law.<sup>376</sup> In the instant case, the Court will examine the alleged violations under the two headings, because the arguments focus on the issue that the State did not take positive, specific and reinforced actions to ensure the Convention-based rights for reasons of sex and gender, as well as owing to the victim's condition as a person in development, categories protected by the Convention.

290. The Court has considered that rape is a form of sexual violence.<sup>377</sup> Also, both the Convention of Belém do Pará and the Convention on the Elimination of All Forms of Violence against Women and its treaty body, have recognized the connection between violence against women and discrimination.<sup>378</sup> The Court has already stressed the special vulnerability of female children to sexual violence, especially within the family, as well as the obstacles and other factors they may face in their search to obtain justice (*supra* para. 156). In the instant case, this violence was perpetrated by a private individual. However, this does not exempt the State from responsibility because it was called on to adopt comprehensive policies to prevent, punish and eradicate violence against women, with particular emphasis on cases in which the woman is under 18 years of age.

291. The Court reiterates that the inefficiency of the system of justice in individual cases of violence against women encourages a climate of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women is tolerated and accepted; this contributes to its perpetuation and social acceptance, to the feelings women have that they are not safe, and to their persistent lack of confidence in the system for the administration of justice.<sup>379</sup> This ineffectiveness or indifference constitutes discrimination against women with regard to access to justice.

292. Therefore, as mentioned previously, the State must reinforce the guarantees of protection during the investigation and criminal proceedings when the case refers to the rape of a female child, especially if this sexual violence was perpetrated within the family; in other words, in an environment in which it should have protected her. In these circumstances, the obligations of due diligence and to adopt measures of protection are greatly increased. In addition, the State must ensure that the investigations and criminal proceedings are conducted with a child- and gender-based perspective, considering the victim's condition as a child and taking into account the aggravated nature of rape, as well as the effects that it could have on the child.

293. The Court notes that the State was confronted by an act of rape, which is an expression of discrimination against women; therefore, it should have adopted positive measures to ensure effective and equal access to justice as established by the Court in the chapter on the essential

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<sup>375</sup> Cf. *Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela, supra*, para. 209, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 214.

<sup>376</sup> Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 185, and *Case of Vélez Loo v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 248.

<sup>377</sup> Cf. *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 359, and *Case of Espinoza González v. Peru, supra*, para. 192.

<sup>378</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, paras. 394 and 395, citing the Convention of Belém do Pará, preamble and Article 6; the Convention on the Elimination of All Forms of Violence against Women of December 18, 1979, Article 1, and the Committee for the Elimination of Violence against Women, *General Recommendation No. 19: Violence against women*, UN Doc. A/47/38, January 29, 1992, paras. 1 and 6.

<sup>379</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, paras. 388 and 400, and *Case of Gutiérrez Hernández et al. v. Guatemala, supra*, para. 176.

components of the obligation of due diligence and enhanced protection (*supra* paras. 158 to 170). The Court has referred to the need for information on the proceedings and comprehensive care services to be available; the right to participate and the right to have one's opinions taken into account; the right to free legal assistance; the special training required for all the officials who intervene, and the right to services of medical, psychological and psychiatric assistance that help in recovery, rehabilitation and reintegration. In the instant case, it has been shown that such measures were not adopted, so that discrimination in access to justice existed for reasons of sex and gender, as well as owing to the victim's condition as a person in development.

294. Furthermore, it was incumbent on Nicaragua to make every effort to provide measures of protection for V.R.P. so as not to prejudice her by causing her further harm due to the investigation procedures, understanding that all the decision adopted should obey the main purpose of protecting the rights of the child comprehensively, safeguarding her subsequent development, ensuring her best interests, and avoiding her revictimization.

295. In the instant case, the State required the child to submit to various medical examinations unnecessarily; to be interviewed on several occasions in order to recount what happened, and to take part in the reconstruction of the events, causing her to relive extremely traumatic moments, among other actions examined above. In addition, the conduct of the forensic physician was discriminatory because he did not consider V.R.P.'s right to be heard and to give her consent when she refused to submit to the first medical examination. The physician blamed the child when she refused to undergo the examination. All this, added to absence of comprehensive care for the victim, increased the trauma suffered, maintained the post-traumatic stress, and prevented the child's recovery and rehabilitation, and the impact on her personal integrity still continues. Consequently, the Court finds that the way in which the investigation into the rape of V.R.P. was conducted was discriminatory and was not carried out from a gender perspective and in order to provide enhanced protection to the rights of the child, pursuant to the special obligations imposed by Article 19 of the American Convention and the Convention of Belém do Pará.

296. Based on the above, the Court considers that the State failed to comply with its obligation to ensure, without discrimination based on sex and gender and on the victim's condition as a person in development, the right of access to justice pursuant to Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1), 19 and 24 of this instrument and Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P.

297. Additionally, the Court finds that in this case, the State became the second aggressor, by committing various revictimizing actions that, taking into account the definition of violence against women adopted by the Convention of Belém do Pará, constituted institutional violence. Indeed, the Convention of Belém do Pará has established parameters to identify when an act constitutes violence and its Article 1 stipulates that "violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."<sup>380</sup> In addition, this instrument stresses that this includes violence perpetrated or condoned by the State or its agents regardless of where it occurs.

298. In conclusion, the Court considers that the child suffered two-fold violence; on the one hand, sexual violence at the hands of a non-state actor and, on the other hand, institutional violence during the judicial proceedings, in particular, owing to the forensic medical examination and the reconstruction of the events. The child and her family resorted to the judicial system seeking protection and to obtain the restitution of their violated rights. However, the State not only failed to comply with the enhanced due diligence and special protection that were required during the

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<sup>380</sup> Article 1 of the Convention of Belém do Pará.



judicial proceedings in which a situation of sexual violence was investigated, but responded with a new form of violence. Thus, in addition to the violation of the right of access to justice without discrimination, the Court finds that the State perpetrated institutional violence, causing V.R.P. increased harm and exacerbating the traumatic experience she had undergone.

299. Consequently, the Court determines that the revictimizing actions carried out by state officials to the detriment of V.R.P. constituted institutional violence and, taking into account the importance of the suffering caused, should be classified as cruel, inhuman and degrading treatment in the terms of Article 5(2) of the American Convention, in relation to Article 1(1) of this instrument.

### **E. An effective remedy and the right to know the truth**

#### *E.1 Arguments of the parties and of the Commission*

300. The **representatives** indicated that, on several occasions, they had filed briefs before the different organs of justice at the domestic level reporting irregularities in the proceedings, offering evidence, and requesting procedures, all to try and prove the irregular and flawed actions of the public servants. V.P.C. could not find an effective remedy in the State of Nicaragua that allowed her to obtain real protection for her daughter's rights. The representatives also stressed the inexistence of an ordinary remedy that would have allowed the parties to file an appeal before a higher court. Based on this, they concluded that the State was responsible for the violation of Articles 25 and 25(1) of the American Convention in relation to Article 1(1) of this instrument. Additionally, the representatives argued that the State had violated the right to the truth because it had failed to conduct the necessary investigations to know the truth in relation to the reasons that led the jury to take the decision they did, despite the existence of all the evidence of the responsibility of the accused. They emphasized that the State also failed to investigate or take measures with regard to the complaints filed by V.P.C. concerning irregularities committed by some participants in the proceedings, or to prosecute the public officials for offenses committed in the exercise of their functions.

301. The **State** noted that, during the domestic public hearing, no complaint had been filed in relation to the supposed irregularities and that the complaints were only filed when V.P.C. became aware of the jury's "not-guilty" verdict. The State indicated that the statement by the representatives that "it had failed to conduct the necessary investigations to know the truth" had not taken into consideration the evidence that had been collected and on which the interim judgment ordering the pre-trial detention of H.R.A. was founded because, in the absence of this evidence, the judge would not have been able to issue the respective order.

302. The **Commission** did not provide input on these points.

#### *E.2 Considerations of the Court*

303. The Court considers that the relevant analysis of the additional aspects adduced by the representatives has already been made in the preceding sections; therefore, it does not find it pertinent to issue an autonomous ruling on their alleged violation.

### **F. Conclusion**

304. Based on the above, the Court concludes that the State of Nicaragua did not act with enhanced due diligence or provide the special protection required in the investigations and criminal proceedings for the rape of the child V.R.P., which involved the perpetration of acts that violated her rights to personal integrity, judicial guarantees, private and family life and judicial protection

recognized in Articles 5(1), 5(2), 8(1), 11(2) and 25(1) of the American Convention, in relation to Articles 1(1) and 19 of this instrument and the obligations contained in Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C.

## VIII-2

### **RIGHTS TO RESIDENCE,<sup>381</sup> PROTECTION OF THE FAMILY,<sup>382</sup> AND SPECIAL MEASURES OF PROTECTION FOR CHILDREN<sup>383</sup> IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS**

#### **A. Arguments of the parties and of the Commission**

305. The **Commission** did not provide input on this point.

306. The **representatives** indicated that V.P.C. was accused of the offenses of defamation and libel by different public servants who intervened in the proceedings. They also indicated that V.R.P. stopped going to school because she was ashamed and was afraid of being rejected; also, there was a fear that V.P.C. would be sent to prison and that "the aggressor would have the custody of the child and continue harming her." They argued that, in these circumstances, in December 2002, V.P.C. "had to abandon and flee Nicaragua" with her daughters, V.R.P. and N.R.P., owing to the "persecution of the judiciary politicized against her, religious persecution because she was a Mormon, and gender-based persecution, and she was granted asylum in the United States. They argued that the State did not provide the family with due protection, because the "accusations and threats of public servants who had taken part in the proceedings" resulted in the displacement of some members of the family. They indicated that V.R.P., her mother and sister lost their home and were uprooted from their community; the family was separated, with the loss of the central element of the mother, who was the only person who was protecting her children. On this basis, the representatives alleged that the State had violated Articles 1(1), 17(1), 12(1), 19 and 22(1) of the American Convention.

307. The **State** argued that the public officials who filed complaints were not acting in their official capacity, but as private individuals. It added that the offenses of defamation or libel were not punishable by imprisonment. It considered that the fact that the actions against V.P.C. had been filed by private individuals revealed that there had not been any political persecution. It also indicated that there had not been any religious persecution because religious freedom existed for "Mormon churches" and Nicaragua is a secular State. Regarding the fact that V.R.P. abandoned her schooling, the State affirmed that it had provided the necessary psychological care for the child to overcome the situation; however, her mother decided to leave the country, even though education was free in Nicaragua and V.R.P. could have been enrolled in another school. In relation to the request for asylum, the State indicated that V.P.C. abandoned the country owing to a voluntary personal decision that resulted in the separation of the family. It argued that a State's decision to grant someone asylum was made in exercise of its sovereignty based on its domestic law. In addition, it denied that the family had been left homeless, because V.P.C. continued to exercise her ownership rights over the property in the city of Jinotega. It asserted that V.P.C., V.R.P. and N.R.P., had never been prevented from entering Nicaragua, as revealed by the migratory movements of V.P.C., who had entered the country on two occasions. It added that the rest of the

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<sup>381</sup> Article 22(1) establishes that: "[e]very person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law."

<sup>382</sup> Article 17(1) stipulates that: "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

<sup>383</sup> Article 19 provides that: "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State."

family continued to live in Nicaragua. Consequently, the State denied the violation of Articles 1(1), 12(1), 17(1), 19 and 22(1) of the American Convention.

### **B. Considerations of the Court**

308. Article 22(1) of the Convention recognizes the right to freedom of movement and residence. In this regard, the Court has considered that this provision protects the right not to be forcibly displaced within a State Party and not to be forced to leave the territory of the State in which a person legally resides.<sup>384</sup> The Court has also indicated repeatedly that the right to freedom of movement and residence is an essential condition for the free development of the individual.<sup>385</sup>

309. The Court has indicated that freedom of movement and residence may be violated by *de facto* restrictions if the State has not established the conditions, or provided the means, to exercise this freedom.<sup>386</sup> Thus, freedom of movement and residence may be infringed when a persons is the victim of threats and harassment and the State fails to provide the necessary guarantees for them to move freely and reside in the territory in question, even when the authors of the threats and harassment are non-State actors.<sup>387</sup> The lack of an effective investigation into violent acts and the situation of impunity may also impair the victims' confidence in the system of justice and contribute to unsafe conditions.<sup>388</sup> In addition, this situation of impunity may lead to or perpetuate forced displacement or exile.<sup>389</sup>

310. The Court has indicated that the fact that another country grants asylum reveals the high degree of credibility that the authorities of the host State accorded to the claims made by the victims.<sup>390</sup> However, this acknowledgement alone is not sufficient to affirm that the right to freedom of residence has been violated in the case. It is just one more indication to be taken into account together with all the specific circumstances of the case.

311. Regarding Article 17 in relation to Article 19 of the American Convention, the Court has indicated that the State is obliged not only to establish and directly implement measures of protection for children and adolescents, but also to promote, as extensively as possible, the development and reinforcement of the family unit. Consequently, the Court has established that the separation of children and adolescents from their family constitutes, in certain circumstances, a violation of their right to a family recognized in Article 17 of the American Convention,<sup>391</sup> because

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<sup>384</sup> Cf. *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 186, and *Case of Yarce et al. v. Colombia, supra*, para. 214.

<sup>385</sup> Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs.* Judgment of August 31, 2004. Series C No. 111, para. 115, and *Case of Yarce et al. v. Colombia, supra*, para. 214.

<sup>386</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 328, para. 174.

<sup>387</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 139, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala, supra*, para. 174.

<sup>388</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 201.

<sup>389</sup> Cf. *Case of the Moiwana Community v. Suriname, supra*, paras. 119 and 120, and *Case of Members of the Village of Chichupac and neighboring communities of the municipality of Rabinal v. Guatemala, supra*, para. 174.

<sup>390</sup> Cf. *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 161.

<sup>391</sup> Cf. *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02, *supra*, para. 71, and *Case of Yarce et al. v. Colombia, supra*, para. 246.

the mutual enjoyment of the coexistence of parents and their children is an essential element of family life.<sup>392</sup>

312. The Court will now analyze whether V.P.C. and her daughters, V.R.P. and N.R.P., had a well-founded fear that their rights were unprotected and were therefore forced to leave Nicaragua, leading to the violation of their right to freedom of residence recognized in Article 22(1) of the Convention. In addition, it will determine whether the circumstances of the departure from the country resulted in other legal consequences that entailed the violation of the rights to protection of the family to the detriment of V.P.C., N.R.P., H.J.R.P., V.A.R.P. and V.R.P. and, in particular, to the special measures of protection for female children, to the detriment of V.R.P.

313. The Court emphasizes that, in the instant case, the alleged human rights violations must be assessed from a gender perspective<sup>393</sup> and observing the paradigm of the comprehensive protection of children and adolescents.<sup>394</sup> Thus, the Court observes that rape causes severe physical and mental harm,<sup>395</sup> which is increased when the victim is a child and, especially when the perpetrator occupies a position of authority over the child. All of this may reasonably cause the victim to have a well-founded fear of lack of protection, comparable to persecution. In this context, even if the rape was committed by a private individual, the State's international responsibility in relation to this situation of well-founded fear of lack of protection, comparable to persecution, may arise to the extent that it knowingly tolerates the act that caused this, or refuses or proves unable to offer effective protection.<sup>396</sup>

314. Bearing in mind these considerations, the Court bases its analysis on the fact that V.R.P. was a victim of rape perpetrated, as she has indicated on numerous occasions, by her father, and this caused her serious physical harm and had profound psychological effects, and also affected her family environment (*supra* Chapter VIII-3). As a result of these facts, her mother filed a

<sup>392</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs, supra*, para. 142, and *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, para. 104.

<sup>393</sup> Cf. United Nations High Commissioner for Refugees (UNHCR), *Guidelines on international protection: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01, May 7, 2002, which establish that: "[i]t is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions" (para. 2).

<sup>394</sup> Cf. Committee on the Rights of the Child, *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*, UN Doc. CRC/GC/2005/6, September 1, 2005, para. 74.

<sup>395</sup> Cf. United Nations High Commissioner for Refugees (UNHCR), *Guidelines on international protection: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01, May 7, 2002, para. 9, which indicates that "[i]nternational human rights law and international criminal law clearly identify certain acts as violations of these laws, such as sexual violence, and support their characterisation as serious abuses, amounting to persecution. In this sense, international law can assist decision-makers to determine the persecutory nature of a particular act. There is no doubt that rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation, intrafamily violence, and trafficking, are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by State or private actors."

<sup>396</sup> Cf. United Nations High Commissioner for Refugees (UNHCR), *Guidelines on international protection: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01, May 7, 2002, para. 19, indicates that: "[t]here is scope within the refugee definition to recognise both State and non-State actors of persecution. While persecution is most often perpetrated by the authorities of a country, serious discriminatory or other offensive acts committed by the local populace, or by individuals, can also be considered persecution if such acts are knowingly tolerated by the authorities, or if the authorities refuse, or are unable, to offer effective protection." Similarly, United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/Rev.1, December 2011, paragraph 65 of which indicates: "[p]ersecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. [...] Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."

complaint of rape. During the processing of the criminal proceedings, the State not only failed to adopt special measures to protect the rights that corresponded to V.R.P., as a child victim of sexual violence, but also failed to comply with its obligation of enhanced due diligence and, through its public officials, committed acts of institutional violence against V.R.P., which resulted in severe revictimization (*supra* paras. 291 to 299). The acts of institutional violence included forcing V.R.P. to submit to the first forensic medical examination and to take part in the reconstruction of the events, despite her refusal to do so, by threatening that, if she did not, her aggressor would be set free (*supra* para. 295).

315. Furthermore, as shown previously, the acts of sexual violence remained unpunished following the decision of a Jury Court that was challenged owing to its lack of objective impartiality (*supra* para. 253); its non-guilty verdict was an unpredictable result considering everything that had taken place during the criminal proceedings (*supra* para. 269). Following this verdict, V.P.C. and her sister filed a criminal complaint against H.R.A. for threats against them on the evening of the day on which the acquittal was issued (*supra* para. 102). The authorities' lack of response to the complaints filed by V.P.C. due to the acts of institutional violence and other irregularities committed during the criminal proceedings for sexual violence (*supra* paras. 125 to 132), were exacerbated by the complaints filed by public servants and officials who had intervened in the criminal proceedings for rape against V.P.C. and other family members who had become involved in the search for justice (*supra* para. 133), and also the different subpoenas received as a result of the said criminal proceedings to appear before the Local Criminal Court of Jinotega to testify.<sup>397</sup> The social stigmatization suffered by V.R.P. and the members of her family as a result of the judicial proceedings has also been verified, and the effects increased following the acquittal verdict (*supra* Chapter VIII-3).

316. In this context, V.P.C. stated during the hearing before this Court that, when they left Nicaragua, they "were afraid as a result of all the criminal accusations that both the forensic physician and the local judge and a member of the jury had filed against [her], against [her] mother who was 70 years of age, and against [her] sister, merely because she had accompanied [her] in the trials." She explained that the fear they felt related to "being punished or persecuted for having persevered with all the complaints made against the public officials." She added that she had no "confidence that, in the State of Nicaragua, everything would be done in a way that respected [their] rights."<sup>398</sup> Her children, V.R.P.<sup>399</sup> and H.J.R.P.<sup>400</sup> expressed similar sentiments in relation to the circumstances of their departure from Nicaragua.

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<sup>397</sup> Cf. Writ of summons against V.P.C. and L.A.C.G. in relation to complaints filed against her: (1) Writ of summons against V.P.C. of December 19, 2001, in the criminal action for defamation filed by the assistant prosecutor of the department of Jinotega (file of procedure before the Commission, volume VII, folio 2862); (2) Writs of summons against V.P.C. of April 29, May 8 and May 14, 2002, in the criminal action for libel filed by the forensic physician (evidence file, volume XX, annex 7.b of the helpful evidence, folios 9699, 9711, 9721); (3) Writ of summons against V.P.C. of July 22, 2002, in the criminal action for defamation filed by the forensic physician (file of procedure before the Commission, volume VII, folio 2495); (4) Writ of summons against V.P.C. of May 8, 2002, in the criminal action for defamation and libel filed by the judge of law and president of the Jury Court (file of procedure before the Commission, volume VII, folio 2586); (5) Writ of summons against V.P.C. of May 8, 2002, in the criminal action for defamation filed by a member of the Jury Court (file of procedure before the Commission, volume VII, folio 2587), and (6) Writ of summons against L.A.C.G. of June 5, 2002 (file of procedure before the Commission, volume VII, folio 2496).

<sup>398</sup> Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>399</sup> Cf. Statement made by V.R.P. before the Inter-American Court during the private hearing held on October 16, 2017, in which she asserted that: "they began to accuse [her] mother saying that what she had said about the doctor and the judge were lies. [She] was afraid that they would put [her] mother in prison, that they would hand [her] over to [her] father. [She] was afraid that they would take [her] away and hand [her] over to him and that they would do something to [her] mother. [They] had to leave; [they] had to leave [her] brothers, who were [her] support, they made [her] feel that [she] was protected, that [she] was safe."

<sup>400</sup> Cf. Affidavit made by H.J.R.P. on October 9, 2017 (evidence file, volume XVIII, affidavits, folio 8349).

317. Based on an assessment of all the reasons given, the Court finds it proved that it was owing to a combination of many factors that, taken as a whole, reveal that the fear that the State would not protect their rights if they remained in Nicaragua was reasonable and justified. The State, by the actions taken from the time it became aware of the acts of sexual violence and throughout the proceedings, demonstrated that it was incapable of offering adequate protection to the victims' rights from a gender perspective and observing the standards for the comprehensive protection of children and adolescents. The State even became an agent with the ability to increase the violence suffered and its effects in situations in which its protection was required.

318. Regarding the complaints filed by V.P.C., the Court's case law has affirmed that it is evident that a State cannot avoid one individual filing a legal action against another. Thus, it is clear that the State is not responsible for the fact that these persons filed complaints or instituted civil proceedings against V.P.C., or that the judicial authorities opened the respective cases.<sup>401</sup> However, the Court notes that, in the instant case, there is a close relationship between the complaints filed against V.P.C., and the exercise of a powerful function, such as the public office or public service of the complainants. The public servants and officials who intervened in the criminal proceedings took legal action in response to the complaints and accusations that V.P.C. had filed alleging deficiencies and irregularities in the performance of their respective public functions, which were significant enough to constitute institutional and gender-based violence. Consequently, it is reasonable to understand that, for the victims, the accusations against them constituted a form of intimidation that, in their minds, created a justified fear of judicial harassment.

319. In addition, diverse reports note the possible influence of political power over the judicial system in Nicaragua and its lack of impartiality and independence and, in particular, over the response of the judicial system to cases of sexual violence against children and adolescents, in relation to the impunity of the perpetrators and the obstruction of the victims' access to justice.<sup>402</sup> Therefore, it was reasonable that V.P.C. and her daughters did not wish to seek the protection of their country of origin owing to distrust in the judicial system in relation to this type of crime.

320. The Court considers that the fact of not wanting to resort to the protection of the State owing to distrust in its effectiveness and, consequently, choosing to reside in another country, may be understood as a decision made by the victims. However, following a full assessment of the circumstances of the case, the Court notes that this decision was forced on them owing to the combination of objective factors resulting in the State's failure to protect the victims' rights and a well-founded fear of judicial harassment and increased vulnerability to possible attacks on their rights. Accordingly, the State is responsible for having created the conditions that forced the presumed victims to leave their country of origin, which also entailed the separation of the family.

321. Therefore, although there is no evidence that the State formally restricted freedom of residence, the Court considers that, in this case, this freedom was limited owing to V.R.P. and V.P.C.'s fear of lack of protection of their rights, founded on objective elements that can be attributed to the responsibility of the State.

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<sup>401</sup> Cf. *Case of Acosta et al. v. Nicaragua*, *supra*, para. 192.

<sup>402</sup> Cf. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Nicaragua*, UN Doc. A/HRC/14/3, March 17, 2010, paras. 82, 92.36 to 92.39; CEDAW, *Concluding Comments of the Committee on the Elimination of Violence against Women: Nicaragua*, February 2, 2007, UN Doc. CEDAW/C/NIC/CO/6, paras. 19 and 20; Human Rights Committee, *Consideration of reports submitted by States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee: Nicaragua*, UN Doc. CCPR/C/NIC/CO/3, December 12, 2008, paras. 8, 12 and 19, and Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, Concluding observations: Nicaragua*. UN Doc. CRC/C/OPSC/NIC/CO/1, October 21, 2010, paras. 33 to 36.

322. Consequently, the Court considers that the State is responsible for the violation of the rights to freedom of residence and to the protection of the family recognized in Articles 22(1) and 17(1) of the American Convention, in relation to Articles 1(1) and 19 of this instrument, to the detriment of V.R.P. The State is also responsible for the violation of the rights to freedom of residence and to the protection of the family recognized in Articles 22(1) and 17(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of V.P.C. and N.R.P. Similarly, the State is responsible for the violation of the right to protection of the family, recognized in Article 17(1) of the American Convention, in relation to Article 1(1), to the detriment of H.J.R.P. and V.A.R.P.

323. With regard to the arguments of the representatives that the departure from Nicaragua was due to a supposed religious persecution that violated the principle of non-discrimination and the right to religious freedom, the Court notes that these assertions have not been proved and that there is no evidence that would objectively indicate that the human rights violations declared in this judgement resulted from the victims' religion. Therefore, the Court considers that the State is not responsible for the alleged violation of the principle of non-discrimination for reasons of religion protected in Article 1(1) of the American Convention, or for the alleged violation of the right to religious freedom recognized in Article 12(1) of the American Convention.

### VIII-3

#### **RIGHT TO PERSONAL INTEGRITY<sup>403</sup> OF THE FAMILY MEMBERS IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS**

##### ***A. Arguments of the parties and of the Commission***

324. The **Commission** observed that the statement made by V.P.C. revealed that her personal integrity and that of her children had been harmed. The Commission also stressed the many obstacles that V.P.C. had faced in her pursuit of justice, and the fact that complaints had been filed against her by two members of the jury that had acquitted the accused, and by the forensic physician who took part in the first medical examination. The Commission emphasized that, even though those complaints were subsequently closed, they had severe effects on V.P.C. and her family. Also, it noted that, owing to the situation of impunity, V.P.C. and her two daughters decided to leave Nicaragua and requested asylum in another country where they currently reside. Based on the foregoing, the Commission considered that there was sufficient evidence to conclude that the rape suffered by V.R.P., its consequences, and the impunity – attributable to the State – in which the case remains, caused emotional suffering to V.P.C. and her daughter and sons, N.R.P., H.J.R.P. and V.A.R.P., in violation of the right recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument.

325. The **representatives** indicated that, according to V.P.C., on December 6, 2002, she had to leave and flee Nicaragua with her two daughters "owing to the persecution of the judiciary politicized against her, and religious persecution because she was a Mormon." They noted that the V.R.P.'s mother and siblings experienced mental and moral suffering due to the anguish, pain, helplessness, stigmatization and fear resulting from this persecution of V.P.C., the break-up of the family, and the distance between the members of the family. Accordingly, the representatives concluded that the State was responsible for the violation of Articles 1(1), 5(1), 11 and 24 of the American Convention, in relation to the petitioner, and Articles 1(1), 5(1) and 11 of this instrument, in relation to V.R.P.'s siblings.

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<sup>403</sup> Article 5(1) of the Convention stipulates that: "[E]very person has the right to have his physical, mental, and moral integrity respected."

326. The **State**, as indicated in the preliminary considerations (*supra* Chapter V), did not recognize V.R.P.'s brothers as presumed victims because they had not been identified as such by the Commission in its Merits Report.

### **B. Considerations of the Court**

327. The Court has indicated on numerous occasions that the next of kin of the victims of human rights violations may also, in turn, be victims.<sup>404</sup> The Court has considered that it can be declared that the right to mental and moral integrity of "direct family members" or other individuals with close ties to the victims has been violated based on the additional suffering that they have endured as a result of the particular circumstances of the violations perpetrated against their loved ones, and due to the subsequent acts or omissions of the state authorities in relation to those facts,<sup>405</sup> taking into account, among other factors, the steps taken to obtain justice and the existence of close family ties.<sup>406</sup>

328. The Court has indicated that it is possible to declare the violation of the mental and moral integrity of the next of kin of victims of certain human rights violations applying a *ius tunc* presumption, provided this responds to the particular circumstances of the case.<sup>407</sup> In other situations, the Court must evaluate, on the one hand, the existence of particularly close ties between the family members and the presumed victim in the case that allows it to establish that their personal integrity has been harmed and, on the other hand, whether the evidence in the case file proves a violation of the right to personal integrity.<sup>408</sup>

329. In this regard, during the public hearing, V.P.C. referred to the serious consequences that her daughter's rape had for her family, as well as the institutional violence, and the revictimization to which they were subjected during the domestic judicial proceedings. She indicated that "the painful acts of coercion and intimidation that the authorities used" against them led to the disintegration of her family and stated that:

My sons had to stay in Nicaragua and I had to abandon the country in order to help my daughter so that she did not have to stay in that place where, basically, instead of giving us justice, what they did was inflict more pain on us than we already had. We were fearful when we left, due to all the criminal accusation that the forensic physician and the local judge and the member of the jury had filed against me, against my mother, who was 70 years old, and against my sister merely because they accompanied me in the proceedings. At the time all this happened, I could support my children, in the sense that I was paying for a private university for my older daughter. My other children were also attending a private school; in other words, they had clothes, food, medicines, [...], I even paid a maid to do the housework, [...] they were well looked after, not in the situation they are now.<sup>409</sup>

330. Regarding the harm and revictimization suffered by V.P.C. when she had recourse to the courts, expert witness Enrique Oscar Stola indicated that "the mother, who is a protective mother, is also a victim and when we analyze the conduct of the judiciary, in principle it had considered her

<sup>404</sup> Cf. *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 156, and *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 249.

<sup>405</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 29, 2016. Series C No. 327, para. 142.

<sup>406</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Valencia Hinojosa et al. v. Ecuador*, *supra*, para. 142.

<sup>407</sup> The Court has applied the *ius tunc* presumption with regard to mothers and fathers, daughters and sons, spouses and permanent companions, for example in cases of massacres, forced disappearances and extrajudicial executions. Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119, and *Case of Espinoza Gonzáles v. Peru*, *supra*, para. 296.

<sup>408</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119, and *Case of Valencia Hinojosa et al. v. Ecuador*, *supra*, para. 143.

<sup>409</sup> Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 17, 2017.



a secondary victim, but I also think that the protective mother received such a level of abuse by the judiciary that she may be a primary victim, together with the child. Lastly, the fact that she was made to constantly repeat what happened to different professional, the only thing this does is increase the trauma, and the prolongation of the trial, the legal proceedings, [...] what this does is maintain the post-traumatic stress active and increase some symptoms."<sup>410</sup>

331. Regarding the harm to the personal integrity of V.R.P.'s sister and brothers, V.P.C. stated during the hearing that her "older daughter who came with us [to the United States], she really assumed a role, together with me, because between the two of us we tried to help my daughter [V.R.P.] recover because, I often stayed with my daughter and she went to work. She even had a very strong reaction because she was confined in a psychiatric ward for about 10 days. This was not so long ago. When I left Nicaragua, in the case of my son H [...], he had to be monitored constantly because he was operated on for a brain tumor and I had to provide him with the necessary monitoring because he still has a drainage valve in his head and was almost abandoned because I haven't been able to help with his health."<sup>411</sup> She also stated that H.J.R.P. had been dismissed from his job owing to international petition filed in this case. Regarding V.A.R.P., she stated that she has been unable to pay for the medicines required for his health problems.<sup>412</sup>

332. In the case of H.J.R.P., according to his affidavit, the departure from Nicaragua of his mother and sisters destroyed his life, because his mother was his "emotional, moral and financial support" and since she left Nicaragua he has not been able to undergo periodic magnetic resonance imaging (MRI) tests to monitor the valve implanted in his cerebellum owing to a surgical procedure he underwent for a brain tumor. He also indicated that, owing to the petition that V.P.C. lodged with the Inter-American Commission, "many of the judges and court secretaries created a climate of rejection and unease [around him]." This "prejudiced [him] professionally because [he was] unable to find stable employment." He also asserted that "[a]ll this had had repercussions on [his] daily life, harming [his] bad health even more with gastritis, migraines and episodes of depression increased by his financial situation."<sup>413</sup> V.A.R.P. indicated in his affidavit that, apart from the severe emotional effects of the stigmatization and revictimization experienced owing to the domestic proceedings and the break-up of his family, he was unable to study and his dreams were curtailed because he could not complete his university education.<sup>414</sup> Meanwhile, N.R.P. recounted that the situation experienced as a result of the legal proceedings undertaken "was exhausting, frightening, and denigrating for the all the members of the family." She also indicated that "the deterioration in [her] emotional, physical and mental health [caused by the events of this case] have thwarted [her] professional development owing to the impact on [her] life of the family's disintegration."<sup>415</sup>

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<sup>410</sup> Expert opinion provided by Enrique Oscar Stola before the Inter-American Court during the public hearing held on October 16 and 17, 2017.

<sup>411</sup> Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 17, 2017.

<sup>412</sup> Cf. Statement made by V.P.C. before the Inter-American Court during the public hearing held on October 17, 2017.

<sup>413</sup> Affidavit made by H.J.R.P. on October 9, 2017 (evidence file, volume XVIII, affidavits, folios 8352 to 8358).

<sup>414</sup> Specifically, he stated that: "when my mother and my sisters left Nicaragua [...] I lost all hope, I had no one to give me a mother's emotional support; I had no one to give me financial support to continue studying. [...] Everything fell to pieces, not only because of what had happened to my sister, but also because those who should have looked after them did not do so; they were left alone. The fact of being unable to study has destroyed me. [...] The separation and disintegration of the family has affected all of us a lot. We cannot get over it [...]. The gap is difficult to fill even after so many years. My health has got worse for this reason. The situation has prevented me from developing as a person, [...]. My goal was to be a professional. I could not fulfill it because I did not have a mother. [...] All this has affected my immune system, with reiterated health problems." Affidavit made by V.A.R.P. on October 9, 2017 (evidence file, volume XVIII, affidavits, folios 8364 to 8375).

<sup>415</sup> In particular, she indicated: "[...] this situation has affected me in all spheres of my life [...]. And in June [2017] I was hospitalized in a psychiatric hospital because I had a relapse owing to the events that took place in my past [...]. The whole stressful situation experienced, post-traumatic stress, has cause severe harm to my health, even though I am young, but my health has deteriorated greatly." Affidavit made by N.R.P. on October 10, 2017 (evidence file, volume XVIII, affidavits, folios 8378 to 8398).

333. The Court notes that, in this case, the State's conduct in response to the rape suffered by V.R.P., the revictimization, the institutional violence caused by the intervening authorities, the accusations filed by public servants and officials, as determined in this judgment, had significant mental and emotional effects on V.P.C. and her children N.R.P., H.J.R.P. and V.A.R.P. In addition, the Court considers that, as has been established (*supra* Chapter VIII-2), V.P.C. and her two daughters, V.R.P. and N.R.P., were forced to leave Nicaragua and request asylum in another country. This situation caused the family socio-economic difficulties, and also the loss of their employment in the case of V.P.C. and H.J.R.P. and, in the case of V.A.R.P., the loss of the possibility of completing his university studies.

334. Consequently, the Court finds that the State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the members of V.R.P.'s family, identified as V.P.C., N.R.P., H.J.R.P. and V.A.R.P.

## **IX REPARATIONS (Application of Article 63(1) of the American Convention)**

335. Based on the provisions of Article 63(1) of the American Convention,<sup>416</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to repair this adequately and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>417</sup>

336. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the reestablishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the rights that have been violated and to redress the consequences of those violations.<sup>418</sup> Therefore, the Court has considered the need to grant different measures of reparation in order to redress the harm integrally so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.<sup>419</sup>

337. The Court has established that the reparations must have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures claimed to redress the respective harm. Therefore, the Court must observe the concurrence of these factors in order to rule appropriately and in accordance with law.<sup>420</sup> In addition, the Court finds that the reparations must include an analysis that not only takes into account the right of the victim to obtain reparation, but also incorporates a child- and gender-based perspective, both in their formulation and in their

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<sup>416</sup> Article 63(1) of the Convention dispone que "[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."

<sup>417</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 25, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 194.

<sup>418</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, paras. 194 and 195.

<sup>419</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79 a 81, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 195.

<sup>420</sup> Cf. *Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 196.

implementation.

338. Taking into account the violations of the American Convention declared in the preceding chapters, and in light of the criteria established in the Court's case law on the nature and scope of the obligation to make reparation,<sup>421</sup> the Court will examine the claims presented by the Commission and the representatives, together with the corresponding arguments of the State in order to establish measures to redress the said violations.

**A. Injured party**

339. Pursuant to Article 63(1) of the Convention, the injured party is considered to be anyone who has been declared a victim of the violation of any right recognized in that instrument. Therefore, the Court finds that, in the instant case, V.R.P., V.P.C., N.R.P., H.J.R.P., and V.A.R.P. are the "injured party" and, in their capacity as victims of the violations declared in this judgment, they will be considered beneficiaries of the reparations ordered by the Court.

**B. Obligation to investigate the facts and identify, prosecute and punish, as appropriate, those responsible**

340. The **Commission** indicated that, although the first recommendation in its Merits Report asked the State to institute proceedings against the person responsible for the rape of V.R.P., who was repeatedly identified by the child as her father, information provided since the adoption of that decision reveals that the presumed perpetrator is now deceased. Nevertheless, the Commission stressed that this fact did not exempt the State from its obligation to take all necessary measures to provide comprehensive justice and, in this case, this could not be understood to be limited to the imposition of a punishment and, in the actual circumstances, the impossibility of subjecting the perpetrator to a criminal trial. In the Commission's opinion, justice required the State of Nicaragua to take all necessary measures to determine "the historical truth of the facts denounced by V.R.P. and her mother, V.P.C., including all the serious irregularities that perpetuated the impunity of this gross human rights violation, and to establish the different responsibilities [administrative, disciplinary or criminal] that correspond to the State's officials who contributed to this denial of justice [and impunity]."

341. The **representatives** asked that the Court order the State to take the necessary measures to ensure that the human rights violations committed against V.R.P and the members of her family are effectively investigated and punished by means of proceedings in which all the judicial guarantees are ensured. They added that these investigations should include the actions of the administrative and judicial authorities that permitted the sexual attack on the child V.R.P to go unpunished, and also the revictimization she suffered.

342. The **State** indicated that H.R.A., who V.R.P. had accused of being the author of the rape she suffered, died on August 29, 2008, and that, even objectively, this prevented complying with the Commission's recommendation, because both the Code of Criminal Procedure and the Criminal Procedure Code establish that the death of the accused extinguishes the criminal action.

343. Also, regarding the investigation of the state officials who contributed to the denial of justice and the impunity of the case, the State indicated that the Supreme Court of Justice had taken cognizance of several "briefs" filed by V.P.C. and they had all been resolved administratively. It indicated that the cases filed by V.P.C. against public officials who had intervened in the criminal proceedings for rape had been archived.

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<sup>421</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 197.

344. The Court takes into consideration that, from the very start of the criminal proceedings for rape, in different statements V.R.P. indicated that her father, H.R.A. was the presumed perpetrator of the facts. On August 29, 2008, during the processing of the procedure before the Commission, H.R.A. died.<sup>422</sup> In the circumstances of this case, the Court considers that it is not appropriate to order new criminal proceedings to investigate, identify, prosecute and eventually punish the rape.

345. However, the Court has established that different state authorities failed to adopt special measures of protection for V.R.P.; to the contrary, they acted in violation of enhanced due diligence during the investigations and criminal proceedings for the rape of the child V.R.P., which entailed her revictimization. In addition, the Court has concluded that there was a well-founded fear of partiality in the domestic proceedings in relation to the conduct of the Jury Court. Therefore, the Court considers that the State should, within a reasonable time, determine, through the competent public institutions, the possible responsibilities of the officials who contributed, through their actions, to the perpetration of acts of revictimization and institutional violence against V.R.P. and, insofar as possible, apply the legal consequences.

### **C. Measures of rehabilitation and satisfaction and guarantees of non-repetition**

#### *C.1 Rehabilitation*

346. The **Commission** recommended providing, free and immediate medical and psychological or psychiatric care, as appropriate, to the victims who request this. In addition, taking into account that some of them reside outside the country, it clarified that this recommendation could be achieved by providing a sum of money that would reasonably cover the costs of the health care they require.

347. The **representatives** asked the Court to order the State to provide H.J.R.P. and V.A.R.P., who live in Nicaragua, with medical and psychological treatment in specialized centers, free of cost. Regarding V.R.P., V.P.C. and N.R.P., since they do not reside in Nicaragua, they asked that the State arrange a cash payment of a prudent amount of US\$200,000.00 for V.R.P., US\$75,000.00 for V.P.C. and US\$30,000.00 for N.R.P., so that they may cover their psychological and psychiatric treatment, as well as the cost of the medicines prescribed for their recovery.

348. The **State** did not acknowledge H.J.R.P. and V.A.R.P. as presumed victims, arguing that this condition had not been accredited in either the Admissibility Report or the Merits Report of the Commission. Despite this, it added that the national health system in Nicaragua has specialized hospitals, clinics and health centers that are totally free and accessible to the whole national and foreign population. It pointed out that the situation of N.R.P. is the same as that of her brothers, because she had not been accredited as a presumed victim.

349. Regarding V.R.P. and V.P.C., the State argued that a "psychological assessment" should be made that took into account the "assessment of physical health possibly resulting from the facts submitted to the consideration of the Court," which would determine the type of treatment required and, consequently, the appropriate amount that should be awarded to them as a measure of rehabilitation in keeping with national parameters, and not the parameters of the value of health care in the United States. In this regard, it offered free and immediate care in Nicaragua for V.P.C. and V.P.R. since nothing prevented them from entering the country.

350. Having verified the serious harm to personal integrity suffered by V.R.P. and the members of

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<sup>422</sup> Cf. Death certificate of H.R.A. (evidence file, volume XVII, annex 43 to the answering brief of the State, folio 8344).

her family owing to the facts of this case, the Court finds, as it has in other cases,<sup>423</sup> that it is necessary to order a measure of reparation that provides suitable care for the physical, psychological and/or psychiatric problems suffered by the victims as a result of the violations established in this judgment.

351. To contribute to the reparation of the physical, psychological and/or psychiatric harm suffered by V.R.P., and considering that she does not live in Nicaragua, the Court establishes the obligation of the State to grant her, once, the sum of US\$75,000.00 (seventy-five thousand United States dollars), for the concept of expenses for medical, psychological and/or psychiatric treatment, including medicines and other related expenditure, so that she may receive this care in the place where she resides. With regard to the harm suffered by V.P.C. and N.R.P., and taking into account that they also reside outside Nicaragua, the Court establishes the State's obligation to grant them once, the sums of US\$50,000.00 (fifty thousand United States dollars), and US\$20,000.00 (twenty thousand United States dollars), respectively, for the concept of expenses for psychological and/or psychiatric treatment, including medicines and other related expenditure, so that they may receive this care in the place they reside. The State has one year from notification of this judgment to make the payments to each of the said victims.

352. Regarding the harm suffered by the brothers, H.J.R.P. and V.A.R.P., and taking into account that they live in Nicaragua, the Court establishes the obligation of the State to provide, free of charge and immediately, through its specialized health care institutions and in an adequate and effective manner, the psychological and/or psychiatric treatment, including the free supply of any medication they may eventually require, taking into consideration the ailments of each of them. This means that the victims shall receive a differentiated treatment as regards the processes and procedures required for them to be treated in the public hospitals.<sup>424</sup> Also, the respective treatment must be provided, insofar as possible, in the centers nearest to their places of residence<sup>425</sup> in Nicaragua for as long as necessary. When providing the psychological and/or psychiatric treatment, the specific circumstances and needs of each victim must be considered, as agreed with each of them and following an individual evaluation.<sup>426</sup> The beneficiaries of this measure have six months from notification of this judgment to advise the State that they wish to receive psychological and/or psychiatric treatment.<sup>427</sup> Meanwhile, the State must provide the psychological and/or psychiatric treatment requested within three months of receiving the corresponding request.

## C.2 Satisfaction

### a) Publication of the judgment

353. The **representatives** asked the Court to order the State to publish a summary of the judgment in the official gazette and in a national newspaper with widespread circulation within six months of notification of the judgment. It also asked that the Court order the State to publish the judgment on an official website for one year.

<sup>423</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Favela Nova Brasília v. Brazil, supra*, para. 296.

<sup>424</sup> Cf. *Case of Heliodoro Portugal v. Panama. Monitoring compliance with judgment*. Order issued by the Inter-American Court on May 28, 2010, *considerandum* 28, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 199.

<sup>425</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 270, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 199.

<sup>426</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala, supra*, para. 270, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 199.

<sup>427</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 253, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 199.

354. Neither the **State** nor the **Commission** submitted specific arguments on this point.

355. The Court finds, as it has in other cases,<sup>428</sup> that, within six months, of notification of this judgment, the State must publish, if V.R.P. authorizes this: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette, in an appropriate and legible font; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation in an appropriate and legible font, and (c) this judgment in its entirety, available for one year, on an official website of the State, in a way that is accessible to the public from the home page.

356. The State must advise the Court immediately when it has made each of the publications ordered, regardless of the one-year time frame to present its first report established in the twenty-fifth operative paragraph of this judgment.

*b) Scholarships*

357. The **representatives** asked, as a way of re-establishing the life projects of the victims who had not concluded their higher education, that the Court order the State to provide them with the necessary means to do this. Regarding V.R.P., taking into account that she has still been unable to conclude her studies and is unable to apply for a scholarship in Nicaragua because she resides outside that country, they asked that she be allocated a prudent amount of US\$150,000.00 to cover her studies and repayment of student loans. In the case of V.A.R.P., they asked that the State provide him with a scholarship and funds to cover the necessary educational expenses so that he is able to pursue university or higher education studies in a center with recognized academic quality chosen by mutual agreement between the State and the victim.

358. Regarding the request that V.R.P. be granted a sum of money, the **State** indicated that there was no justification for the amount requested and that, if the Court considered that it should pay any compensation, this should be calculation based on national parameters. The State added that the Court could not be used as a mechanism for resolving all aspects of the life of the presumed victims and that, since they had been given asylum in the United States and had left Nicaragua voluntarily, they enjoyed "other prerogatives and amenities."

359. The State argued that it could not be attributed with any obligation with regard to V.A.R.P. because his status as a victim had not been accredited in either the Admissibility Report or the Merits Report of the Commission. It indicated that it was surprised by the request to grant a scholarship and educational expenses, because at the date of the answering brief, V.A.R.P. was over 34 years of age and, in addition, could and still can have access to higher education in Nicaragua, because the national universities are almost free and entry is merely conditional on passing the admission examination.

360. The **Commission** did not refer specifically to this measure of reparation.

361. The Court has established in this judgment that the facts of the case had serious effects on V.R.P. and the members of her family that have persisted over time and that resulted in significant changes both in their lives and in their personal and social relationships, impairing their personal development (*supra* paras. 25 and 299 and Chapter VIII-3). In particular, the Court underscores that the events occurred during V.R.P.'s school years, and she was obliged to leave school and, subsequently, move to the United States. According to her statement during the hearing, currently she is attending university in the United States "to try and help children who have similar

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<sup>428</sup> Cf. *Case of Cantoral Benavides v. Peru*, *supra*, para. 79, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 218.

experiences.” In addition, her brother, V.A.R.P., stated that the stigmatization and revictimization experienced during the criminal proceedings, as well as the subsequent break-up of the family, made it impossible for him to conclude his university education.<sup>429</sup>

362. Based on the foregoing, as it has in other cases,<sup>430</sup> the Court finds it appropriate to order, as a measure of satisfaction in this case, that the State grant V.R.P., once, the sum of US\$150,000.00 (one hundred and fifty thousand United States dollars), to be able to cover the necessary expenses to conclude her professional training in the place where she resides. The State has one year from notification of this judgment to pay V.R.P. the amount ordered.

363. Furthermore, the Court establishes that the State must grant V.A.R.P a scholarship in a Nicaraguan public institution, to be agreed between him and the State, so that he may pursue university or higher technical studies, or professional training. The State must award this scholarship as soon as the beneficiary requests it and until the conclusion of his university or higher technical studies and it must cover all the expenses until he completes these studies, including educational materials. In addition, this measure should be implemented as soon as possible following notification of this judgment, so that the beneficiary may commence his studies the following academic year if he so wishes. The victim or his representatives have six months from notification of this judgment to advise the State of his intention to receive this scholarship.

### *C.3 Guarantees of non-repetition*

#### *a) Measures to reinforce institutional capacity to address sexual violence against children and adolescents comprehensively*

364. The **Commission** asked the Court to order the State to adopt public policies and integrated institutional programs to combat violence against women and girls as a form of discrimination, and to promote the elimination of discriminatory socio-cultural patterns that prevent their full access to justice.

365. It also asked that the Court order the State to reinforce institutional capacity to combat impunity in cases of rape and other forms of sexual violence against women and girls by means of effective criminal investigations with a gender-based perspective, thus ensuring the appropriate punishment and redress.

366. The **representatives** asked the Court to order the State to adapt its domestic laws to the minimum standards of the American Convention on Human Rights, in order to ensure due process, especially in cases involving minors. They indicated that the corresponding proceedings should be conducted by qualified individuals and that the State should adopt a series of measures of protection pursuant to international law to avoid the revictimization of children and adolescents during criminal proceedings. They also indicated that the protection provided by the State should not be limited judicial proceedings; rather administrative measures should be adopted to safeguard victims of incest in order to achieve their social reintegration.

367. The **State** argued that, to combat violence against women and girls, it had updated its legislation, making it more effective and protective for the victim by substituting the inquisitorial system by oral and public ways of delivering justice, in addition to increasing the punishments for offenses. It added that, in 2001, the Criminal Procedure Code had been promulgated by Law No. 406, based on the principles of orality and immediacy that guaranteed the victim access to justice

<sup>429</sup> Cf. Affidavit made by V.A.R.P. on October 10, 2017 (evidence file, volume XVIII, affidavits, folios 8363 to 8365).

<sup>430</sup> Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 237, and *Case of Vereda La Esperanza v. Colombia, supra*, para. 286.

and the accused the right to be tried without delay. Also, in 2008, the Nicaraguan Criminal Code had been promulgated and this increased the penalties for various offenses and constituted an instrument for the prevention and elimination of sexual abuse, especially of female children and adolescents and women. Furthermore, it indicated that the main objective of Law No. 779 was to protect women's rights and to guarantee them a life free of violence, pursuant to the principles of equality and non-discrimination. That law had created new criminal offenses, and also safety measures. In addition, the State indicated that it had established a public policy to strengthen the family and to prevent violence, aimed at the promotion, protection and restitution of the human rights of the family, women, children and adolescents, guaranteeing them a life free of violence and establishing comprehensive measures to prevent, punish and progressively eradicate violence by assisting victims and promoting changes in socio-cultural patterns. This policy included strategies of prevention, assistance, interinstitutional coordination, institutional reinforcement, communication and, finally, community and territorial coordination.

368. Nicaragua added that, in order to reduce impunity, it had been developing, through the Judiciary, policies, programs and best practices that reflected the recognition of the rights of persons in a vulnerable situation who use the judicial services, in addition to applying the contents of the 100 Brasilia Rules. It explained that the Judiciary had a Ten-year Strategic Plan 2012-2021 to increase access to justice for the population, especially for those in a vulnerable situation, with a gender-based focus and perspective. The main guidelines of this plan were: to continue reducing the delay in the administration of justice; to guarantee the parties the certainty that their cases will be decided in keeping with the law and with impartiality; to facilitate access to justice without any discrimination and, lastly, to develop inter-institutional coordination between the Judiciary and the other branches of the State. Nicaragua indicated that awareness-raising and specialized training for judicial officials had facilitated access to justice, giving victims greater confidence in the system for the administration of justice, especially women and children. Thus, it had gradually created special courts for gender-based violence, the family, and criminal justice for adolescents in the country's 17 departments. The State also alleged that, in 2005, the Special Unit to combat crimes involving gender-based violence, with national jurisdiction, had been created within the Public Prosecution Service, with specialized prosecutors in each departmental office, which instituted criminal actions to defend the rights of the victims from the investigation until the conclusion of the judicial proceedings.

#### *Considerations of the Court*

369. The Court notes that the State forwarded various documents on domestic legislation relating to its efforts to prevent, punish and eradicate gender-based violence, in particular rape, by means of, *inter alia*, legislation, circulars and directives issued by the Prosecutor General, procedural manuals for the National Police, technical norms, protocols and presidential decrees. The Court also notes that some of these documents include general criteria on assistance and treatment for children and adolescents who are victims of sexual and intrafamily violence.<sup>431</sup>

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<sup>431</sup> Cf. Order No. 010/03 of the National Police, Ministry of the Interior. "Manual of police procedures for specialized assistance to victims and survivors of intrafamily and sexual violence" (evidence file, volume XX, helpful evidence, folios 10009 to 10015); Protocol on assistance for victims of gender-based violence of the Specialized Victims Assistance Unit of the Public Prosecution Service (evidence file, volume XX, helpful evidence, folios 10108 to 10112); Protocol of the Public Prosecution Service on assistance to victims of crime (2010) (evidence file, volume XX, helpful evidence, folios 10174 to 10177); Protocol on prosecution of gender-based violence of the Special Unit to combat crimes involving gender-based violence (2009) (evidence file, volume XXI, helpful evidence, folios 10902 to 10906); Model for comprehensive care for victims of gender-based violence in Nicaragua, of the Technical Team of the Comprehensive Care Model (MAI) (2012) (evidence file, volume XXI, helpful evidence, folios 11012 and 11013); Regulation 031 of the General Directorate of Outreach and Quality of Assistance, Ministry of Health. "Norms and Protocols for the prevention, detection and assistance of intrafamily and sexual violence" (2009) (evidence file, volume XX, helpful evidence, folios 10281 to 10342), and Protocol of norms and procedures for specialized attention to victims and survivors of gender, intrafamily and sexual violence of the Police Stations for Women, Children and Adolescents of the National Police (2014) (evidence file, volume XXI, helpful



370. Also, under Law No. 779, "Comprehensive Law to combat violence against women and amendments to Law No. 641, 'Criminal Code'" and its regulatory decree, district courts were created that specialized in matters relating to violence, composed of a judge specialized in this area, as well as by an interdisciplinary team for assisting victims composed of, at least, a psychologist and a social worker, responsible for providing specialized assistance, for supporting the jurisdictional function in the hearings, and for monitoring and controlling the measures of protection imposed by the court.<sup>432</sup> Similarly, according to these regulations and a decree, Nicaragua adopted a public policy to strengthen the Nicaraguan family and to prevent violence, establishing different strategies (for prevention, assistance, institutional coordination, institutional strengthening, and community and territorial coordination, communication, investigation and redress) to prevent violence. It also established the inclusion in educational, health care, and institutional systems, among others, training actions with a human rights perspective that promoted equality and non-discrimination between men and women, and encouraged changes in socio-cultural patterns.<sup>433</sup>

371. The Court appreciates the State's efforts to adopt laws, other legal norms and public policies, and to create institutions and public policies aimed at combating gender-based violence, as well as its efforts to adapt its criminal investigation and criminal proceedings system. These advances constitute structural indicators related to the adoption of measures that, in principle, have the objective of combating violence and discrimination against women and female children, and their application will contribute to this.<sup>434</sup>

372. Nevertheless, the Court finds it pertinent to order the following guarantees of non-repetition, because they constitute measures that will help strengthen the State's institutional capacities in different spheres and provide comprehensive assistance to children and adolescents who are victims of sexual violence and rape.

*a.1) Adoption of standardized protocols for investigation and comprehensive assistance in cases of sexual violence against children and adolescents*

373. The **Commission** asked the Court to order the State to develop investigation protocols to ensure that cases of rape and other forms of sexual violence against women and girls are duly investigated and prosecuted pursuant to the standards established in its report.

374. The **representatives** asked that the State develop an investigation protocol for cases of sexual abuse against women, with special emphasis on assistance to female child victims.

375. The **State** indicated that this recommendations was already being complied with because the State of Nicaragua considered that the investigation of cases of rape and other forms of violence against women and children was important. In this regard, it had created institutional policy

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evidence, folios 10726 to 10728).

<sup>432</sup> Cf. Law No. 779, "Comprehensive Law to combat violence against women and amendments to Law No. 641, 'Criminal Code'" (evidence file, volume XX, annex 3 of the helpful evidence, folio 9464), and Regulations to Law No. 779, Comprehensive Law to combat violence against women and amendments to Law No. 641, "Criminal Code," Decree No. 42-2014 of the President of the Republic of Nicaragua (evidence file, volume XXII, annex 9.g of the helpful evidence, folios 11160 to 11166).

<sup>433</sup> Cf. Regulations to Law No. 779, Comprehensive Law to combat violence against women and amendments to Law No. 641, "Criminal Code," Decree No. 43-2014 of the President of the Republic of Nicaragua, "State policy for strengthening the Nicaraguan family and preventing violence" (evidence file, volume XXII, annex 9.g of the helpful evidence, folios 11160 to 11167).

<sup>434</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 264, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 252.

instruments such as the Protocols on Assistance to Victims and the Protocol on Prosecution of Gender-based Violence. It explained that, in 2010, it had put in practice the Model for comprehensive assistance to victims of gender-based violence in Nicaragua (MAI), to coordinate the system of assistance to victims of domestic and sexual violence, and this allowed actions of investigation, criminal prosecution and punishment to be taken from the moment authorities were informed of the act, as well as measures of protection to contribute to the victim's recovery, together with measures of restitution to redress the harm. Lastly, the State indicated that it had specifically proposed the implementation of norms of assistance and action centered on victims that avoided secondary victimization, strengthened the institutional response capacity in cases of intrafamily violence and sexual offenses, and protected physical, mental, sexual, and patrimonial integrity, by the application of precautionary measures in favor of the victims.

376. The State also alleged that, in 2005, the Public Prosecution Service had created the Specialized unit to combat crimes of gender-based violence and the Specialized Victims Assistance Unit. The latter was responsible for providing comprehensive assistance in legal and psychological matters, and with legal advice, social work and general support, in the context of which victims underwent a process of empowerment, reinforcement of self-esteem, and emotional and legal preparation to face the criminal proceedings. The State indicated that another of its achievements was the creation and operation of the comprehensive forensic clinic for women and the office for assistance to victims, which have contributed to reducing impunity and secondary victimization. It added that it had been able to provide evidence to the system of justice that verified or disproved offenses and crimes, including those relating to sexual freedom and integrity, people trafficking, intrafamily violence, and physical and mental violence.

377. The Court notes that most of the legislation forwarded by the State focuses on the prevention, combat and eradication of general gender-based violence. Nevertheless, the Court has verified that the following norms include a specific section of general guidelines for case in which the victim is a child or adolescent: (a) Order No. 010/03 of the of the National Police, Ministry of the Interior. "Manual of police procedures for specialized assistance to victims and survivors of intrafamily and sexual violence";<sup>435</sup> (b) Protocol on assistance for victims of gender-based violence of the Specialized Victims Assistance Unit of the Public Prosecution Service;<sup>436</sup> (c) Protocol of the Public Prosecution Service on assistance to victims of crime (2010);<sup>437</sup> (d) Protocol on prosecution of gender-based violence of the Special Unit to combat crimes involving gender-based violence (2009);<sup>438</sup> (e) Model for comprehensive care for victims of gender-based violence in Nicaragua of the Technical Team of the Comprehensive Care Model (MAI) (2012);<sup>439</sup> (f) Regulation 031 of the General Directorate of Outreach and Quality of Assistance, Ministry of Health. "Norms and Protocols for the prevention, detection and assistance of intrafamily and sexual violence" (2009),<sup>440</sup> and (g) Protocol of norms and procedures for specialized attention to victims and survivors of gender, intrafamily and sexual violence of the Police Stations for Women, Children and Adolescents of the National Police (2014).<sup>441</sup>

378. Meanwhile, the Institute of Forensic Medicine has a technical regulation on a comprehensive medical approach to the investigation of sexual violence (2014),<sup>442</sup> which makes a general

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<sup>435</sup> Evidence file, volume XX, helpful evidence, folios 10009 to 10015.

<sup>436</sup> Evidence file, volume XX, helpful evidence, folios 10108 to 10112.

<sup>437</sup> Evidence file, volume XX, helpful evidence, folios 10174 to 1176.

<sup>438</sup> Evidence file, volume XXI, helpful evidence, folios 10902 to 10906.

<sup>439</sup> Evidence file, volume XXI, helpful evidence, folios 11012 to 11013.

<sup>440</sup> Evidence file, volume XXII, helpful evidence, folios 11273 to 11296.

<sup>441</sup> Evidence file, volume XXI, helpful evidence, folios 10726 to 10728.

<sup>442</sup> Evidence file, volume XX, helpful evidence, folios 10227 to 10279.

reference to the recommended positions for a gynecological examination of children, as well as certain criteria that the psychologist, psychiatrist, forensic physician or any other public or private health personnel must take into account when interviewing child victims of sexual violence. In addition, the Institute of Forensic Medicine has a technical regulation with regard to the evaluation of mental harm in women, children and adolescents who are victims of sexual and other forms of gender-based violence within the family (2015),<sup>443</sup> and a technical regulation for the comprehensive forensic medical assessment in the investigation of intrafamily violence (2015).<sup>444</sup> The Court underscores that the 2014 technical regulation includes certain criteria for the comprehensive medical approach to cases of female child victims of sexual violence.

379. Based on these regulations, the Court notes that special criteria and guidelines existed for both police and prosecutors in relation to differentiated treatment for children and adolescents, victims of intrafamily and sexual violence. Among the most important are the special interaction that the authorities should have with female children owing to the differentiated impact that an act of sexual violence may have on them and their greater vulnerability; the importance of the statement made by the child or adolescent; the requirement that there should be no contact with the perpetrator; the tact and sensitivity in the treatment; the respect with which the authorities should act, without forcing the interview, and ensuring privacy and a climate of trust and safety. In addition, some of the said documents emphasize certain techniques to facilitate establishing a connection with the child or adolescent.

380. The Court considers that the general criteria established in the documentation cited signifies an important step forward as regards the adaptation of domestic laws and practices to the international norms for the protection of the rights of children and adolescents. However, it notes that it is necessary to have more specific norms that include the criteria established in this judgment and in other relevant international instruments.

381. Therefore, the Court finds it appropriate to order the State to adopt protocols that establish clear measures of protection and criteria to be taken into account during investigations and criminal proceedings arising from acts of sexual violence against children and adolescents. These should ensure that the statements and interviews, the forensic medical examinations, and the psychological and/or psychiatric expert evaluations are conducted in a way that is adapted to the needs of child and adolescent victims, and should delimit the content of the specialized comprehensive care for children and adolescents who are victims of sexual violence. Consequently, the Court orders the State to adopt, implement, supervise and monitor appropriately three standardized protocols, namely: (i) a protocol for investigation and actions during criminal proceedings in cases of child victims of sexual violence; (ii) a protocol on comprehensive care and forensic medical evaluation in cases of child victims of sexual violence, and (iii) a protocol on comprehensive care for child and adolescent victims of sexual violence.

382. Concerning the protocol for investigation and actions during criminal proceedings in cases of child victims of sexual violence, the State must take into account the criteria established in the international instruments for the protection of the rights of the child, as well as the standards developed in this judgment and in the Court's case law. Thus, this protocol must take into consideration that enhanced due diligence entails the adoption of special measures and the implementation of proceedings adapted to children and adolescents to avoid their revictimization, so that it must include, based on the standards described in paragraphs 158 to 168, at least the following criteria: (i) the right to information on the proceedings, and on the legal assistance and health services and other measures of protection available; (ii) free legal assistance provided by the State, consisting of a lawyer qualified to represent children and adolescents and with the

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<sup>443</sup> Evidence file, volume XX, helpful evidence, folios 10181 to 10226.

<sup>444</sup> Evidence file, volume XX, helpful evidence, folios 10281 to 10342.

authority to become a party to the proceedings, contest judicial measures, file appeals and carry out any other procedural action to defend their rights during the proceedings; (iii) the right to be heard with due guarantees and within a reasonable time, which involves an enhanced criterion of celerity; (iv) the right of the child or adolescent victim to take part in the criminal proceedings based on their age and maturity, and provided this does not harm their biopsychosocial well-being. To this end, only those procedures that are strictly necessary should be conducted, avoiding the presence and interaction of the children and adolescents with their aggressor; (v) appropriate conditions should be created so that children and adolescents can play an effective role in the criminal proceedings, providing special protections and specialized support; (vi) the interview must be conducted by a specialized psychologist or a professional in a similar discipline duly trained in taking this type of statement from children and adolescents; (vii) interview rooms must provide a safe environment that is not intimidating, hostile, insensitive or inappropriate and that offers privacy and inspires confidence; (viii) the personnel of the criminal justice service who intervene must be specially trained in this area, and (ix) immediate professional assistance must be provided, both medical and psychological and/or psychiatric, by a professional specially qualified in the treatment of victims of this type of crimes and with a gender perspective. The Court considers that this protocol must be addressed, above all, to all the administration of justice personnel who intervene in the investigation and processing of criminal proceedings in cases of child and adolescent victims of sexual violence, whether this has occurred in the public or private sphere.

383. Concerning protocol on comprehensive care and forensic medical evaluation in cases of child victims of sexual violence, the Court orders the State of Nicaragua to adopt a specific standardized protocol to ensure that all health care personnel, whether public or private, and, in particular, the personnel of the Institute of Forensic Medicine, have the necessary criteria to conduct the required examinations in keeping with the standards established in paragraph 169 of this judgment and the Court's case law, as well as the relevant international standards. The Court stresses that if it is considered necessary to conduct a medical examination, the State must ensure, at least, the following: (i) insofar as possible, victims should not be subjected to more than one physical evaluation; (ii) it must be performed by a professional with extensive knowledge and experience in cases of sexual violence against children and adolescents; (iii) the victim or their legal representative, based on the maturity of the child or adolescent, may choose the sex of the professional; (iv) the examination must be performed by a specialist in pediatric and adolescent gynecology with specific training in performing forensic medical examinations in cases of sexual abuse and rape; (v) it must only be performed following the informed consent of the victim, or their legal representative, in accordance with their level of maturity, taking into account the right of the child to be heard, and (vi) it must be conducted in an appropriate place, respecting the victim's intimacy and privacy, and permitting them to be accompanied by a person of confidence.

384. Lastly, in the case of the specific standardized protocol on comprehensive case for child and adolescent victims of sexual violence, the Court orders that this must provide measures of protection from the moment the State becomes aware of the sexual violence, in keeping with the criteria established in paragraphs 164, 165 and 170 of this judgment. In particular, the Court orders the State to ensure that this protocol establishes the provision of special protection and specialized support, medical, psychological and/or psychiatric, for the child or adolescent to play an effective role in the criminal proceedings, avoiding revictimization, and in keeping with their experiences and understanding. In addition, the protocol must guarantee that assistance is provided before, during and after the investigations and criminal proceedings to achieve the reintegration and rehabilitation of child and adolescent victims of sexual violence. Thus, immediate, professional assistance must be provided, both medical and psychological and/or psychiatric, by qualified professionals, with a gender perspective and without discrimination, to the victims and to the members of their families, for as long as necessary to achieve their rehabilitation. The Court finds that this protocol must be addressed not only to the health care personnel who intervene in cases of sexual violence, but also to social and family support personnel who provide

comprehensive care to the victims, so that it should include information on the support mechanisms available to the victims and their families. The protocol must also clearly establish coordination actions between the different state entities that provide assistance to child and adolescent victims of sexual violence in Nicaragua.<sup>445</sup>

385. The Court requires that Nicaragua comply with the measures of reparation established in this section within two years of notification of this judgment.

*a.2) Creation of the mechanism of children and adolescents' counsel who provides legal assistance to victims of criminal offenses free of charge*

386. The Court notes that V.R.P. did not have her own legal counsel or the support of a state entity to ensure her rights during the revictimizing judicial procedures, who would have allowed her opinion to be heard in the proceedings as well as her evident and clearly stated wish that certain procedures not be conducted owing to the harm they caused her. The Court notes that if the child had taken part in the criminal proceedings with her own legal counsel, she would have been able to contest harmful judicial procedures and, thus, been able to avoid the different acts of revictimization that she suffered.

387. The Court considers that, as a measure to reinforce the State's institutional capacity, Nicaragua should create and implement a special mechanism that provides legal assistance to child and adolescent victims of crimes, especially those involving sexual violence; in other words, the child's or adolescent's counsel, specialized in the matter, who defends their interests during the investigations and the criminal proceedings. This technical legal assistance must be provided by the State free of charge if the minor is of an age and has sufficient maturity to indicate their intention to become a plaintiff in the proceedings, in order to defend his or her rights autonomously, as a subject of rights differentiated from those of adults. The technical assistance must be freely chosen, so that it must be offered and provided to the child or adolescent who requires it, unless they have their own lawyer. Nicaragua must comply with the measure of reparation within two years of notification of this judgment.

*b) Training for public officials.*

388. The **Commission** recommended that the State design and implement permanent training programs for public officials, members of the Judiciary, the Public Prosecution Service and the National Police, on international standards for the investigation of rape and other forms of sexual violence against women, including girls. It also recommended that the State train health care personnel, both doctors and psychologists, who are involved in such investigations, on the international standards for the treatment of child victims of sexual violence.

389. The **representatives** asked that the State provide training to public servants whose work involves issues relating to sexual abuse on human rights and best practices in assisting victims of such abuse, thus preventing revictimization, especially in the case of children.

390. The **State** indicated that it was working on this recommendation as an intrinsic part of updating its criminal legislation with a gender perspective. It added that the Nicaraguan National Assembly, Supreme Court of Justice, National Police and Public Prosecution Service had created the

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<sup>445</sup> The Court notes that comparative experiences exist in which manuals of best practices have been adopted for the care of victims of sexual violence and rape in cases of children and adolescents. Cf. UNICEF and Asociación por los Derechos Civiles (ADC), *Guía de buenas prácticas para el abordaje de niños/as, adolescentes víctimas o testigos de abuso sexual y otros delitos*, September 2013, pp. 66 to 69, and MSP, SIPIAV, UNICEF, *Mapa de ruta para la prevención y la atención de situaciones de maltrato y abuso sexual infantil en el sector salud* [Road map for the prevention and treatment of situations of ill-treatment and sexual abuse of children in the health sector], Uruguay, 2009.

Gender Unit and Technical Secretariats, to include the issue of gender in the process of legal training and the functions of each of these institutions. It mentioned that both the Unit and the Technical Secretariats had offered training on the gender perspective to officials. It also mentioned that, in the area of health care, since 2009, the Norms and Protocols for the prevention, detection and care of intrafamily and sexual violence have been in operation.

391. The Court notes that article 33 of Law No. 779 establishes that personnel involved in the investigation and processing of proceedings for violence against women must be trained in this area by preliminary, continuing and specialized training programs. It also notes that, although this training encompasses all the institutions that compose the system of criminal justice, it refers to violence against women, without specifying situations of violence against children and adolescents. In addition, the State did not provide specific information on the suitability, implementation and permanence of the said training programs.

392. Consequently, the Court finds that the State should adopt and implement permanent training programs and courses for public officials who, owing to their functions in the system for the administration of justice, work with issues of sexual violence; in particular, officials who are members of the Judiciary, the Public Prosecution Service and the National Police. These training programs and courses should focus on standards of due diligence in the investigation of cases of sexual violence against children and adolescents, as well as its eradication, and the measures of protection that should be adopted. In addition, the training must be based on the criteria established in this judgment, which correspond to the content of the standardized protocols ordered by this Court (*supra* paras. 381 to 384), on the Court's case law on gender-based violence and protection of the rights of the child, and on the relevant international standards. The training must be imparted from a gender perspective, based on the protection of children, and be designed to deconstruct gender stereotypes and mistaken beliefs about sexual violence, to ensure that the investigation and prosecution of such acts is conducted based on the strictest standards of due diligence.

393. Furthermore, the Court orders the State to adopt and implement permanent training programs and courses for medical professionals and the personnel of the public health system who intervene in the detection, diagnosis and treatment of children and adolescents who are victims of sexual violence, as well as the forensic physicians and other personnel of the Institute of Forensic Medicine, in order to offer training on the appropriate treatment of children and adolescents who are victims of sexual violence and rape during the medical examinations, and to ensure that such examinations are conducted in keeping with the criteria established in this judgment and the relevant international standards.

394. The Court also orders the State to adopt and implement permanent training programs and courses for health care personnel who intervene in cases of sexual violence and rape, as well as those who provide social and family support, and those who provide comprehensive care to the victims of sexual violence and rape. The training programs and courses should focus on the criteria developed in this judgment; in particular, on the coordinated, specialized, comprehensive and appropriate support and care that should be provided to such victims to achieve their rehabilitation and reintegration.

395. The State must comply with the measures of reparation established in this section within one year of notification of this judgment.

#### *C.4 Other measures requested*

- a) Adaptation of domestic law to the minimum standards of the American Convention on Human Rights in relation to trials by jury*

396. The **representatives** asked the Court to order the State to adapt its laws to the minimum standards of the American Convention on Human Rights to ensure due process of law in judicial proceedings, especially in cases that involve children. They asked that such proceedings be managed by qualified persons, eliminating the jury court in cases of rape or any act in which a minor was involved, and that the responsibility for the administration of justice revert to judges, who should decide cases based on the evidence submitted and sound judicial discretion. Lastly, they asked that the right to appeal be established in all proceedings, indistinctly, including those heard by a jury.

397. The **State** argued that, for more than 10 years, it had been making important changes in relation to criminal matters and human rights. It added that, one of the most important elements was the central role of the victim at each and every stage of the proceedings, with a model of immediate compensation. Regarding the criminal trial system, it argued that, since 2008, crimes against sexual liberty and integrity were tried by courts with technical judges and that Law No. 779 had created courts specializing in gender-based violence, so that such offenses were no longer decided by juries.

398. The **Commission** did not submit arguments in this regard.

399. The Court has verified that Law No. 779, "Comprehensive law to combat violence against women and amendments to Law No. 641 Criminal Code," adopted in January 2012, and published on February 22, 2012, implements a trial system in cases of gender-based violence and, in particular, cases of sexual violence, that differs from the one in force at the time of the facts of this case. The said law establishes the creation of courts of first and second instance that specialize in these matters, and have a technical judge. This eliminates the possibility of a case of sexual violence against women, children and adolescents being tried by a peoples' jury. The Court therefore considers that it is not necessary to order an additional measure of reparation in this regard because, based on the above amendments to the law, crimes of sexual violence, including rape, committed against women, children and adolescents, are no longer tried by a peoples' jury, but by a specialized judge.

*b) Other measures*

400. The **representatives** also asked the Court to order the State of Nicaragua: (i) to provide appropriate housing, without additional expenses and free of charge, so that V.R.P., V.P.C. and N.R.P. could live with dignity in the United States, because the victims were obliged to leave Nicaragua and abandon their home, and were left with nowhere to live. They asked that the State allocate them a prudent sum of US\$200,000.00 so that they could acquire this; (ii) to send an official letter to the United States Embassy requesting the approval of visitor's visas so that H.J.R.P. and V.A.R.P. could travel and meet up with the other members of their family; this measure was due to the disintegration of the family when V.P.C., V.R.P. and N.R.P left Nicaragua, and the consequences, because the sisters had not seen their brothers since then; (iii) to approve a project to support victims of sexual abuse, to be implemented in the city of Jinotega, including maintenance expenses for infrastructure and "transportation", and (iv) not to file any criminal, civil or any other type of action against the petitioner and her family for having had recourse to the Inter-American Commission on Human Rights.

401. The **State** argued the following: (i) regarding the request for housing, it opposed the request adducing that it was not duly justified and that V.P.C. continued to own her house in Jinotega, which was free of encumbrances and could be sold to acquire another house; (ii) the granting of a visa for H.J.R.P. and V.A.R.P. or anyone else was a sovereign power of each country that any

citizen could request before the consulate, individually, complying with the requirements established by each country. It added that the State could not become involved in that sovereign decision of the United States, especially as there was no impediment for V.A.R.P. and H.J.R.P. to see their sisters, V.R.P. and N.R.P., because the latter could freely enter and leave Nicaragua with full guarantees that they would not be persecuted; (iii) in Nicaragua, more than 6,000 non-governmental organizations were legally constituted and registered by simple regulations that did not require establishing a special measure of guarantee, and each one of them created and worked with their own financing sources. Consequently, it was not for the State to assume the costs of infrastructure, transportation and maintenance of the said project to support victim of sexual abuse, because this would signify the existence of a center of assistance for victims funded by the State and subject to its control. Lastly, it indicated that it could work in coordination with other NGOs of the same nature that function with their own funding sources, and (iv) there was no indication of persecution against V.P.C. or against her sons who reside in Nicaragua; and this was revealed by the fact that she had visited Nicaragua and traveled freely in its territory. The State added that it reaffirmed its commitment to strictly respect human rights, particularly the rights of petition, to life, physical, moral and mental integrity, and legal certainty.

402. Regarding the request that the State provide housing, the Court considers that, as the State has indicated and the representatives have not contested, V.P.C. still owns a house in Nicaragua that is free of encumbrances. Therefore, the Court does not find it appropriate to order a measure in this regard. In the case of the request for family reunion, the Court notes that the issue of visas is, indeed, a power of each country and that access to visas by V.P.C.'s sons has not been prevented. Moreover, neither the arguments nor the evidence presented in this case reveal that V.P.C. and her daughters are unable to travel to Nicaragua to meet up with their loved ones. Accordingly, the Court does not find it appropriate to order a measure in this regard.

403. In sum, the Court finds that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to compensate the violations suffered by the victims and does not find it necessary to order the other measures that have been requested. Nevertheless, the Court reiterates to the State of Nicaragua that, pursuant to the American Convention, victims have the right to lodge petitions before the Inter-American Commission if they consider this pertinent and, pursuant to Article 53 of the Court's Rules of Procedure, States may not prosecute the presumed victims or their representatives or legal advisers or take reprisals against them based on their statements or their legal defense before the Court.

#### ***D. Compensation***

404. The **Commission** asked the Court, in general terms, to order the State to provide comprehensive pecuniary and non-pecuniary reparation for the human rights violations declared in its Merits Report.

405. The **State** argued, in general terms, that the reparations requested by the representatives were exceedingly high and sought enrichment, rather than compensation. It therefore asked the Court to take into account the economic situation of Nicaragua. It added that the sum requested by the representatives was not consonant with the amounts established by the Court in other more serious cases.

##### *D.1 Pecuniary damage*

406. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal



nexus with the facts of the case.<sup>446</sup>

*a) Indirect damage*

407. The **representatives** asked the Court to order the State to pay the victim or her representatives, under the heading of indirect damage, all the direct and immediate expenditure they had incurred as a result of the wrongful act committed; in other words, the expenses incurred by V.P.C., both in Nicaragua and in the United State, owing to the medical care required for the physical harm and ailments suffered by V.R.P., and also the mental harm (expenses for surgical procedures, therapies and medication). Under this heading, the representatives included the judicial expenses incurred owing to the complaint filed against the person V.R.P. indicated was her aggressor, which included expenditure for travel, copies of documents, payment of judicial taxes and fees in the domestic sphere. These expenses were increased by the need to file actions owing to the irregularities in the proceedings, and even having to resort to the inter-American system. The representatives also indicated that V.P.C. had to cover the costs of the move to the United States and of the asylum procedure in that country for her two daughters and herself. The representatives indicated that some of these expenses were substantiated by documents and invoices and provided documentation on hospital expenses amounting to US\$2,023.94 and pharmaceutical expenses amounting to US\$281.50, for a total of US\$2,305.44.

408. The representatives added that, to the amount indicated should be added those expenses that it was impossible to quantify in detail owing to the passage of time and their informal nature. Thus, the representatives indicated that the following disbursements had been made: (a) US\$7,000.00 for medical expenses owing to the physical and mental condition of the child, including her admission to the Victoria Hospital in Jinotega, surgical procedure, biopsy examinations, payment of the gynecologist and the pediatrician, medicines, appointments for subsequent care, psychiatric expenses, therapeutic expenses, transportation expenses, accommodation expenses, medical expenses in the United State, all without any evidentiary support; (b) US\$39,024.00 for legal expenses in Nicaragua, including the filing of the complaint, transfers for witnesses, expenses for copies, expenses for the criminal prosecution, transfers for the visual inspection, transfers for the forensic physicians, transportation to Matagalpa owing to the appeal against the order of imprisonment, presentation of evidence, transfers to the jury selection, appeal for the annulment of the verdict, presentation of testimonies, transfers for the opening to evidence of the proceedings, inspection, video, certifications, payment of fees; (c) US\$5,700.00 for expenses relating to various complaints owing to irregularities in the proceedings, including expenses for transfers to follow up on the complaint before the Supreme Court of Justice, the Attorney General's Office, the Prosecutor General's Office and the Office of the Children's Ombudsman; (d) US\$15,250.00 for expenses relating to the petition and following up on the case before the Commission, including the location, request for, copying and mailing of the case file, legal expenses, FedEx and post office; (e) US\$2,500.00 for expenses of the trip from Nicaragua to Miami, which included tickets for three persons, passports, travel to Managua and trip to Miami; (f) US\$20,100.00 for legal expenses in the asylum procedure for V.P.C., V.R.P. and N.R.P., which included the "presentation of copies, FedEx and translation of documents for three persons," and (g) US\$500.00 for expenses of the proceedings before the Inter-American Court, which include the affidavit, copies and mailing documents. Based on the foregoing, the representatives quantified the indirect damage at US\$92,379.44, and emphasized that these expenses were paid for by V.P.C., who was responsible for providing for the family.

409. The **State** asked the Court to establish the indirect damage, provided it included the direct and immediate expenses the victim had to pay. It also requested that the alleged disbursements

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<sup>446</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 215.

be corroborated by documents or invoices, rejecting the medical expenses alleged without any evidentiary support. The State argued that, although case law existed that indicated that the lack of a voucher could not result in the rejection of fair reparation, this was based on exceptional circumstances, and it asked that this exception should not become the rule, because the nature of the Court was not to establish compensations that it was impossible to pay. In addition, it found that it was no logical that there were receipts for some of the expenses incurred a long time ago, and not for more recent ones.

410. Concerning indirect damage, the Court notes that the representatives based the amount requested on a series of expenses paid by V.P.C. as a result of the human rights violations declared in this judgment. These include: (a) expenses for medical care for the physical and mental harm and for the ailments suffered by her daughter, V.R.P; (b) expenses derived from the criminal proceedings for rape; (c) expenses for the complaints filed against the intervening public servants and officials who caused the different irregularities in the criminal proceedings; (d) expenses owing to the departure from Nicaragua and the establishment of her residence and that of her two daughters in the United States, and (e) expenses derived from the petition and the processing of the case before the inter-American system. The Court will consider, under the heading of indirect damage, the expenses incurred by V.P.C. that are not related to the expenses in connection with the processing of the case, which will be analyzed under the heading of costs and expenses (*infra* para. 432).

411. Consequently, even though the amount verified in the Court's case file amounts to US\$2,131.26 (two thousand one hundred and thirty-one United States dollars and twenty-six cents), the Court finds it reasonable to presume that V.P.C. incurred additional expenses derived from the human rights violations committed by the State in this case. The Court therefore finds it reasonable to order the payment of the sum of US\$7,000.00 (seven thousand United States dollars), for indirect damage, and this must be paid to V.P.C.

*b) Loss of earnings*

412. The **representatives** asked the Court to order the State to pay the petitioner, V.P.C., within six months of notification of the judgment, the sum of US\$34,183.09 for "pecuniary damage owing to loss of earnings." They argued that V.P.C. had a monthly income of US\$600.00, plus a month's salary for vacations and the thirteenth month bonus salary, to which should be added approximately US\$200.00 that she received informally from clients for conducting judicial procedures. Therefore, they asked the Court to take the sum of US\$800,00 as the reference for calculating loss of earnings. They added that the petitioner was obliged to abandon her work in October 2001, when V.R.P.'s health worsened. This situation of unemployment lasted until December 2002, when she left Nicaragua. In the United States she remained unemployed until October 2004.

413. The **State** indicated that the information presented to calculate the amount requested lacked any substantiation because it was accompanied by a "certification of a salary supposedly perceived" and because the amount indicated did not accord with the salary that an office manager or assistant earned at the time, because it was more than the salary of "judges or prosecutors with around 10-20 years' experience." It added that an amount had been added that did not constitute salary, and also a "thirteenth month without any payment stub."

414. The State also indicated that, in a previous case, in order to calculate reparations, the Court had only considered 50% of a professional's salary. It therefore asked that, in this case, the Court do the same; in other words, calculate reparations in favor of V.P.C., as a probable office worker, without a professional title or specialization, based on the sum of US\$300,00, which was equivalent to 50% of the amount indicated by the presumed victims' representatives as the basic salary

received by the petitioner. It also argued that, according to Nicaraguan labor laws, every worker had the right to the employer paying one month's additional salary after a year of continuous employment or the proportionate part corresponding to the period worked. Therefore, V.P.C. would have had the right to receive a complete salary for this concept in 2002 and 2003, while in 2001, she would only have received the proportionate part corresponding to the months of October, November and December and, in 2004, the proportional part corresponding to the months of January to September. Based on the foregoing, the State calculated that the amount to be paid for loss of earnings should be established at US\$12,575.00.

415. It added that, according to the Ministry of Labor and the Central Bank of Nicaragua, the minimum wage in Nicaragua corresponding to the service sector, in which V.P.C. worked, ranged between 1,110,00 cordobas and 1,752,00 cordobas, equivalent to US\$82.56 and \$130.32 in 2001, in 2002 to US\$77.88 and \$122.93, in 2003 to US\$73.47 and \$115.97, and in 2004 to US\$69.64 and \$109.93.

416. The Court has declared that V.P.C. suffered a violation of her rights to personal integrity, private and family life, judicial guarantees, judicial protection, freedom of residence, protection of the family and special measures of protection owing to the acts of revictimization and institutional violence endured by her daughter, V.R.P., which led to their departure from Nicaragua. This situation resulted in socio-economic difficulties for the members of the family because V.P.C. was its financial support and had to abandon her employment to deal with her daughter's situation and, subsequently, to file administrative and judicial complaints owing to the irregularities committed in the proceedings. Once in the United States, V.P.C. obtained employment in October 2004.<sup>447</sup> Thus, the Court considers that a causal nexus exists between the violations declared in this case and the financial harm due to loss of earnings.

417. The Court notes that, among the evidence provided to the case file, there is a certification of the V.P.C.'s employment in Nicaragua as a legal assistant, receiving a salary of US\$600.00 (six hundred United States dollars).<sup>448</sup> However, the Court has no evidence that authenticates the extra US\$200.00 (two hundred United States dollars) that, according to the representatives, V.P.C. also received as informal income that was part of her salary. However, the Court notes that, as clarified by the State, in Nicaragua, employees receive an additional salary each year as a bonus payment.

418. Taking into consideration V.P.C.'s statement, which the State did not contest, the Court considers that she was obliged to abandon her employment as a legal assistant in October 2001, owing to the rape of her daughter, followed by the lack of protection and response by the State that, ultimately, led her to leave Nicaragua. The Court has also verified that V.P.C. resumed employment in the United States in October 2004.

419. Based on the foregoing, the Court finds that, owing to the violations recognized in this judgment, V.P.C. suffered a loss of earnings from October 2001 to October 2004, and, owing to the salaries that she failed to receive during this period, this amounts to US\$23,400.00 (twenty-three thousand four hundred United States dollars). The State must pay this amount to V.P.C.

## *D.2 Non-pecuniary damage*

420. The **Commission** argued that the facts had a severe impact on the life project of V.R.P, her mother, V.P.C. and her brothers and sister, because the serious failure of the State to acknowledge

<sup>447</sup> Cf. United States tax vouchers (evidence file, volume V XI, annex H.2 to the brief with pleadings, motions and evidence, folios 7721 to 7730).

<sup>448</sup> Cf. Certification of employment and salary of V.P.C. (evidence file, volume XVI, annex H.1. to the pleadings and motions brief, folio 7719).

V.R.P.'s condition as a victim at such a young age, and the severe violence that she endured at the hands of the state authorities negated the victim's possibilities of recovery and reintegration. The Commission considered that the State's obligation to provide comprehensive support and protection to the victim is still pending, so that it cannot be permitted to allege the victims' departure from the country in order to evade its obligation to provide full reparation, in particular bearing in mind that the said departure was due precisely to the State's conduct in relation to the complaints.

421. The **representatives** indicated that the harm suffered by V.R.P. at the hands of a third party engaged the State's responsibility because it had not ensured her rights effectively and had not conducted an effective investigation that led to the punishment of the perpetrator. They also indicated that the institutional violence and the revictimization suffered by the child, owing to the actions of persons acting in their capacity as public officials, caused her harm. The representatives argued that all of this affected both V.R.P. and her family circle and caused them mental and moral harm because they were stigmatized and had to bear the pain suffered by V.R.P., in addition to feeling helpless due to the lack of response from the State, which ultimately led to the disintegration of the family. Therefore, they asked the Court to order the payment of US\$250,000.00 in favor of V.R.P., US\$150,000.00 in favor of V.P.C., and US\$50,000.00 in favor of each of the siblings. Consequently, the total amount requested for non-pecuniary damage amounted to US\$550,000.00.

422. The representatives argued, with regard to V.R.P., that her expectations of normal, healthy personal development were curtailed from the moment she was sexually attacked, because she ceased to be a happy child, she refused to attend school, and she stopped looking after herself, and all this was exacerbated when her aggressor was released. Her life project was also harmed when she had to withdraw from her family and her surroundings and was unable to enjoy affectionate relations with those she loved. Regarding V.P.C., they adduced that she had to abandon her employment to take care of both the delicate situation of her daughter and the judicial proceedings; she had to leave her family to move to a foreign country, she had to leave her home to find herself in the street without anywhere to sleep, wear out her strength and health trying to help her daughter recover and seeking justice which never came. None of this formed part of her plans before filing the complaint against her daughter's aggressor. In the case of N.R.P., they argued that her life project was affected when she was unable to continue with her chosen career owing to social rejection because of what had happened in her family and, when she had to leave the country, because she had to support her mother and sister, abandoning her studies and her dreams to take up more lowly jobs that allowed her to help them. Regarding H.J.R.P. and V.A.R.P., they indicated that they were preventing from advancing in the academic and work environment owing to the lack of opportunities due to rejection by the community and the stigmatization they suffered. Specifically, they indicated that H.J.R.P. was unable to follow his chosen career, and V.A.R.P. was unable to study because, also, he no longer had the financial support of his mother who had to leave Nicaragua.

423. The **State** indicated that, although non-pecuniary damage could include both the suffering and affliction caused to the direct victims and to their close family who had directly suffered the impairment of values of great significant for the individual, and it was not possible to allocate or establish an amount of money that was equivalent to the harm for the purposes of reparation, the sum sought by the representatives as compensation for non-pecuniary damage, amounting to US\$550,000.00, exceeded the reality of a developing country such as Nicaragua. It asked the Court to take into account that, according to its case law, "the judgment can constitute, *per se*, a form of reparation." The State considered that the amount requested as compensation for the alleged impairment of the life project was very high, even though the representatives had not indicated a specific sum, and it contested considering V.R.P.'s brothers as beneficiaries because they had not been accredited as victims by the Commission. In addition, citing the Court's case law

on the life project, it asked that, in this judgment, the Court take into consideration the calculations made by the State concerning the pecuniary damage that had presumably been caused.

424. In its case law, the Court has established that non-pecuniary damage "may include both the suffering and affliction caused by the violation, and also the impairment of values of great significance for the individual, and any alteration of a non-pecuniary nature in the living conditions of the victims." In addition, since it is not possible to allocate a monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of full reparation to the victims, by the payment of a sum of money or the delivery of goods or services with a monetary value, that the Court determines in reasonable application of judicial discretion and in equity.<sup>449</sup>

425. Considering the circumstances of the instant case, the violations committed, the suffering caused and endured to different degrees, as well as the change in the living conditions of V.R.P. and the members of her family, the proven harm to personal integrity, and the other consequences of a non-pecuniary nature they suffered, the Court will now establish, in equity, compensation for non-pecuniary damage in favor of the victims, which must be paid directly to each of them.

426. Consequently, the Court orders, in equity, the payment of US\$65,000.00 (sixty-five thousand United States dollars) for non-pecuniary damage in favor of V.R.P. In addition, the Court establishes, in equity, the sum of US\$45,000.00 (forty-five thousand United States dollars) for non-pecuniary damage in favor of her mother, V.P.C. Lastly, the Court establishes, in equity, the sum of US\$20,000.00 (twenty thousand United States dollars) for non-pecuniary damage in favor of V.R.P.'s sister, N.R.P., and the sum of US\$15,000.00 (fifteen thousand United States dollars) for non-pecuniary damage in favor of each of her brothers, H.J.R.P. and V.A.R.P.

427. The Court recognizes that the violations of the human rights of V.R.P., V.P.C., N.R.P., H.J.R.P. and V.A.R.P., harmed their personal development and their family life, and also altered their social relationships; in other words, they harmed their life project. However, the Court considers that this harm is included within the non-pecuniary damage and the other measures of reparation already ordered in this judgment, such as scholarships and the measures of rehabilitation.

### ***E. Costs and expenses***

428. The ***representatives*** asked the Court to order the State to pay the costs and expenses resulting from the processing of the case in both the domestic sphere and before the inter-American system.

429. Neither the ***State*** nor the ***Commission*** presented specific arguments on this point.

430. The Court reiterates that, according to its case law,<sup>450</sup> costs and expenses are part of the concept of reparation, because the actions taken by the victims in order to obtain justice, at both the national and the international level, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment. Regarding reimbursement of costs and expenses, it is for the Court to prudently assess their scope, and this includes both the expenses arising before the authorities of the domestic jurisdiction, as well as those incurred in the course of 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

<sup>449</sup> 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 the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 227.

<sup>450</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru, supra*, para. 242.

rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>451</sup>

431. The Court has indicated that “the claims of the victims or their representatives with regard to costs and expenses and the substantiating evidence must be submitted to the Court at the first procedural moment granted to them – that is, in the pleadings and motions brief – without prejudice to updating those claims subsequently in keeping with the new costs and expenses incurred during the proceedings before this Court.”<sup>452</sup> In addition, the Court reiterates that it is not sufficient merely to forward probative documents; rather the parties are required to include arguments that relate the evidence to the fact it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly indicated.<sup>453</sup>

432. The Court notes that no vouchers were provided for the expenses incurred in the search for justice in the domestic sphere owing to the rape of V.R.P., for various legal expenses arising from filing complaints against different authorities, for legal expenses for the asylum procedure filed by V.P.C. and her daughters in the United States, or those that the representatives alleged they had incurred during the procedure before the Commission. Nevertheless, the Court considers that it can be presumed that V.P.C. incurred additional expenses based on the search for justice in the domestic sphere and before the inter-American system, in particular in the procedure before the Inter-American Commission. The Court finds it necessary to indicate that this amount does not include the payment of expenses incurred as a result of the proceedings before this Court which were covered by the Victims’ Legal Assistance Fund (*infra* para. 434).

433. Consequently, the Court decides to establish the reasonable amount of US\$15,000.00 (fifteen thousand United States dollars) for costs and expenses. This amount shall be delivered to V.P.C. During the procedure of monitoring compliance with this judgment, the Court may establish that the State must reimburse the victims or their representatives any reasonable and duly authenticated expenses at that procedural stage.<sup>454</sup>

#### **F. Reimbursement of expenses to the Victims’ Legal Assistance Fund**

434. In 2008, the General Assembly of the Organization of American States created the Victims’ Legal Assistance Fund of the inter-American human rights system, in order “to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system.”<sup>455</sup> In the instant case, an order of the President of September 21, 2017,<sup>456</sup> granted the financial assistance of the Fund to cover the expenses of: (i) travel, transfers and accommodation so that two inter-American defenders could attend the public hearing and represented the presumed victims; (ii) travel, transfers and accommodation for V.R.P., V.P.C.

<sup>451</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, *supra*, para. 82, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 242.

<sup>452</sup> *Case of Garrido and Baigorria v. Argentina. Reparations and costs*, *supra*, paras. 79 and 82, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 243.

<sup>453</sup> Cf. *Case of Chaparro Álvarez and Lapo Ñíñez v. Ecuador*, *supra*, para. 277, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 243.

<sup>454</sup> Cf. *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 331, and *Case of Pacheco León et al. v. Honduras*, *supra*, para. 224.

<sup>455</sup> AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the Thirty-eighth OAS General Assembly, at the four plenary session, held on June 3, 2008, “*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*,” Operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, “*Rules of Procedure for the Operation of the Legal Assistance Fund of the inter-American human rights system*,” Article 1(1).

<sup>456</sup> Cf. Order issued by the President of the Inter-American Court of Human Rights on September 21, 2017 (merits file, volume I, folios 838 to 852).

and Enrique Oscar Stola to attend this hearing to provide their statements and expert opinion, respectively; (iii) the costs required for the affidavits of N.R.P., H.J.R.P. and V.A.R.P., and (iv) other reasonable and necessary expenses incurred by the inter-American defenders; to this end, they must forward the Court both the justification of such expenses and the respective vouchers.

435. The State was able to present its observations on the disbursements made in this case, which amounted to US\$13,862.51 (thirteen thousand eight hundred and sixty-two United States dollars and fifty-one cents). In its brief of December 21, 2017, the State indicated that, although a calculation table of "per diems" allocated in Panama was attached to the report provided by the Court's Secretariat, the report did not include any accounting for those amounts by the beneficiaries. The State also indicated that the report had not been signed or approved by the Court's accounts section, and Nicaragua's accounting rules required real and sufficient evidence to justify the use of funds for this type of activity. It therefore indicated that, given the lack of supporting documents, bills or receipts for all the disbursements made by the beneficiaries, the State did not have the probative support to determine the amounts disbursed and therefore requested that the Court provide supporting documents that justified the use of the funds for food and accommodation, and if there was a balance that had not been used to this end, it should be reimbursed to the Victims' Legal Assistance Fund.

436. The State also alleged that, in the case of the payment of fees to expert witness Enrique Oscar Stola, although this was authorized with the signature of the Court's Secretary, this payment was not authorized pursuant to article 4 of the Rules for the Operation of the Victim's Legal Assistance Fund or paragraphs 43 to 46 of the order of the President of September 21, 2017. The State indicated that, in no paragraph of this order had the President established the payment of fees for the said expert witness. Furthermore, it indicated that, pursuant to article 4 of the said Rules, disbursements from the Fund should be made in accordance with the parameters authorized by the President, which had not occurred in this case. Therefore, the State indicated that it could not and should not pay this disbursement which amounted to more than five thousand dollars.

437. Regarding the State's objections to the lack of documentation to substantiate the amounts disbursed for per diems and transportation expenses, the Court recalls that, according to article 6 of the Court's Rules for the Operation of the Victims' Legal Assistance Fund, "the Court shall decide matters not governed by the Rules and questions regarding their interpretation." In this regard, since the Assistance Fund came into operation,<sup>457</sup> the Court has established as a policy that it accords the persons whose expenses are covered by the Fund a fixed amount for a per diem, which includes accommodation and food, based on the OAS table of per diems in force (in this case applicable to Panama City, Republic of Panama), without the need for them to present invoices proving the disbursements made. This is because the said table reflects the amount that, according to the OAS, a person will reasonably spend on accommodation and food in that city. Moreover, requiring invoices from the beneficiaries of the Assistance Fund for the per diem funds they receive would present serious obstacles to their correct and expeditious administration. For this reason also, in the case of terminal expenses – that is, expenses for transportation to and from the airport and other incidental expenses – the Court only verifies the expenses incurred from the point of origin to the place where the hearing will be held, considering it reasonable that the person concerned will spend the same amount on the return journey. Therefore, the Court rejects the State's objections.<sup>458</sup>

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<sup>457</sup> The Victims' Legal Assistance Fund was applied for the first time in the case of *Contreras et al. v. El Salvador*, in which the judgment was delivered on August 31, 2011.

<sup>458</sup> Cf. *Case of the Campesino Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 355, and *Case of the Dismissed Employees of PetroPerú et al. v. Peru*, *supra*, para. 237.

438. Regarding the State's objections to the payment of the fees of expert witness Enrique Oscar Stola, the Court underlines that, according to paragraph 42 of the order of the President of September 21, 2017, "in cases in which the representation is assumed free of charge by an Inter-American Defender under Article 37 of the Inter-American Court's Rules of Procedure,<sup>459</sup> help will be provided by the Victims' Legal Assistance Fund to cover, insofar as possible, the reasonable and necessary expenses arising from that representation. In other words, the application of the Assistance Fund in these situations is regulated by article 4 of the Memorandum of Understanding between the Inter-American Court and the Inter-American Association of Public Defenders; thus, the designated Inter-American Defender "shall submit to the Court all the necessary vouchers that authenticate the expenses incurred as a result of processing the case before the Court." This was also expressly indicated when notifying the submission of this case.

439. Based on the above, considering paragraph 43 of the said order established that "financial assistance will be allocated to cover the expenses of: [...] (iv) other reasonable and necessary expenses that the inter-American defenders have incurred or may incur, which requires that they forward the Court both the justification for such expenses and the respective vouchers."

440. Therefore, the Court finds that the payment of the fees of expert witness Enrique Oscar Stola is included under the heading "other reasonable and necessary expenses incurred by the defenders," which was duly authorized by the President, as previously indicated.

441. Consequently, owing to the violations declared in this judgment and that the requirements were met for access to the Fund, the Court orders the State to reimburse the said Fund the sum of US\$13,862.51 (thirteen thousand eight hundred and sixty-two United States dollars and fifty-one cents). This amount must be reimbursed within six months of notification of this judgment.

### ***G. Method of complying with the payments ordered***

442. The State shall make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein, within one year, of notification of this judgment, without prejudice to making the complete payment previously, pursuant to the following paragraphs.

443. If the beneficiaries are deceased or die before they receive the respective compensation, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

444. The State shall comply with its monetary obligations by payment in United States dollars to the beneficiaries who reside in that country. In the case of the beneficiaries who reside in Nicaragua, the State shall comply with its monetary obligations by payment in United States dollars or the equivalent in national currency using the exchange rate in force on the New York Stock Exchange (United States of America), the day before payment to make the respective calculation.

445. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit the said amounts in their favor in a deposit account or certificate in a solvent Nicaraguan financial institution, in United States dollars and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed after ten years, the amounts shall be returned to the State with the interests accrued.

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<sup>459</sup> This article establishes that "[i]n cases in which alleged victims are acting without duly accredited legal representation, the Court may, on its own motion, appoint an inter-American defender to represent them during the processing of the case."



446. The amounts allocated in this judgment as compensation and to reimburse costs and expenses shall be delivered to the persons and institutions indicated in full, as established in this judgment, without any deductions arising from possible charges or taxes.

447. If the State should fall into arrears, including with the reimbursement to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Nicaragua.

**X**  
**OPERATIVE PARAGRAPHS**

448. Therefore,

**THE COURT**

**DECIDES,**

Unanimously,

1. To reject the preliminary objection filed by the State on the alleged failure to exhaust domestic remedies, pursuant to paragraphs 21 to 29 of this judgment.
2. To reject the preliminary objection filed by the State on the alleged lack of jurisdiction *ratione temporis* of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, pursuant to paragraphs 33 to 36 of this judgment.
3. To reject the preliminary objection filed by the State on the alleged lack of jurisdiction *ratione materiae* of the Court in relation to the presumed violation of articles of the Convention on the Rights of the Child, pursuant to paragraphs 40 to 42 of this judgment.

**DECLARES:**

Unanimously, that:

4. The State is responsible for the violation of the rights to personal integrity, judicial guarantees, private and family life, and judicial protection, by both act and omission, pursuant to Articles 5(1), 8(1), 11(2) and 25(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 19 of this instrument, as well as for failure to comply with the obligations derived from Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C., pursuant to paragraphs 150 to 203 and 304 of this judgment.
5. The State is responsible for the violation of the guarantees of due process that relate to objective impartiality and the prohibition of arbitrariness, recognized in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument and Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C., pursuant to paragraphs 216 to 271 and 304 of this judgment.
6. The State is responsible for the violation of the guarantee of a reasonable time of the proceedings, recognized in Article 8(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 19 of this instrument and Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C., pursuant to paragraphs 275 to 285 and 304 of this judgment.

7. The State is responsible for failing to comply with its obligation to ensure, without discrimination for reasons of sex and gender, and for the victim's condition as a person in development, the right of access to justice pursuant to Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Articles 1(1), 19 and 24 of this instrument and Article 7(b) of the Convention of Belém do Pará, to the detriment of V.R.P., pursuant to paragraphs 289 to 296 and 304 of this judgment.

8. The State is responsible for the violation of the prohibition of cruel, inhuman or degrading treatment, established in Article 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of V.R.P., pursuant to paragraphs 297 to 299 and 304 of this judgment.

9. The State is responsible for the violation of the rights to freedom of residence and protection of the family recognized in Articles 22(1) and 17(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 19 of this instrument, to the detriment of V.R.P. In addition, the State is responsible for the violation of the rights to freedom of residence and protection of the family recognized in Articles 22(1) and 17(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of V.P.C. and N.R.P. Similarly, the State is responsible for the violation of the right to protection of the family, recognized in Article 17(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of H.J.R.P. and V.A.R.P. All of this pursuant to paragraphs 308 to 322 of this judgment.

10. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the members of V.R.P.'s family, identified as V.P.C., N.R.P., H.J.R.P. and V.A.R.P., pursuant to paragraphs 327 to 334 of this judgment.

11. The State is not responsible for the alleged violation of the principle of non-discrimination for reasons of religion, protected in Article 1(1) of the American Convention on Human Rights, or for the alleged violation of the right to freedom of religion recognized in Article 12(1) of the American Convention on Human Rights, pursuant to 323 of this judgment.

12. It is not incumbent on the Court to issue a ruling on the alleged violations of Article 25 of the American Convention on Human Rights, or on the right to know the truth, pursuant to paragraph 303 of this judgment.

**AND ESTABLISHES:**

Unanimously, that:

13. This judgment constitutes, *per se*, a form of reparation.

14. The State shall, within a reasonable time, determine, through the competent public entities, the eventual responsibilities of the officials who contributed with their actions to the perpetration of acts of revictimization and institutional violence to the detriment of V.R.P., and, as appropriate, apply the consequences established by law, pursuant to paragraph 345 of this judgment.

15. The State shall pay V.R.P., V.P.C. and N.R.P. the sums established for the expenses of medical psychological and/or psychiatric treatment, as applicable, pursuant to paragraph 351 of this judgment.

16. The State shall provide, free of charge and immediately, through its specialized health care institutions, appropriate and effective psychological and/or psychiatric treatment to H.J.R.P. and V.A.R.P., pursuant to paragraph 352 of this judgment.

17. The State shall make the publications indicated in paragraph 355 of this judgment, if V.R.P. authorizes this.

18. The State shall pay V.R.P. the sum established for a scholarship to cover the necessary expenses to conclude her professional training in the place where she lives, pursuant to paragraph 362 of this judgment.

19. The State shall award V.A.R.P. a scholarship in a Nicaraguan public institution to be agreed between the beneficiary and the State, so that he may undertake university or vocational studies, or job training, pursuant to paragraph 363 of this judgment.

20. The State shall adopt, implement, supervise and monitor, as appropriate, the following three standardized protocols: (i) protocol for investigation and actions during the criminal proceedings in cases of child victims of sexual violence; (ii) protocol on comprehensive care and forensic medical evaluation in cases of child victims of sexual violence, and (iii) protocol on comprehensive care for child victims of sexual violence, pursuant to paragraphs 381 to 385 of this judgment.

21. The State shall create and implement a special mechanism that provides free legal assistance to child and adolescent victims of crimes, especially those involving sexual violence, pursuant to paragraph 387 of this judgment.

22. The State shall adopt and implement the permanent training programs and courses ordered in paragraphs 392 to 395 of this judgment.

23. The State shall pay the amounts established in paragraphs 411, 419, 426 and 433 of this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, pursuant to the said paragraphs and paragraphs 442 to 447.

24. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount disbursed during the processing of this case, pursuant to paragraphs 441 and 447 of this judgment.

25. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions of paragraph 356 of this judgment.

26. The Court will monitor full compliance with this judgment, in exercise of its attributes and in fulfillment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on March 8, 2018.

I/A Court HR. Case of *V.R.P., V.P.C. et al. v. Nicaragua*. Preliminary objections, merits, reparations and costs. Judgment of March 8, 2018.

Eduardo Ferrer Mac-Gregor Poisot  
President

Humberto A. Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot  
President

Pablo Saavedra Alessandri  
Secretary