

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASO LÓPEZ SOTO *ET AL.* V. VENEZUELA**

**JUDGMENT OF SEPTEMBER 26, 2018**

***(Merits, reparations and costs)***

In the case of *López Soto 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  
Eduardo Vio Grossi, Vice President  
Humberto Antonio Sierra Porto, 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, 62, 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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\* Judge Elizabeth Odio Benito, for reasons beyond her control that were accepted by the full Court, did not take part in the deliberation and signature of this judgment.

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## I

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

1. *The case submitted to the Court.* On November 2, 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 “Linda Loaiza López Soto and family” against the Bolivarian Republic of Venezuela (hereinafter “the State of Venezuela,” “the Venezuelan State,” “the State” or “Venezuela”). According to the Commission, the case relates to the alleged international responsibility of the State of Venezuela for the presumed failure to comply with the obligation of prevention, owing to the deprivation of liberty endured by Linda Loaiza López Soto, who was 18 years of age at the time, between March 27 and July 19, 2001, by a private individual, and to the acts of violence that she suffered for almost four months, which presumably included mutilation, severe physical injuries and psychological harm inflicted with extreme cruelty, as well as repeated forms of sexual violence and rape, all of which had a profound and irreversible impact on her life. The Commission also established that this revealed a situation of acquiescence by the State and, therefore, the gross acts of physical, psychological and sexual violence suffered by Linda Loaiza López Soto had constituted failure to comply with the State’s obligations concerning the absolute prohibition of torture and cruel, inhuman and degrading treatment. It also alleged that the State had failed to comply with its obligation to undertake investigations within a reasonable time, and that the presumed victim had not been provided with access to justice under equal conditions. Furthermore, it argued that the egregious acts of violence she suffered had been investigated and prosecuted under a discriminatory legal framework that was incompatible with the American Convention and allowed the discussion to focus on speculations about the victim’s life rather than on elucidation of what had happened and determination of the corresponding responsibilities. According to the Commission, “the gravity of the facts that occurred, added to the absence of a timely and adequate judicial response, extended beyond the direct [presumed] victim and included her family.”<sup>1</sup>

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

- a) *Petition.* On November 12, 2007, Linda Loaiza López Soto and Juan Bernardo Delgado Linares (hereinafter “the petitioners”) lodged the initial petition before the Commission.
- b) *Admissibility Report.* On November 1, 2010, the Commission adopted Admissibility Report No. 154/10, in which it concluded that the petition was admissible.<sup>2</sup>
- c) *Merits Report.* On July 29, 2016, the Commission adopted Merits Report No. 33/16 pursuant to Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 33/16”), in which it reached a series of conclusions,<sup>3</sup> and made several recommendations to the State.<sup>4</sup> The Merits Report was notified to the State on August 2, 2016.

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<sup>1</sup> The members of Linda Loaiza López Soto’s family identified as presumed victims are: 1. Nelson López Meza (who also appears as Nelson López Mesa); 2. Paulina Soto Chaustre (who also appear as Paulina Soto de López); 3. Ana Secilia López Soto; 4. Diana Carolina López Soto; 5. Anyi Karina López Soto; 6. Nelson Enrique López Soto; 7. Elith Johana López Soto; 8. Gerson José López Soto; 9. Yusmely del Valle López Soto; 10. Luz Paulina López Soto; 11. José Isidro López Soto, and 12. Emmanuel Adrián López Soto.

<sup>2</sup> In this report, the Commission decided that the petition was admissible with regard to the presumed violation of the rights recognized in Articles 2, 5(1), 5(2), 8(1), 11(1), 24 and 25 of the American Convention, all in relation to Article 1(1) of this instrument and Article 7 of the Convention of Belém do Pará to the detriment of Linda Loaiza López Soto, and also, in the case of Articles 5(1), 8(1) and 25 of the American Convention in relation to Article 1(1) of this instrument, to the detriment of the family members identified. *Cf.* Admissibility Report No. 154/10, *Case of Linda Loaiza López Soto and family v. Venezuela*, November 1, 2010 (file of procedure before the Commission, volume I, folios 150 to 164).

<sup>3</sup> The Commission concluded that the State of Venezuela was responsible for “[t]he violation of the rights established in Articles 5(1), 5(2), 7(1), 11(1), 11(2) and 24 of the American Convention, in relation to the obligations established in Article 1(1) of this instrument, to the detriment of Linda Loaiza López.” The Commission also concluded that the State had

d) *Report on the Commission's recommendations.* The Venezuelan State did not respond in any way to the Commission's Merits Report.

e) *Submission to the Court.* On November 2, 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 for the [presumed] victim [...] and the members of her family."<sup>5</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). The Commission also asked the Court to order to the State to adopt measures of reparation, which are described and analyzed in Chapter IX of this judgment.

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violated Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, in addition to failing to comply with the obligation established in Article 7(a) and (b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Linda Loaiza López. Similarly, the Commission considered that the State had violated "the rights established in Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of this instrument, as well as [...] its duty to investigate acts of torture and violence against women, established respectively in Articles 1, 6 and 8 of the ICPPT and Article 7 of the Convention of Belém do Pará, and the right established in Article XVIII of the American Declaration, all to the detriment of Linda Loaiza López." The Commission also determined "[t]he violation of the rights established in Articles 5(1), 8(1), 11, 24 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument; as well as the violation of Article 7 of the Convention of Belém do Pará, all to the detriment of Linda Loaiza López." Lastly, the Commission concluded that the State had violated the "right to mental and moral integrity established in Article 5(1) of the American Convention to the detriment of the family members of Linda Loaiza López [who had been] identified."

<sup>4</sup> Consequently, the Commission made a series of recommendations to the State:

1. Investigate effectively, with due diligence and within a reasonable time, the sexual violence suffered by Linda Loaiza López. The corresponding investigations and judicial proceedings must be carried out according to the standards described in th[e] report.
2. Order the administrative, disciplinary, or criminal measures that correspond to the acts or omissions of the State officials who contributed to the different factors involved in denial of justice identified in th[e] report.
3. Provide comprehensive reparation to Linda Loaiza López and her family for the human rights violations found to her detriment. This reparation must include measures of monetary compensation and satisfaction to redress both the pecuniary and non-pecuniary damage. The measures of satisfaction should include: (i) an act of public apology to Linda Loaiza López and her family for the denial of justice represented by the facts of this case; (ii) dissemination of the standards developed in th[e] report through campaigns to raise awareness in the community on violence against women, and (iii) coordinating with Linda Loaiza López to provide her with a scholarship for her professional development.
4. Provide free and immediate medical and psychological or psychiatric care, as appropriate, for as long as necessary to the victims of this case who request this and in coordination with them.
5. Provide mechanisms of non-repetition that include: (i) adoption of legislative, administrative or other measures to guarantee access to justice for women victims of violence in Venezuela; (ii) design and implementation of a national policy on prevention of violence against women and gender-based violence that includes effective supervision and oversight mechanisms; (iii) strengthening the institutional capacity for responding to the structural problems identified in this case as factors of impunity in cases of violence against women; (iv) design and implementation of adequate and accessible reporting mechanisms for women who are victims of violence, including sexual violence, in Venezuela, pursuant to the standards established in th[e] report; (v) design and implementation of multidisciplinary health care services for women victims of sexual violence that address the specific needs of victims of this type of violence for their recovery and rehabilitation; (vi) design of protocols to facilitate and foster effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence that include a description of the complexity of the evidence and specify the minimum evidence that must be collected to have adequate evidentiary grounds, taking into account the international standards set forth in the Istanbul Protocol, and (vii) design of training programs for all agents of justice who come in contact with and/or are in charge of investigating cases of violence against women, including sexual violence.
6. Reimburse the Victims' Legal Assistance Fund of the Inter-American Commission on Human Rights the funds expended during the processing of this case.

<sup>5</sup> The Commission appointed Commissioner Francisco Eguiguren Praeli and Executive Secretary Paulo Abrão as its delegates before the Court, and Elizabeth Abi-Mershed, then Deputy Executive Secretary, together with Silvia Serrano Guzmán and Selene Soto Rodríguez, Executive Secretariat lawyers, as legal advisers.

## II PROCEEDINGS BEFORE THE COURT

4. *Notification to the representatives and to the State.* The submission of the case was notified by the Court to representatives of the presumed victims<sup>6</sup> (hereinafter “the representatives”) and to the State on January 30, 2017.

5. *Brief with motions, pleadings and evidence brief.* On March 30, 2017, the representatives of the presumed victims submitted their brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”) to the Court. The representatives agreed substantially with the Commission’s allegations and asked the Court to declare the international responsibility of the State for the violation of the same articles alleged by the Commission and, in addition, the violation of Articles 3, 6 and 22, in relation to Articles 1(1) and 2 of the American Convention, Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”) and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “ICCPT”), to the detriment of Linda Loaiza López Soto. In addition, the presumed victims requested, through their representatives, access to the Victims’ Legal Assistance Fund of the Inter-American Court (hereinafter “the Court’s Legal Assistance Fund” or “the Fund”). Lastly, they asked the Court to order the State to adopt various measures of reparations and to reimburse certain costs and expenses.

6. *Answering brief.* On August 1, 2017, the State submitted to the Court its brief answering the submission of the case in the Merits Report of the Inter-American Commission and the pleadings and motions brief of the representatives (hereinafter “the answering brief”).<sup>7</sup> In this brief, the State acknowledged some of the alleged violations, contested others, and responded to the requests for reparation.

7. *Victims’ Legal Assistance Fund.* In an order of the President of the Court of August 22, 2017, the request filed by the presumed victims, through their representatives, to access the Court’s Legal Assistance Fund, was admitted.<sup>8</sup>

8. *Observations on the partial acknowledgement of responsibility.* On October 17 and 20, 2017, the representatives and the Commission, respectively, presented their observations on the partial acknowledgement of responsibility made by the State, and on the arguments submitted in section B of Chapter II on Preliminary Considerations of its answering brief; that is in the section entitled: “(B) Considerations not included in the [Commission’s] Admissibility Report.”

9. *Public hearing.* In an order of December 13, 2017,<sup>9</sup> the President called the State, the representatives and the Inter-American Commission to a public hearing to receive their final oral arguments and observations on the merits and eventual reparations and costs, and also to receive the statements of two presumed victims, one witness proposed by the State and two expert witnesses proposed by the representatives and by the Commission.<sup>10</sup> The public hearing took place

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<sup>6</sup> Juan Bernardo Delgado Linares; the Center for Justice and International Law (CEJIL), and the Comité de Familiares de las Víctimas de los Sucesos de Febrero-Marzo de 1989 (COFAVIC), represented the presumed victims in this case.

<sup>7</sup> In a communication of February 17, 2017, the State appointed Larry Devoe Márquez as its Agent.

<sup>8</sup> Cf. *Case of López Soto et al. v. Venezuela. Victims’ Legal Assistance Fund.* Order of the President of the Inter-American Court of August 22, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/lopezsoto\\_fv\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/lopezsoto_fv_17.pdf).

<sup>9</sup> Cf. *Case of López Soto et al. v. Venezuela. Call to a hearing.* Order of the President of the Inter-American Court of December 13, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/lopez\\_soto\\_13\\_12\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/lopez_soto_13_12_17.pdf).

<sup>10</sup> In a communication of January 17, 2018, the State advised that the witness, María Hernández Royett, called to testify during the public hearing, was unable to attend the hearing for reasons beyond her control, and asked that the Court receive her testimony by affidavit. The State also asked the Court to call expert witness María Lucrecia Hernández, whose opinion had been required by affidavit, to attend the public hearing. After consulting the representatives and the Inter-

on February 6, 2018, during the 121<sup>st</sup> regular session of the Court held at its seat.<sup>11</sup> During the hearing, the Court received the statement of presumed victims Linda Loaiza López Soto and Ana Secilia López Soto, and the opinions of expert witnesses Daniela Kravetz, Marie Christine Chinkin and María Lucrecia Hernández Vitar. In addition, the Court required the State to present certain information and documentation; in particular, it requested a copy of the record of individuals who had presented complaints to the Judicial Technical Police located in Urdaneta Avenue, from March to July 2001, as well as any other complaint that had been made before a police station or agency by Ana Secilia López Soto. The affidavits that had been requested were received on January 24, 2018.<sup>12</sup>

10. *Amici curiae*. On February 20 and 21, 2018, the Court received *amicus curiae* briefs from: (1) the Red de Observación y Acción por el Derecho de las Mujeres a una vida libre de Violencia (Red Naranja); Equivalencias en Acción; Asociación Venezolana para una Educación Sexual Alternativa (AVESA); Centro por la Justicia y Paz (CEPAZ); Centro Hispanoamericano de la Mujer; Asociación Civil Mujeres en Línea; Unión Afirmativa; Programa Venezolano de Educación-Acción en Derechos Humanos (PROVEA); CIVILIS Derechos Humanos; Casa Juan Ramírez La Avanzadora; Fundación para la Prevención de la Violencia Doméstica hacia la Mujer (FUNDAMUJER); Unidad de Investigación y Estudios de Género "Bella Carla Jirón Camacaro"; Escuela de Formación Obrera Priscila López; Observatorio Venezolano de los Derechos Humanos de las Mujeres; Acceso a la Justicia, and Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX);<sup>13</sup> (2) the World Organization against Torture (OMCT) and Women's Link Worldwide,<sup>14</sup> and (3) the Academy on Human Rights and International Humanitarian Law and the War Crimes Research Office, both of Washington College of Law at the American University.<sup>15</sup>

11. *Final written arguments and observations*. On March 6, 2018, the representatives and the

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American Commission, the President of the Court decided to accept the State's request and to modify the way in which the testimony of María Hernández Royett was received; accordingly, this was provided by affidavit. Nevertheless, this testimony was not submitted. The Court also decided to accept the State's request to modify the way in which the opinion of expert witness María Lucrecia Hernández Vitar was received and, accordingly, her expert opinion was provided during the public hearing.

<sup>11</sup> There appeared at this hearing: (a) for the Inter-American Commission: the President of the Commission, Commissioner Francisco Eguiguren Praeli, and the Executive Secretariat lawyers, Silvia Serrano Guzmán and Selene Soto Rodríguez; (b) for the representatives of the presumed victims: the General Coordinator, Liliana Ortega, and the lawyers, Ronnie Boquier and Karla Subero, of the Comité de Familiares de las Víctimas de los Sucesos de Febrero-Marzo de 1999 (COFAVIC), and for the Center for Justice and International Law (CEJIL), the Executive Director, Viviana Krsticevic, the Program Director for the Andean, North American and Caribbean Region, Francisco Quintana, the Director of Legal Affairs, Alejandra Vicente, the senior lawyer, Elsa Meany, and the communications official, Alexandra McAnarney, and (c) for the State of Venezuela: Larry Devoe Márquez, State Agent before the international human rights system, and Alexis Crespo Daza, Adviser to the Ministry of the People's Power for Foreign Affairs.

<sup>12</sup> On January 12, 2018, Katherine Romero advised that, for personal reasons beyond her control, she would be unable to present her expert opinion, which had been proposed by the representatives.

<sup>13</sup> The brief was signed by Fabiola Romero of the Centro Hispanoamericano de la Mujer and by Beatriz Borges of the Centro por la Justicia y Paz. It presented a series of considerations on the institutional violence to which women are presumably subjected by Venezuelan state agencies. It also described the situation of impunity that reigned in relation to complaints filed by Venezuelan women.

<sup>14</sup> The brief was signed by Gerald Staberock, Secretary General of the World Organization against Torture, and by Teresa Fernández Paredes, lawyer, of Women's Link Worldwide. The brief presented considerations on the following aspects: (a) the meaning and scope of State obligations with regard to the right to personal integrity, in particular, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, from a gender perspective; (b) the gender perspective in the examination of violence; (c) discriminatory violence against women as a form of torture, and (d) the State obligation to prevent acts that constitute torture or ill-treatment and to investigate, prosecute, punish and redress such acts.

<sup>15</sup> The brief was signed by Susana SáCouto, of the Academy on Human Rights and International Humanitarian Law, and by Claudia Martin, of the War Crimes Research Office. The brief presented an analysis of the criteria for assessing evidence used by the Inter-American Court in cases of violence against women in order to determine the international responsibility of the State. The brief also addressed the concept of "consistent testimony" in the practice of this Court and other international courts.

State forwarded their respective final written arguments together with the corresponding annexes, and the Commission presented its final written observations.

12. *Observations of the parties and of the Commission.* The President granted the State and the Commission a time frame for presenting any observations they deemed pertinent on the annexes to the representatives' final written arguments. On April 6, 2018, the State asked the Court to declare these annexes inadmissible. The Commission did not present observations.

13. *Disbursements in application of the Legal Assistance Fund.* On March 20, 2018, the Secretariat, on the instructions of the President of the Court, forwarded the State information 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 for presenting any observations it deemed pertinent. The State presented its observations on April 6, 2018.

14. *Helpful evidence.* The State was again asked to forward the helpful evidence requested during the public hearing in this case. On April 6, 2018, the State indicated that the documents requested were not available. However, it forwarded the "2001 Annual Report of the Ministry of the Interior and Justice, on the work of the Scientific, Criminal and Criminalistic Investigations Unit." The State also failed to forward a copy of the complaint filed by Ana Secilia López Soto owing to death threats, or of any other complaint that she might have filed in a police station or other agency.

15. *Deliberation of this case.* The Court began to deliberate this judgment on September 26, 2018.

### III JURISDICTION

16. Venezuela has been a State Party to the American Convention since August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981. Subsequently, on September 10, 2012, the State denounced the American Convention. The denunciation took effect on September 10, 2013, According to Article 78(2) of the Convention,<sup>16</sup> the Court has jurisdiction to examine this case, taking into account that the facts examined occurred prior to the date on which the denunciation of the Convention took effect.

### IV ACKNOWLEDGEMENT OF STATE RESPONSIBILITY

#### ***A. The State's acknowledgement of responsibility and observations of the Commission and the representatives***

17. The **State** made a partial acknowledgement of international responsibility in its answering brief. In addition, Venezuela contested certain facts.<sup>17</sup> Consequently, it argued that there was no

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<sup>16</sup> Article 78(2) of the Convention establishes that "[s]uch a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that State prior to the effective date of denunciation."

<sup>17</sup> The State contested several facts, namely: 1. The assertion of the supposed existence of a complaint that Ana Secilia López Soto, Linda Loaiza's sister, had filed or attempted to file on March 28, 2001, in the offices of the former Judicial Technical Police located in Urdaneta Avenue in Caracas; 2. The assertion that Ana Secilia López Soto, Linda Loaiza's sister, had supposedly attempted to file this complaint on six (6) occasions and had not received an appropriate response from the police agents; 3. The assertion that the Venezuelan State had been or should have been aware of the situation of Linda Loaiza López Soto prior to her rescue on July 19, 2001, as there was no complaint that advised the competent authorities of the existence of the "disappearance" of this person; 4. The assertion that it corresponded to the State to prove that the complaint had not been filed on March 28, 2001. 5. The Commission's assertion regarding the Court's supposed position on



reason for the Court to review factual and legal issues relating to aspects that were “evidently resolved, by the State having accepted responsibility,” and that the analysis in this matter should be circumscribed to the points that the State had contested or failed to accept.

18. In this regard, Venezuela admitted that the actions of the judicial organs had been inadequate, “which meant that the judicial proceedings were convoluted and, consequently, lasted more than a reasonable time.” The State also indicated that “the obligation to investigate and duly punish the facts that resulted in the harm suffered by Linda Loaiza López [Soto] had not been complied with appropriately and in keeping with international standards on human rights and violence against women.” It stressed that “the actions of the organs responsible for hearing this case were marked by evident omissions and inadequate practices, as well as by unjustified delays.” Similarly, the State acknowledged the violation of Articles 8(1), 25(1), 5(1), 11, 24 and 2 of the American Convention, because Ms. López Soto, “as a victim of violence against women, did not receive appropriate treatment and assistance at the time of her rescue and in the moments following this.” The State added that the gross acts of violence she endured “were investigated and prosecuted in light of a discriminatory legal framework,” that had been upgraded with the entry into force, in 2007, of the Law on the Right of Women to a Life Free of Violence. It also argued that these situations affected not only “her right of access to justice, but constituted additional forms of revictimization that could evidently have affected both her private life and dignity and also her mental and moral integrity.”

19. The State also acknowledged its responsibility for the violation of the right to personal integrity of the members of Linda Loaiza López Soto’s family identified in the Merits Report in the terms of Article 5 of the American Convention. This was owing to the suffering they endured due to “the violations perpetrated against a loved one and the absence of a timely and adequate judicial response that would have concluded the criminal proceedings definitively, determining the person or persons responsible for each and every fact that gave rise to this case.” It added that the excessive and unjustified delay in the criminal proceedings, as well as the different irregularities during their development, affected the living conditions of this family group and gave rise to a feeling of despair that impaired their right to personal integrity. However, the State did not acknowledge that “the suffering of the family was increased owing to the inaction of the authorities in response to the complaint that Ana Cecilia López, [Linda Loaiza’s sister] had tried to file the day following the disappearance [of Linda Loaiza López Soto], in order to discover the whereabouts of her sister, because [it contested] the existence of this complaint or her attempt to file it.” Additionally, the State contested that “the Venezuelan authorities had shown “scant sensitivity” in the treatment accorded to Nelson López and Paulina Soto when they came to Caracas to meet up with their daughter, without being allowed to see her initially and, even [having had] to take certain steps to prove that they were her parents.”

20. The State indicated expressly that its acknowledgement did not include the alleged responsibility derived from the violations committed by non-State agents, in the terms described by the Commission. Consequently, Venezuela did not acknowledge the alleged responsibility for the supposed violation of Articles 5(1), 5(2), 7(1), 11 and 1(1) of the American Convention and Articles 1 and 6 of the ICPPT, because it was not and should not have been aware, prior to her rescue, of the dangerous situation in which Linda Loaiza López Soto found herself, as “there is no evidence that any attempt was made to file a complaint of any type with regard to the situation of Linda

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the assessment of evidence in situations in which it is alleged that the respective authority refused to receive a complaint of the disappearance of a women promptly and in a specific context. In particular, the Commission had argued that the Court had considered this situation proved based on the statements of family members, and given the inexistence of proof to the contrary by the State; 6. The assertion that, at the time and even nowadays, a permissive context exists towards gender-based violence and that the competent authorities paid very little attention to this issue, and 7. The assertion that the Venezuelan authorities had shown “scant sensitivity” in the treatment accorded to Linda Loaiza’s parents when they came to Caracas to meet up with their daughter.

Loaiza López between March 28 and July 19, 2001.”

21. Regarding reparations, the State asked that these be established, based on case law and taking into consideration the evidence in the case file. Also, in its final arguments it presented various observations on the measures requested by the representatives and asked that “the guarantees of non-repetition constituted by the institutional and legislative improvements made by the State [...], and the adoption of the measure of satisfaction in favor of Linda Loaiza López Soto and her family [consisting in a public act to acknowledge international responsibility] during the hearing [...] be considered [...] when delivering judgment in this case.”

22. In this regard, during the public hearing the State addressed Linda Loaiza López Soto “to express its sympathy owing to the gross acts of violence against women of which [...] she had been a victim.” Specifically, the State declared the following:

Linda Loaiza López Soto: on behalf of the Venezuelan State, I apologize to you and your family for the inadequate actions of the organs of the system of justice that intervened in the processing of the criminal proceedings filed to punish the terrible acts of violence against women of which you were a victim; we profoundly regret all the suffering that you and your family group have had to endure for almost 17 years in the search for justice. For us and for the people of Venezuela, you are an example of the courage and dignity of women, and also of constancy and engagement in the fight against gender-based violence. Please accept our sincere apology.

23. The **representatives** indicated that the acknowledgement made by the State signified a step forward due to its symbolic and legal significance. They pointed out that, for Linda Loaiza López, “it was extremely important that the State had acknowledged that the way in which it had treated her over the last 16 years had resulted in serious violations of her human rights and had caused severe harm to both her and her family.” They stated that, although this partial acknowledgement should be accepted and have full legal effect in the proceedings, several aspects merited additional analysis by the Court to establish clearly the proven facts and the scope of the State’s responsibility; thus, “the dispute in this case has not ended.”

24. In particular, they indicated that, regarding the reasonable time and due diligence with regard to acts of violence against women, the acknowledgement made by the State was very general and did not allow it to be determined whether it covered each and every violation alleged by the representatives, “including the discriminatory treatment by public officials, and deficiencies such as the failure to conduct the necessary procedures and to ensure the chain of custody for the evidence.” Regarding the initial procedures, the discriminatory context and the violations of the integrity of Linda Loaiza López, they specified that the ambiguity in the wording used and the lack of greater precision raised doubts about the factual and legal grounds on which the State had made the acknowledgement. Specifically, the representatives indicated that the acknowledgement did not reveal precisely which provisions of the legal framework the State understood to be contrary to the Convention. In addition, they asserted that the State had not presented arguments concerning the absence of a protocol to guide the investigation of sexual violence. Lastly, regarding the violations of the family’s integrity, the representatives asked the Court to analyze and to consider those violations as they were presented in the pleadings and motions brief, in particular, as regards the access to education and the life projects of the family members.

25. The representatives also referred to the elements that had not been acknowledged by the State and indicated that: (i) the State had questioned, although not contested, the facts that prove that the State was aware that Linda Loaiza López was in a situation of imminent danger as of March 27, 2001; (ii) the State had questioned and contested the existence of a context of violence against women and the pattern of a refusal to receive reports of sexual violence at the time of the facts; (iii) the State had denied its responsibility for the acts of torture and sexual violence, and (iv) the State did not include observations on appropriate reparations. The representatives stressed

that, while expressing sympathy towards the victims during the hearing, the State had repudiated their testimony. Therefore, "the reparative value that the acknowledgement could have had was almost annulled, because the State apologized to the victim but, at the same time, again questioned the truth of her testimony and of the statements and actions of the members of her family, revictimizing them once again."

26. The **Commission** considered that "this was a very important acknowledgement by the Venezuelan State, which it appreciate[d] as a positive contribution to the development of the international proceedings and the perspectives for justice and reparation for the victim." However, it considered that the dispute persisted in relation to important aspects of Report No. 33/16, and therefore asked the Court to determine the corresponding facts, establish their legal effects, and establish the respective reparations based on the nature and severity of the violations that had occurred in this case. The Commission considered that the facts determined in Merits Report No. 33/16 were covered by the acknowledgment. Consequently, the Commission considered that the dispute had ended in relation to the violations declared in that report of Articles 5(1), 8(1), 11, 25(1) and 24 of the American Convention and Article 7 of the Convention of Belém do Pará. These related to the actions of the Venezuelan State following Linda Loaiza López Soto's rescue in 2001, and subsequent facts, with the exception of the alleged "insensitive treatment" of the victim's parents because they were not allowed to see her immediately after the rescue as an order prohibiting visits had been issued. The Commission stressed that the dispute subsisted in relation to the attribution of international responsibility for the serious harm to the personal integrity, personal liberty, privacy, dignity and autonomy and the right to a life free of violence and discrimination suffered by Linda Loaiza López Soto during the months that she was kidnapped by a private individual, as well as with regard to the context established as part of the factual framework of the case in relation to the inadequate actions of the Venezuelan authorities responsible for receiving complaints and investigating this type of case.

## **B. Considerations of the Court**

27. The Court underscores the good will of the State, expressed in this case by its partial acknowledgement of responsibility during the processing of these proceedings. However, pursuant to Articles 62<sup>18</sup> and 64<sup>19</sup> of the Rules of Procedure and in exercise of its powers for the international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent on the Court to ensure that acts of acquiescence are acceptable for the purposes of the inter-American system. The Court will now examine the situation presented in this specific case.

### *B.1 The facts*

28. In this case, the State indicated its partial acknowledgement of responsibility with regard to some of the alleged violations of the American Convention and the Convention of Belém do Pará, without admitting clearly and specifically which of the facts described in the Commission's Merits Report or in the representatives' pleadings and motions brief substantiated this acknowledgment. To the contrary, the State explicitly contested certain facts and these are mainly related to three factual aspects: (i) the supposed report filed on March 28, 2001, by Ana Secilia López Soto, or the

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<sup>18</sup> Article 62. Acquiescence  
If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or in the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects

<sup>19</sup> Article 64. Continuation of a case  
Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

attempt to file this on several occasions at the offices of the former Judicial Technical Police located in Urdaneta Avenue in Caracas; (ii) the supposed context of “permissiveness towards gender-based violence, and that the competent authorities had been notably negligent in this regard,” and (iii) the treatment accorded by the authorities to Linda Loaiza’s parent when they came to Caracas to meet up with their daughter.

29. As it has in other cases,<sup>20</sup> this Court finds that, in circumstances such as those of the instant case, it should be understood that the State has accepted the facts that, according to the Merits Report – the factual framework for these proceedings – constituted the violations acknowledged in the terms in which the case was submitted, with the exception of those facts that were expressly contested. Therefore the Court, in addition to determining the facts that occurred based on the evidence submitted in the proceedings before it, will rule on the contested facts when examining the merits of this case.

### B.2 *The legal claims*

30. Taking into account the violations acknowledged by the State, as well as the observations of the representatives and the Commission, the Court considers that the State’s acknowledgement constitutes a partial acquiescence to the legal claims of the Commission and the representatives. This acknowledgement has full legal effects pursuant to Articles 62 and 64 of the Court’s Rules of Procedure.

31. Consequently, taking into consideration the arguments of the State,<sup>21</sup> as well as the observations of the representatives and the Commission, the Court considers that the dispute has ceased in relation to the violations of: (i) the rights to judicial guarantees and judicial protection, as well as the obligation to investigate acts of violence against women established in Articles 8(1) and 25(1) of the American Convention and Article 7(a) and (b) of the Convention of Belém do Pará, to the detriment of Linda Loaiza López Soto, owing to the “omissions and inadequate actions, as well as to unjustified delays, that resulted in a failure to comply with the obligation to investigate with due diligence within a reasonable time”; (ii) the rights to judicial guarantees, judicial protection, personal integrity, privacy, and equality and non-discrimination, recognized in Articles 8(1), 25(1), 5(1), 11 and 24 of the American Convention, in relation to the obligation to adopt domestic legal provisions recognized in Article 2 of this instrument, because Linda Loaiza López Soto “did not have access to justice under equal conditions, because she was treated in a way that was inappropriate to her condition as a victim of violence against women [and a]lso, the facts were investigated and prosecuted under a discriminatory legislative framework,” and (iii) the right to personal integrity, established in Article 5 of the American Convention, to the detriment of the family members of Linda Loaiza López identified in the Commission’s Merits Report.

32. Furthermore, regarding the alleged violations of Articles 5(1), 5(2), 7(1), 11 and 1(1) of the American Convention, Article 7(a) and (b) of the Convention of Belém do Pará and Articles 1 and 6 of the ICPPT, in relation to the facts that occurred prior to July 19, 2001, as well as with regard to the alleged failure to comply with the obligation to investigate acts of torture established in Articles 1, 6 and 8 of the ICPPT, which the State did not expressly acknowledge, the Court notes that the dispute remains and it will rule on this when addressing the merits of the case.

<sup>20</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 16, para. 17, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 28.

<sup>21</sup> Regarding the State’s acknowledgement in relation to the violation of Article XVIII of the American Declaration of the Rights and Duties of Man, which establishes the right to justice, the Court notes that, in this case, the specific and primary source of the State’s international obligations is the American Convention; consequently, it does not correspond to the Court to rule on the said article of the American Declaration. See, similarly, *Case of Ruano Torres et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 29.

### B.3 *The reparations*

33. Regarding the measures of reparation, the Court notes that the State indicated that it had already implemented certain measures, considered that some were inappropriate, and disagreed with certain aspects related to compensation (*supra* para. 21). Therefore, in the corresponding chapter, the Court will take the necessary decisions with regard to the reparations requested by the Commission and the representatives, and will analyze whether a causal nexus exists between the violations that are declared and the measures requested by the parties.

### B.4 *Assessment of the scope of the partial acknowledgement of responsibility*

34. This Court appreciates the partial acknowledgement of international responsibility made by the State during the public hearing, which has great symbolic significance to avoid the repetition of similar facts. All such actions make a positive contribution to the development of these proceedings, to implementation of the principles that inspire the Convention and, in part, to satisfying the need to make reparation to the victims of human rights violations.<sup>22</sup>

35. As in other cases,<sup>23</sup> the Court finds that the acknowledgement made by the State has full legal effects pursuant to the said Articles 62 and 64 of the Court's Rules of Procedure. Accordingly, and based on its attributes as an international organ for the protection of human rights, the Court finds it necessary to deliver a judgment in which it determines the facts that occurred, because this will contribute to making reparation to Linda Loaiza López Soto and her family, to avoiding the repetition of similar acts and, in sum, to achieving the purposes of the inter-American human rights jurisdiction.

36. Regarding the alleged violations of the American Convention, owing to the demands for justice in this case and to ensure a better understanding of the State's international responsibility in the case and of the causal nexus between the violations established and the reparations ordered, the Court finds it pertinent to specify the human rights violations included in the State's partial acknowledgement of responsibility, and the origin and scope of the violations cited regarding which the dispute subsists. Lastly, the Court will decide the subsisting dispute in relation to the reparations requested by the Commission and the representatives.

## V

### PRELIMINARY CONSIDERATIONS

37. Before examining the pertinent facts and applying the standards of the American Convention and other relevant inter-American treaties to them, due to the arguments presented by the State, the Court must include some preliminary considerations on: (a) the supposed new facts included in the representatives' brief, and (b) considerations supposedly not included in the Inter-American Commission's Admissibility Report.

#### **A. *Supposed new facts included in the representatives' brief***

<sup>22</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits and reparations*. Judgment of May 26, 2010. Series C No. 213, para. 18, and *Case of Ramírez Escobar v. Guatemala, supra*, para. 34.

<sup>23</sup> Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, paras. 23 to 25, and *Case of Ramírez Escobar v. Guatemala, supra*, para. 35.

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

38. The **State** argued, in general terms, that in their pleadings and motions brief, the representatives had introduced “new facts and different aspects that did not form part of the Merits Report, and did not merely explain, clarify or reject facts indicated in that Report.”

39. The **representatives** indicated that this argument should be rejected because the State had not indicated which fact or facts were not included in the factual framework.

40. The **Commission** did not refer to this argument.

*A.2 Considerations of the Court*

41. The Court notes that the State did not specify which precise facts in the pleadings and motions brief fell outside the factual framework presented by the Commission in either its answering brief, or its final arguments after the Court had specifically requested this during the hearing. Therefore, owing to the State’s lack of precision, the Court rejects its argument and will proceed to determine the facts in the corresponding chapter.

***B. Considerations supposedly not included in the Inter-American Commission’s Admissibility Report***

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

42. In its answering brief, the **State** indicated its discrepancy with the inclusion in the proceedings before the Court of considerations in relation to the ICPPT that, supposedly, were not included in the Commission’s Admissibility Report. It argued that, since that Convention was only recently included in Report No. 33/16, this could give rise to the violation of the right of defense and to due process of law to the detriment of the State, because “it was unaware of the facts and grounds on which the Commission based itself to establish the pertinence of the use of that instrument until the presentation of the Merits Report, and this affected the State’s adequate and effective exercise of its defense.”

43. The **representatives** asked the Court to reject this argument because it did not relate to a serious error that would have harmed the State’s right of defense before either the Commission or the Court. It recalled the preliminary nature of the Admissibility Report and indicated that, during the procedure before the Commission, including the hearing, it had presented arguments on the violation of Articles 1, 6, and 8 of the ICPPT to which the State had responded. Lastly, it indicated that the proceedings before the Court offered the representatives the possibility of presenting their own legal considerations on the facts under analysis and they were not limited to the determinations made by the Commission in its Merits Report. Moreover, since the arguments in this regard were presented in the pleadings and motions brief, the State was able to respond to the alleged violations of the ICPPT in its answering brief.

44. The **Commission** indicated that the State should have proved that its right of defense had been harmed, and it was not sufficient that it indicate a complaint or a difference of opinion in relation to the actions or decisions of the Inter-American Commission. The Commission considered that the State had not substantiated this harm and that its argument related to matters corresponding to the merits of the case. It also argued that both the Commission and the Court are empowered to determine the legal categorization of the facts submitted to their consideration under the *iura novit curia* principle. Thus, according to the Commission, the exercise of this

authority in the Merits Report, with regard to rights not specifically cited by the petitioners and not included in the Admissibility Report – which is of a *prima facie* nature - does not harm the State's right of defense, provided it is based on the facts under discussion. Therefore, the Commission stressed the relevance of taking into consideration the specific obligations established in the ICPPT, an aspect that remains in dispute and regarding which the State has submitted its arguments.

## B.2 Considerations of the Court

45. It is for the Court to determine whether the fact that the Commission established violations of the ICPPT in Merits Report No. 33/16, without having expressly include the application of this instrument in its Admissibility Report, harmed the State's right of defense.

46. The Court finds it desirable to recall the *prima facie* nature of the legal provisions indicated in the Admissibility Report because this merely constitutes a preliminary examination of those provisions by the Commission to establish possible violations.<sup>24</sup> Additionally, the Court notes that it had already ruled on a similar argument in the *Case of Furlan and family v. Argentina*, in which it argued that "neither the American Convention nor the Rules of Procedure of the Inter-American Commission include any provision establishing that the Admissibility Report must include all the rights presumably violated."<sup>25</sup> In this regard, the Court concluded that "the rights indicated in the Admissibility Report are the result of a preliminary examination of the petition that is being processed; therefore, they do not limit the possibility that, at later stages of the procedure, other rights or articles may be included that have presumably been violated, provided that the State's right of defense is respected in the context of the factual framework of the case being examined."<sup>26</sup> The Court refers back to the doctrine established in the above-mentioned case, that the Commission is authorized to make use of the *iura novit curia* principle or to consider a different categorization of the same facts, without this entailing a violation of the State's right of defense.<sup>27</sup>

47. In addition, the Court emphasizes that Venezuela is a party to the ICPPT and that, based on the date on which it ratified this Convention, it is applicable to the facts of this case that the Commission characterized based on this instrument.

48. Based on the foregoing, the Court rejects the arguments of the State.

## VI EVIDENCE

### A. Admission of the evidence

#### A.1 Admission of the documentary evidence

49. In this case, as in others, the Court admits the probative value of those documents presented by the parties and by the Commission at the appropriate procedural moment, that were not contested or opposed and the authenticity of which was not questioned.

<sup>24</sup> Cf. *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series No. 292, para. 43, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of April 25, 2018. Series C No. 354, para. 71.

<sup>25</sup> *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 52.

<sup>26</sup> *Case of Furlan and family v. Argentina, supra*, para. 52.

<sup>27</sup> Cf. *Case of Furlan and family v. Argentina, supra*, paras. 52 to 59.

50. Following the presentation of their pleadings and motions brief, the representatives forwarded, as supervening evidence, some annexes "corresponding to the risk portfolio of two insurance companies with regard to some of the medical expenses incurred by Linda Loaiza López [Soto]." This evidence had been announced in Annex 10.E to the pleadings and motions brief. Also, during the public hearing, Ms. López Soto presented a copy of the complaint relating to a death threat – No. 1025-01 of May 26, 2001. Since the State did not contest these documents and they are useful for deciding the case, the Court admits them under Article 58(a) of the Rules of Procedure.

51. With their final written arguments, the representatives forwarded: (i) a brief addressed to the Senior Public Prosecutor of the Judicial District of the Caracas Metropolitan Area dated December 11, 2017, requesting information on the status of the criminal cases; (ii) medical insurance certificate issued on April 11, 2017, and (iii) Report "*Mujeres al Límite*" of November 2017. The State argued that this evidence was inadmissible because its presentation was time-barred. Indeed, 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 or with pleadings and motions, or the answering brief, as applicable. Consequently, since the late presentation was not justified by any of the exceptions established in the Rules of Procedure, and the evidence was not expressly requested by the Court as helpful evidence, the brief addressed to the Prosecutor will not be considered by the Court in its decision. In addition, the Court notes that the insurance certification is already included in the case file and was incorporated in the preceding paragraph. The Court admits the report "*Mujeres al Límite*" based on Article 58 of the Rules of Procedure because it is useful for deciding this case. Lastly, the Court admits the documents presented by the representatives as vouchers for alleged supervening expenses that were incurred following the presentation of the pleadings and motions brief.

52. The Court also finds it appropriate to admit the documents provided by the State that were requested by the Court, its President or judges as useful evidence pursuant to the provisions of Article 58 of the Rules of Procedure of the Court (*supra* paras. 9 and 14). The representatives questioned the content of the copy of the domestic judicial case file that was provided because allegedly it was not complete. The State presented clarifications and explanations on the correct order of the volumes provided and the page numbering. However, the Court notes that some procedural documents that form part of the domestic judicial case file are partially illegible or incomplete.

53. In addition, the Court notes that the State did not present certain helpful evidence requested during the public hearing. Specifically, it failed to forward a copy of the record of persons who had filed complaints with the Judicial Technical Police located in Urdaneta Avenue, from March to July 2001, as well as any other complaint that had been filed by Ana Secilia López Soto with a police station or entity. In this regard, the State indicated that, having requested the said documents from the Scientific, Criminal and Criminalistic Investigations Unit, it had been informed that they "were not available, because every 10 years many documents of an administrative nature are removed, mainly for reasons of physical space."<sup>28</sup> Also, Venezuela did not forward a complete copy of the report of threats filed by Ana Secilia López Soto against Luis Antonio Carrera Almoina in May 2001, because it had been unable to locate this in the case file according to the certification sent. Instead, the State presented a copy of the corresponding section of the 2001 Annual Report of the Ministry of the Interior and Justice on the activities of the Scientific, Criminal and Criminalistic Investigations Unit, which included the statistics of the complaints received by this police agency during 2001. It

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<sup>28</sup> In addition, it indicated that the content of the record of complaints and/or complainants did not constitute an essential element to elucidate the dispute regarding whether or not Ana Secilia López attempted to file complaints owing to the presumed "disappearance" of Linda Loaiza López Soto, especially considering that the parties have argued either that those attempts to file a complaint were not made or else that they were unsuccessful. Consequently, according to the State, the said records would not reflect whether or not Ana Secilia López Soto went to the police station.



also advised that “in the different police agencies, no report exists other than the one filed by the said citizen for death threats.” The Court will assess these circumstances together with the whole body of evidence when determining the facts and the scope of state responsibility, taking into account that “for the purposes of the international jurisdiction of this Court, it is the State that controls the means to clarify facts that occurred within its territory and, therefore, its defense cannot rest on the impossibility of the plaintiff providing evidence that, in many cases, cannot be obtained without the cooperation of the state authorities.”<sup>29</sup> Lastly, the Court decides to incorporate the corresponding section of the 2001 Annual Report of the Ministry of the Interior and Justice based on Article 58 of the Court’s Rules of Procedure, insofar as it is useful for deciding this case.

#### A.2 Admission of the statements and expert opinions

54. The Court finds it pertinent to admit the statements and 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>30</sup> and the purpose of this case.

55. When forwarding the written statements of those who reside in Venezuela, the representatives indicated that it had not been possible “to obtain a notary public willing to officialize the statements in Venezuela.” The conduct of the State is incompatible with the duty of procedural cooperation and with the principle of good faith that governs the international proceedings.<sup>31</sup> The said statements were presented within the established time frame, therefore the Court considers, as it has in other cases, that the absence of legalization by a public notary cannot be attributed to either the representatives or the deponents, but to undue conduct by the State. Consequently, the Court finds it pertinent to admit the statements made, and they will be assessed as a simple statement pursuant to the criteria of this Court.<sup>32</sup>

56. The **State** questioned the pertinence and probative value of the witness statement of the lawyer, Juan Bernardo Delgado Linares. As established in the order calling the hearing, the Court found it pertinent to admit this statement because it refers to facts and circumstances that this person was aware of personally, in particular regarding the supposed threats that were received and that were included in the Merits Report.

57. The State also questioned the probative value of some of the expert opinions provided in this case because they had not observed their obligation of impartiality. In particular, it indicated that

<sup>29</sup> *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 89. See also, *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 135, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 230.

<sup>30</sup> The Court received the affidavits of Nelson López Meza, Paulina Soto Chaustre, Diana Carolina López Soto, Anyi Karina López Soto, Nelson Enrique López Soto, Elith Johana López Soto, Yusmely del Valle López Soto, Luz Paulina López Soto, and José Isidro López Soto; the witnesses Juan Bernardo Delgado Linares, proposed by the representatives, and Marelis Pérez Marcano and Carmen Zuleta de Merchán, proposed by the State; the expert witnesses proposed by the representatives, Magaly Vásquez González, Magaly Josefina Huggins Castañeda, Rossana Ramírez Velasco and Maritza Durán, and the expert witness proposed by the State, Kiezler Francisco Pacheco Morales and Ana Margarita Ratti León, and the expert witness proposed by the Commission, Juan E. Méndez. Regarding the evidence provided during the public hearing, the Court received the statements of presumed victims Linda Loaiza López Soto and Ana Secilia López Soto, and the opinions of expert witnesses Daniela Kravetz, Marie Christine Chinkin and María Lucrecia Hernández Vitar, proposed, respectively, by the representatives, the Commission, and the State. The purposes of all these statements was established in the order of the President of the Inter-American Court of December 13, 2017. Available at: [http://www.corteidh.or.cr/docs/asuntos/lopez\\_soto\\_13\\_12\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/lopez_soto_13_12_17.pdf).

<sup>31</sup> *Cf. Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244, para. 33, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs.* Judgment of February 8, 2018. Series C No. 348, para. 36.

<sup>32</sup> *Cf. Case of Ortiz Hernández v. Venezuela. Merits, reparations and costs.* Judgment of August 22, 2017. Series C No. 338, para. 49, and *Case of San Miguel Sosa et al. v. Venezuela, supra*, para. 36.

expert witnesses Magaly Vásquez González, Magaly Josefina Huggins Castañeda, Daniela Kravetz and Marie Christine Chinkin had included opinions on this specific case, its processing in the domestic jurisdiction and the applicable measures of reparation, exceeding the purpose of their expert opinions; moreover, they had included observations in favor of the arguments of the representatives. The Court has established that, even if an expert witness's opinion contains elements that support the arguments of one of the parties, this does not *per se* disqualify the expert witness.<sup>33</sup> Therefore, the Court admits these expert opinions insofar as they are in keeping with the purposes that had been defined. The Court will not take into account anything that exceeds these purposes, in particular the references to this case, when this was not specified in the respective purpose, as in the case of the expert opinion of Huggins Castañeda.

58. The Court notes that both the State and the representatives presented considerations on the assessment of the evidence in this case. In particular, the State questioned the criteria used by this Court to assess the statements of the presumed victims. Meanwhile, the representatives submitted arguments on the assessment of the testimonial evidence in cases with limited documentary evidence or when confronted with possible ambiguities in the testimony. The Court will take these arguments into account and will establish the considerations that are relevant to deciding this case when addressing the contested facts (*infra* Chapter VIII-1).

## VII FACTS

### A. Background information

59. Linda Loaiza López Soto was born on December 12, 1982, in La Azulita, capital of the state of Mérida, Venezuela. Her family consisted of her father, Nelson López Meza, her mother, Paulina Soto Chaustre, and ten siblings, Ana Secilia, Diana Carolina, Anyi Karina, Nelson Enrique, Elith Johana, Gerson José, Yusmely del Valle, Luz Paulina, José Isidro and Emmanuel Adrián, all with the last names López Soto.<sup>34</sup> Linda Loaiza López Soto studied at the El Cenizo Agricultural Technical College in Trujillo state and, in 2000, graduated as a mid-level technician in animal husbandry.<sup>35</sup> On February 27, 2001, she moved to Caracas with her sister, Ana Secilia, in order to continue her studies at university and look for work.<sup>36</sup>

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<sup>33</sup> Cf. *Case of Escué Zapata v. Colombia*. Order of the Court of December 20, 2006, *considerandum* 21, and *Case of Díaz Peña v. Venezuela*, *supra*, para. 29.

<sup>34</sup> Cf. Bolivarian Republic of Venezuela identity documents of Nelson Enrique López Soto, Anyi Karina López Soto, Diana Carolina López Soto, Elith Johana López Soto, Emmanuel Adrián López Soto, José Isidro López Soto, Linda Loaiza López Soto, Luz Paulina López Soto, Yusmely del Valle López Soto and Ana Secilia López Soto (evidence file, volume XIII, annex 1A to the pleadings and motions brief, folios 8030 to 8034 and 8036 to 8040); Birth certificates of Ana Secilia López Soto, Anyi Karina López Soto, Diana Carolina López Soto, Elith Johana López Soto, Emmanuel Adrián López Soto, Gerson José López Soto, José Isidro López Soto, Linda Loaiza López Soto, Luz Paulina López Soto, Yusmely del Valle López Soto and Nelson Enrique López Soto (evidence file, volume XIII, annex 1B to the pleadings and motions brief, folios 8041, 8042, 8044, 8046, 8049, 8052, 8054, 8056, 8057, 8060 and 8062); Marriage certificate of Nelson López Meza and Paulina Soto Chaustre (evidence file, volume XIII, annex 1C to the pleadings and motions brief, folio 8064), and Death certificate of Gerson José López Soto of January 3, 2013 (evidence file, volume XIII, annex 1A to the pleadings and motions brief, folio 8028).

<sup>35</sup> Cf. Certification of the Director of the El Cenizo Agricultural Technical College, Trujillo state, of July 17, 2000 (evidence file, volume X, annex 5 to the Merits Report, folio 6100).

<sup>36</sup> Cf. Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5811 to 5812); Statement made by Ana Secilia López Soto during the public hearing before the Inter-American Court on February 6, 2018; Statement made by Paulina Soto Chaustre (evidence file, volume XLIV, affidavits, folio 31027), and Statement made by Nelson López Meza (evidence file, volume XLIV, affidavits, folio 31020).

**B. The deprivation of liberty and the acts of physical, verbal, psychological and sexual violence against Linda Loaiza López Soto**

60. According to the statement made by Linda Loaiza López Soto,<sup>37</sup> on March 27, 2001, on leaving her place of residence in the morning she was intercepted by Luis Antonio Carrera Almoina who made her get into a Jeep Grand Cherokee vehicle, the color of "red wine." Once in the vehicle, under threat of being shot, he took her to the Aventura Hotel in Caracas where he had reserved a room several days previously, from March 26 to May 26, 2001.<sup>38</sup> Nevertheless, when they arrived at the hotel, he was advised that the room was not yet ready; therefore, Luis Antonio Carrera Almoina took Linda Loaiza López Soto to his father's home, where they remained for half an hour and then returned to the Aventura Hotel. On entering, the hotel only recorded the name of Luis Antonio Carrera Almoina and did not require Linda Loaiza López Soto to present an identity document.<sup>39</sup>

61. Linda Loaiza López Soto remained deprived of liberty by Luis Antonio Carrera Almoina in the room of the Aventura Hotel for one week, and was the victim of daily repeated rape, and physical ill-treatment. In addition, on various occasions she was obliged to go out with him and pretend that they were a couple. At night she was handcuffed in the hotel room so that she could not escape while he was sleeping, and he kept the key under the mattress on his side of the bed.<sup>40</sup>

62. After one week at the Aventura Hotel, Linda Loaiza López Soto was moved by her aggressor to a house near the beach in the locality of Petare, in the town of Cumana, Sucre state. During May 2001, the aggressor again moved Linda Loaiza López Soto, this time to a room in the Minerva Hotel in Cumana. Luis Antonio Carrera Almoina checked in to the hotel without recording that he was accompanied.<sup>41</sup> Subsequently, they returned to the Aventura Hotel in Caracas. Lastly Luis Antonio Carrera Almoina rented an apartment in a district in Caracas, where he took Linda Loaiza López Soto during the night to avoid anyone seeing her.<sup>42</sup> It was from this apartment that she was rescued on July 19, 2001 (*infra* para. 70).

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<sup>37</sup> Cf. Statement by Linda Loaiza López Soto in the record of the public oral hearing of the Twentieth Trial Court of the Caracas Metropolitan Area of September 9, 2004 (evidence file, annexes to the answering brief, volume XXXIII, folios 22803 to 22808), and Statement made by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>38</sup> Cf. Receipt for payment made by Luis Antonio Carrera Almoina on March 16, 2001, for a room at the Aventura Hotel from March 26, 2001, to May 26, 2001 (evidence file, volume XXV, annexes to the answering brief of the State, folio 16853); Room reservation receipt of March 16, 2001 (evidence file, volume XXV, annexes to the answering brief of the State, folio 16855); Record of arrival of Luis Antonio Carrera Almoina at the Aventura Hotel on March 27, 2001 (evidence file, volume XXV, annexes to the answering brief of the State, folio 16852), and Official Ledger recording guest arrivals and departures (evidence file, volume XXV, annexes to the answering brief of the State, folios 16857 to 16858). See also, Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5725).

<sup>39</sup> Cf. Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5806); Record of arrival of Luis Antonio Carrera Almoina at the Aventura Hotel on March 27, 2001 (evidence file, volume XXV, annexes to the answering brief of the State, folio 16852); Official Ledger recording guest arrivals and departures (evidence file, volume XXV, annexes to the answering brief of the State, folios 16857 to 16858), and Statement by Linda Loaiza López Soto in the record of the public oral hearing of September 6, 2004 (evidence file, volume XXXIII, annexes to the answering brief, folio 22803).

<sup>40</sup> Cf. Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5816), and Statement by Linda Loaiza López Soto in the record of the public oral hearing of September 6, 2004 (evidence file, volume XXXIII, annexes to the answering brief, folios 22805 to 22807).

<sup>41</sup> Cf. Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5726).

<sup>42</sup> Cf. Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5725, 5726 and 5810).

63. The sexual abuse, physical ill-treatment and threats with a firearm continued in the above places, and she was also forced to consume drugs.<sup>43</sup> At times, an attempt was made to drown out the victim's screams by turning up the volume on the radio. Nevertheless this did not prevent the neighbors from hearing her screams, but Luis Antonio Carrera Almoína explained that they were due to relationship issues.<sup>44</sup>

64. According to the victim's statement, the sexual and physical abuse was constant. She was obliged to consume narcotics and medicines, watch pornographic films, cook and remain nude, continually under threat that her family would be killed. Luis Antonio Carrera Almoína told everyone that Linda Loaiza López Soto was his partner and the screams were due to relationship problems that they were resolving, forcing her to say that she was all right. She stated that her aggressor "penetrated [her] anus and vagina with a whisky bottle; he enjoyed this, he laughed, he was very pleased with everything he did; [...] he put out cigarettes on [her] face, burned [her] with the embers, and beat [her] constantly." Also, once he tried to penetrate her vagina with a broom handle. When he went out, he left her in the room handcuffed. The victim had to plead for the aggressor's permission every time she needed to go to the bathroom, and she was fed with food leftovers so that she would survive. Luis Antonio Carrera Almoína "always had the gun with which he threatened [her], he had leather ropes that he tied [her] up with; [...] she] heard him on the telephone saying that he was the son of the university president," "he showed her photographs of different women who he had done the same to; he had left them beside the Caracas-La Guaria or the Caracas-Guarenas highways." When they were in Petare, the aggressor had penetrated her vagina with his hand causing a tear, and at the Aventura Hotel he had injured her ear.<sup>45</sup>

65. Linda Loaiza López Soto stated that, while she was deprived of liberty, she was unable to communicate with her family. Luis Antonio Carrera Almoína called Linda Loaiza López Soto's sister and told her that she was fine, that she was studying to be a model. Once, he obliged Linda Loaiza to call her sister and to insult her.<sup>46</sup> On another occasion, he deposited money in the name of Linda Loaiza López Soto's father telling her that, in this way, "he had proof, that no one could blame him for what he had done." He also obliged her "to write things on some photographs that [...] he had," and also to write letters "hitting [her] or putting the gun to [her] head."<sup>47</sup>

<sup>43</sup> Cf. Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5726).

<sup>44</sup> A resident of Petare stated that, with his wife, "when tourists arrive[d], we ma[de] arepas; she ma[de] arepas for them, [...] she called them and [Carrera Almoína] came to get them; once she told me that she had heard someone moaning; [...] he came out [...] and said that it was his wife, that she was passionate." Statement made by Serrano Gil Miguel José, recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5964). See also, Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5807).

<sup>45</sup> Cf. Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5806 to 5819).

<sup>46</sup> During the domestic criminal proceedings, Linda Loaiza López Soto stated: "I could never talk to my family by telephone; rather, once he forced me to call my sister and to insult her with obscenities; as he had my address book, he called my sister and told her that I was fine, that I was studying to be a model." Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5807). See also, Statement by Linda Loaiza López Soto in the record of the public oral hearing of September 6, 2004 (evidence file, volume XXXIII, annexes to the answering brief, folio 22806). The victim's father, Nelson López Meza, stated that: "we used to call each other two or three times a day; [...] then I stopped hearing from Linda from the moment she was kidnapped, from 27-03-01; I talked to Ana Secilia even more. When she told me that Linda Loaiza had disappeared I just told her that she should file a report with the Judicial Technical Police; she told me that [Linda] had left and not returned; this is what concerned us, because after Linda Loaiza was kidnapped Ana had no further communication with her." Statement by Nelson López Meza recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5941).

<sup>47</sup> Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the

66. Linda Loaiza López Soto stated that the aggressor's father, who was President of the Universidad Nacional Abierta and from Cumaná in Sucre state, was aware of what was happening. According to the victim's statement, Luis Antonio Carrera Almoina "called his father on several occasions and told him that his ear was swollen, and his father told him to bleed it with a syringe and he pressed it and bled it and got rid of the blood in the washbasin." She stated that, when they returned to Caracas, they went to the father's apartment and he told his son that "some people were calling his house and [Luis Antonio] told him that it was [her] family who wanted news of [her]."<sup>48</sup> The victim also stated that Luis Antonio Carrera Almoina rented the apartment in Caracas with his father's help. Before the victim was rescued, Luis Antonio Carrera Almoina "called his father and told him that Linda no longer satisfied him, and asked him to get hold of some black bags in order to [get her out] of there."<sup>49</sup>

### **C. Actions undertaken by Linda Loaiza López Soto's family**

67. During the domestic criminal proceedings,<sup>50</sup> Ana Secilia López Soto recounted that on March 27, 2001, her sister did not return to the apartment early as was her custom. At 2 a.m. the following day, she received a telephone call from an unknown person who merely said that "Linda was not going to return home."<sup>51</sup> Later, Ana Secilia López Soto tried to call the number that was registered on her telephone; but the number was answered by an answering machine which said: "you have called Luis Antonio Carrera Almoina." She told her father what had happened, and he urged her to file a report.<sup>52</sup> Meanwhile, Nelson López Meza tried to call the number that his daughter had given him, without getting an answer, even though he left messages.<sup>53</sup> Ana Secilia López Soto also tried to call her sister several times, calling Luis Antonio Carrera Almoina's number, but never obtained news of her.<sup>54</sup>

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Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5808 to 5814).

<sup>48</sup> Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5809).

<sup>49</sup> Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5810). See also, Statement made by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>50</sup> Cf. Statement by Ana Secilia López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5945 to 5952), and Statement by Ana Secilia López Soto in the record of the public oral hearing before the Seventh Trial Court of the Caracas Metropolitan Area on April 8, 2006 (evidence file, volume IX, annex 3 to the Merits Report, folios 5679 to 5683).

<sup>51</sup> Statement by Ana Secilia López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5946).

<sup>52</sup> Cf. Statement by Nelson López Meza recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5941), and Statement made by Nelson López Meza (evidence file, volume XLIV, affidavits, folio 31020).

<sup>53</sup> Nelson López Meza stated that, over the following months, he received "threatening calls, telling [them] to keep quiet [...] female and male voices; that they knew where [they] were, that they could kill [them]." Statement by Nelson López Meza recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5943).

<sup>54</sup> On one occasion, Luis Antonio Carrera Almoina "told [her] that Linda had gone to France to study to be a model and, on another, he told [her] that he would kill [her]." Ana Secilia López Soto stated that, on another occasion, "about a month or a month and a half [after the disappearance]," "when [she returned home she found] a piece of paper telling [her] where Linda was, [she plucked up courage] to call the local telephone number and a man answered and [she] told him that she wanted to have news of Carrera Almoina and he told [her] that Carrera Almoina was his son and [...] that his name was Gustavo Carrera Damas and [she told him] that [her] sister had disappeared and had been kidnapped and he told [her] not to make a nuisance of [herself], not to call that number again and that he had no information; on another occasion, [she] called again and he insulted [her] and told [her] not to call him because he would tell his son to look for [her] and kill [her] and that [she] should not call that number again." Statement by Ana Secilia López Soto recorded in the judgment handed

68. Ana Secilia López Soto indicated that she tried to file the report concerning her sister's situation on six occasions, but it was not received "because they said that they must be a couple."<sup>55</sup> The State contested this point, and it will be examined in this judgment together with the merits (*infra* paras. 154 to 164). On May 26, 2001, Ana Secilia López Soto filed a complaint against the aggressor with the Judicial Technical Police, which was processed for the offense of death threats.<sup>56</sup> The police officials merely tried to communicate with the accused by telephone and, when they did not get an answer, they left messages for him to present himself at the police station. The family had no information of any action taken by the authorities as a result of the complaint filed.<sup>57</sup>

69. Around three months after the disappearance, Luis Antonio Carrera Almoína called Ana Secilia López Soto and asked her to meet him in Plaza Venezuela, in Caracas, telling her that he would be waiting with her sister. She took a taxi to the place and, seeing that he was alone, she left.<sup>58</sup> Following the rescue, Linda Loaiza López Soto told her sister that, that day, the aggressor "had beaten her very hard in reprisal."<sup>59</sup>

***D. Linda Loaiza López Soto's rescue, her reunion with her family and the physical and psychological aftereffects***

70. On July 19, 2001, Linda Loaiza López Soto was left alone in the room in the apartment where she was deprived of liberty. According to her statement, Carrera Almoína noted that she was helpless and, therefore, did not tie her up or handcuff her that time before going out.<sup>60</sup> She was naked, so she "grabbed a sheet, and dragged [herself] to a window and looked out; [she] could not see very well, [she] did not know if they were children; [she] opened the window and called for help and to be rescued; the fire department arrived with a rope; they entered the apartment; they began to take photographs; [she] told them the name of the person who was holding [her] there; they sat [her] down on a chair; [she] asked them to get [her] out of there, that [she] wanted to see [her] father, [her] family."<sup>61</sup>

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down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5946, 5950 and 5951).

<sup>55</sup> Statement by Ana Secilia López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5946). Ana Secilia López Soto also indicated that "at the police station [they said to her] that they must be a couple." Statement by Ana Secilia López Soto in the record of the public oral hearing of the Seventh Criminal Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area on April 8, 2016 (evidence file, volume IV, annex 3 to the Merits Report, folio 5680). See also, Statement made by Ana Secilia López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>56</sup> Cf. Complaint of May 26, 2001 (merits file, volume I, folio 910), and Statement by Ana Secilia López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5946).

<sup>57</sup> Ana Secilia López Soto stated that: "at the police station they said that they were going to investigate, that I should return in five days; the person before whom I filed the complaint never reappeared; [...] they gave me a [copy of my complaint] which should be in the case file because I gave it to them [...]. I went to the police station twice, what more could I do." Judgment handed down by the Seventh Trial Court of the Caracas Metropolitan Area on May 22, 2006 (evidence file, volume X, annex 6 to the Merits Report, folios 6248 and 6249).

<sup>58</sup> Cf. Statement by Ana Secilia López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5946 and 5947), and Statement made by Ana Secilia López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>59</sup> Statement by Ana Secilia López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5947).

<sup>60</sup> Cf. Statement made by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>61</sup> Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the

71. That day, at around 7 p.m., the Chacao Municipal Police received a call asking them to come to Residencias 27, in Sojo Avenue, “because the cries could be heard of someone calling for help from the second floor, apartment 2-A.” Two officers who were on patrol in the El Rosal district of Caracas went to the place, where they observed Linda Loaiza López Soto on the balcony of the apartment; they “could see that she had bruises on her face and seemed intent on throwing herself off the balcony.”<sup>62</sup> One of the officers stated that the apartment was locked; consequently, “owing to the desperation of that person it was decided to go up” to the balcony where the victim was. He noted that Linda Loaiza López Soto “was rather dehydrated [...], terrified [...]; what caught [his] attention was her lips, because it was as if they had been torn off.” During the domestic criminal proceedings, the police officer considered that, taking into account the condition she was in, “if that person had been there one more day, she would not have come out alive.”<sup>63</sup>

72. Subsequently, four officials from the Eastern Fire Department arrived and rappelled down to the apartment. Later, the owner of the building arrived and unlocked the door; also Prosecutor No. 33 of the Public Prosecution Service, personnel of the Judicial Technical Police of the Chacao Police Station, and a group of representatives of the Municipal Cooperation and Health Care Institute (IMCAS). The latter was headed by a doctor who treated Linda Loaiza López Soto in the apartment and organized her transfer by ambulance to the Caracas University Hospital.<sup>64</sup> When she was rescued she weighed 32 kg.<sup>65</sup>

73. Linda Loaiza López Soto was admitted to the emergency department of the Caracas University Hospital, where the presence of numerous contusions and injuries on different parts of her body were recorded.<sup>66</sup> The forensic medical examination determined that she had “an extensive and scarred tear that even extended to the vaginal mucosa and adjacent vulvar region”; “older deflowering and signs of genital trauma produced more than eight days ago,” “scabbed-over abrasion on the nasal dorsum, multiple anfractuous injuries of varying size on both lips, loss of external substance and with signs of infection in the left auricle,” “small scratches on the right side of the neck,” “bruising on the vertical band of the left lower jawbone,” “signs of abrasions on both hands and dorsal lumbar area,” “cranioencephalic trauma complicated by fracture of lower jaw,” “thoracic trauma,” “blunt abdominal trauma complicated by acute abdomen.”<sup>67</sup> In addition, the victim was “moderately dehydrated” and was suffering from “anemia probably caused by lack of

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Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5810 to 5811). See also, Statement made by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>62</sup> Police record No. 2001-1540 of July 19, 2001, of the Head of Services, of the Operations Division of the Chacao Municipal Police in the state of Miranda (evidence file, volume IX, annex 4 to the Merits Report, folios 5824 to 5825).

<sup>63</sup> Statement by Giovanni José Chicco Salas recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5821 to 5822).

<sup>64</sup> Cf. Police record No. 2001-1540 of July 19, 2001, of the Head of Services, of the Operations Division of the Chacao Municipal Police in the state of Miranda (evidence file, volume IX, annex 4 to the Merits Report, folios 5824 to 5825); Statement by José Miguel Calzadilla Itriago recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5825 to 5827); Police record of July 19, 2001, signed by Juan Guzmán attached to the Chaco Police Station of the Judicial Technical Police (evidence file, volume IX, annex 4 to the Merits Report, folios 5832 to 5833).

<sup>65</sup> Cf. Nutritional evaluation of November 8, 2001, conducted in the Caracas University Hospital (evidence file, volume X, annex 23 to the Merits Report, folios 6342 to 6343).

<sup>66</sup> Cf. Medical report signed by Dr. Robert A. Lam, of the Caracas University Hospital, Surgery Department, dated September 4, 2001 (evidence file, volume X, annex 10 to the Merits Report, folio 6306).

<sup>67</sup> Forensic medical examination signed by Dr. José Enrique Moros, forensic physician of the National Criminal Investigations Directorate, Judicial Technical Police, Forensic Medicine Division, dated July 30, 2001 (evidence file, volume X, annex 13 to the Merits Report, folios 6312 to 6313).

food,<sup>68</sup> “she was undernourished, she had a pancreatic cyst, a hepatic injury that could have been caused by the anemia.”<sup>69</sup> Based on her condition, Linda Loaiza López Soto was treated by various medical service that same night, she had emergency exploratory laparoscopic surgery, and received four blood transfusions.<sup>70</sup>

74. The representative of the Public Prosecution Service prohibited visits to Linda Loaiza López Soto while she was in the hospital, “to preserve her physical safety and safeguard the investigation.”<sup>71</sup> Consequently, Linda Loaiza López Soto’s parents had to ask the prosecutor in charge of the case for permission to visit her and to prove that they were her parents.<sup>72</sup> On July 25, 2001, the prosecutor sent a letter to the hospital authorizing their visit.<sup>73</sup> The same procedure was followed with the lawyer, Juan Bernardo Delgado. On November 7, 2011, the prosecutor sent a communication to the Director of the Caracas University Hospital authorizing him to meet with Linda Loaiza Soto.<sup>74</sup>

75. Linda Loaiza López Soto remained hospitalized from July 20, 2001,<sup>75</sup> until December 25, 2001, when she was transferred to the Caracas Military Hospital,<sup>76</sup> where she stayed until June 10, 2002.<sup>77</sup> Subsequently, she also had to be hospitalized on several occasions to undergo various surgical procedures,<sup>78</sup> facial reconstruction surgery (upper and lower lips) and jaw surgery (owing to the triple jaw fracture she had suffered), psychological and psychiatric treatment, and

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<sup>68</sup> Record of visual inspection of November 2, 2001, conducted by a forensic physician attached to the Forensic Medicine Division of Caracas, Forensic Medicine Directorate, in the presence of the judge of the Eighteenth Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area, a nurse, and Fiscal No. 33 of the Public Prosecution Service (file of procedure before the Commission, volume II, folios 862 to 863).

<sup>69</sup> The surgeon of the Caracas University Hospital declared that the victim “had five grams of hemoglobin when she was admitted, which is not normal in an individual; the normal is twelve grams; she was severely anemic.” Statement by Robert Ángel Lam Leung recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5855).

<sup>70</sup> Cf. Medical report signed by Dr. Robert A. Lam, of the Caracas University Hospital, Surgery Department, dated September 4, 2001 (evidence file, volume X, annex 10 to the Merits Report, folios 6306 to 6307), and Medical report signed by Dr. Freddy Sánchez Rivero, of the Caracas University Hospital, Surgery Department, dated December 7, 2001 (evidence file, volume X, annex 11 to the Merits Report, folios 6309 to 6310).

<sup>71</sup> Communication No. AMC.C-33-660-2001 of July 25, 2001, of Prosecutor No. 33 of the Public Prosecution Service of the Caracas Metropolitan Area addressed to the Legal Department of the Caracas University Hospital, granting permission for Linda Loaiza López Soto’s parents and aunt to visit her (file of procedure before the Commission, volume II, folio 864).

<sup>72</sup> Cf. Statement made by Paulina Soto Chaustre (evidence file, volume XLIV, affidavits, folio 31028), and Statement made by Nelson López Meza (evidence file, volume XLIV, affidavits, folio 31020).

<sup>73</sup> Cf. Communication No. AMC.C-33-2001 of July 25, 2001, of Prosecutor No. 33 of the Public Prosecution Service of the Caracas Metropolitan Area addressed to Dr. Luis Virgilio Parra of the Legal Department of the University Hospital of the Universidad Central de Venezuela (file of procedure before the Commission, volume II, folio 864).

<sup>74</sup> Cf. Communication No. AMC-33-992-2001 of November 7, 2001, of Assistant Prosecutor No. 33 of the Public Prosecution Service of the Caracas Metropolitan Area addressed to the Director of the Caracas University Hospital (evidence file, volume X, annex 16 to the Merits Report, folio 6319).

<sup>75</sup> Cf. Medical report of September 4, 2001, prepared by Dr. Roberto A. Lam of the Caracas University Hospital (evidence file, volume X, annex 10 to the Merits Report, folios 6306 to 6307), and Medical report of December 7, 2001, prepared by Dr. Freddy Sánchez Rivero of the Caracas University Hospital (evidence file, volume X, annex 11 to the Merits Report, folios 6309 to 6310).

<sup>76</sup> Cf. Medical report (undated) prepared by Dr. Luis Nicomedes Fariña and Dr. María A. Villagrasa of the “Dr. Carlos Arvelo” Military Hospital (evidence file, volume X, annex 17 to the Merits Report, folio 6321).

<sup>77</sup> Cf. Summary of discharge from hospital of Linda Loaiza López Soto on June 10, 2002, prepared by Colonel (AV) Dr. Jacinto Lara Sanchez and Dr. Víctor Bracho of the “Dr. Carlos Arvelo” Military Hospital (evidence file, volume X, annex 18 to the Merits Report, folios 6323 to 6325).

<sup>78</sup> Cf. Medical report of October 18, 2002, prepared by Dr. María A. Villagrasa of the “Dr. Carlos Arvelo” Military Hospital (evidence file, volume X, annex 19 to the Merits Report, folio 6327); Ophthalmological report of January 30, 2003, prepared by Dr. Janeidy Cabrera of the G. Behrens Belisario Foundation (evidence file, volume X, annex 19 to the Merits Report, folio 6328), and Medical report of April 9, 2012, prepared by Dr. Manuel Vicente Gordon Parra of La Trinidad Teaching Hospital (file, volume X, annex 20 to the Merits Report, folio 6331).



ophthalmic services, among other treatments.<sup>79</sup> She was also diagnosed with post-traumatic stress syndrome.<sup>80</sup>

***E. Investigation and judicial proceedings for the acts of violence perpetrated against Linda Loaiza López Soto***

*E.1 Criminal investigation procedures and actions by the Public Prosecution Service*

76. On July 19, 2001, the date of which Linda Loaiza López Soto was rescued, the criminal investigation was initiated by Prosecutor No. 33 of the Public Prosecution Service of the Caracas Metropolitan Area.<sup>81</sup> That same day, the Judicial Technical Police of the Chacao Police Station made a visual inspection of the apartment and recorded that “in the building [...] several types of criminal evidence were found, such as wrappers containing waste, and seeds of a presumed narcotic, several pornographic magazines, a pair of handcuffs without any visible marking, and bedsheets impregnated with brownish stain, [and] two VHS tapes.”<sup>82</sup> The officials who took part in the visual inspection subsequently testified in the oral trial and referred to several pieces of evidence that were not included in the photographic record that complemented this procedure.<sup>83</sup>

77. During the first months of her hospitalization, state authorities tried to interview Linda Loaiza López Soto on numerous occasions.<sup>84</sup> Linda Loaiza denounced the intervening prosecutor for having made her sign, under threat, while she was in the Caracas University Hospital, a statement that she was not allowed to see and in the presence of an unidentified individual carrying a weapon.<sup>85</sup> Linda’s parents also denounced that the prosecutor tried to take statements from Linda Loaiza, for a whole week at different times of day, even when she had just been operated on and could not speak. They also denounced that, while she was still in these conditions, the prosecutor questioned

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<sup>79</sup> With regard to facial and mandibular reconstruction surgery: Medical report signed by Dr. Robert A. Lam, of the Caracas University Hospital, Surgery Department, dated September 4, 2001 (evidence file, volume X, annex 10 to the Merits Report, folios 6306 to 6307), and Medical report of December 7, 2001, prepared by Dr. Freddy Sánchez Rivero of the Surgery Department of the Caracas University Hospital (evidence file, volume X, annex 11 to the Merits Report, folios 6309 to 6310); With regard to nasal reconstruction surgery: Medical report of April 9, 2012, prepared by Dr. Manuel Vicente Gordon Parra of the La Trinidad Teaching Hospital (evidence file, volume X, annex 20 to the Merits Report, folio 6331); With regard to auricular reconstruction: Medical report of February 22, 2013, prepared by Dr. Marcos Oziel of the La Floresta Medical Institute (evidence file, volume X, annex 21 to the Merits Report, folio 6333); and With regard to surgery of the lower labial area: Medical report of July 26, 2013, prepared by Dr. Macos Oziel of the La Floresta Medical Institute (evidence file, volume X, annex 21 to the Merits Report, folio 6334).

<sup>80</sup> Cf. Testimony of Dr. Osiel David Jimenez, Forensic Psychiatrist of the Scientific, Criminal and Criminalistic Investigations Unit, recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5919).

<sup>81</sup> Cf. Communication of July 19, 2001, ordering the opening of the investigation by Prosecutor No. 33 of the Public Prosecution Service (evidence file, volume XXV, annex to the State’s answering brief, folio 16772).

<sup>82</sup> Police record of the Chacao Police Station of August 19, 2001 (evidence file, volume IX, annex 4 to the Merits Report, folio 5837), and Visual inspection No. 048 of July 19, 2001 (evidence file, volume XLVI, helpful evidence, folios 31419 and 31420).

<sup>83</sup> Cf. Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5846).

<sup>84</sup> Cf. Police record of the Chacao Police Station of July 19, 2001 (evidence file, volume XLVI, helpful evidence, folios 31409 and 31410), and Record of interview with Linda Loaiza López Soto by the Chacao Police Station on July 26, 2001 (evidence file, volume XLVI, helpful evidence, folios 31411 to 31414).

<sup>85</sup> Cf. Record of the public oral hearing of the Twentieth Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, volume XXXIII, annex to the State’s answering brief, folio 22811); Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5814 and 5815); Brief addressed by Juan Bernardo Delgado, as legal representative of Linda Loaiza López, to the member of the National Assembly, César López, President of the Special Committee that investigated the case of Linda L. López, dated November 26, 2001 (evidence file, volume X, annex 29 to the Merits Report, folios 6585 to 6587), and Brief addressed by Juan Bernardo Delgado to the Prosecutor General on November 14, 2001 (evidence file, volume X, annex 30 to the Merits Report, folios 6589 to 6591).

her and Linda Loaiza had to answer him in writing.<sup>86</sup> All these complaints failed to culminate in a disciplinary investigation.<sup>87</sup>

*E.2 Actions relating to the deprivation of liberty of the accused and his escape*

78. On August 22, 2001, the prosecutor requested the preventive detention of Carrera Almoína based on the presumed perpetration of the offenses of concealment of drugs and narcotic substances and of the crimes of rape and personal injury.<sup>88</sup> On September 10, 2001, the hearing to read out the charges was held in the presence of the prosecutor, the accused and his defense counsel.<sup>89</sup> At the end of the hearing, the Eighteenth Court determined the criminal responsibility of Luis Antonio Carrera Almoína, on a preliminary basis and established the alternative precautionary measure of house arrest.<sup>90</sup> The Public Prosecution Service and the accused's defense counsel appealed against this decision. On October 11, 2001, the Appellate Court admitted the appeal and ordered preventive detention.<sup>91</sup> On October 3, 2001, Linda Loaiza López Soto's lawyer informed the Ombudsman that the accused had not been detained, and also that the victim's personal integrity was in danger as she had received threats.<sup>92</sup>

79. On November 2, 2001, the Eighteenth Court again granted an alternative precautionary measure of house arrest in favor of the accused.<sup>93</sup> On November 6, 2001, the same court revoked that measures and imposed preventive detention.<sup>94</sup> That same day, Carrera Almoína absconded from the place where his house arrest had been ordered.<sup>95</sup> A criminal investigation was opened against the accused, his father and two employees of the Universidad Nacional Abierta in relation to his escape.<sup>96</sup> On November 8, 2001, the oversight court ordered the preventive detention of all the accused.<sup>97</sup> Finally, in the case relating to Carrera Almoína's escape, all the accused were acquitted and their release was ordered.<sup>98</sup>

<sup>86</sup> Cf. Sworn statement of Paulina Soto Chaustre and Nelson López Soto before the Consulate General of Colombia in Venezuela on April 25, 2002 (evidence file, volume X, annex 7 to the Merits Report, folios 6286 and 6287). See also, Statement by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>87</sup> Cf. Communication No. DID-16-1224-65772 of the Director of Inspection and Discipline, Office of the Prosecutor General, of September 28, 2004 (evidence file, volume X, annex 31 to the Merits Report, folio 6593).

<sup>88</sup> Cf. Request submitted by Prosecutor No. 33 of the Public Prosecution Service of the Caracas Metropolitan Area to the first instance oversight court of the same judicial district, on August 22, 2001 (evidence file, volume XXV, annex to the State's answering brief, folios 16764 to 16767).

<sup>89</sup> Cf. Decision of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area of September 10, 2001 (evidence file, volume X, annex 37 to the Merits Report, folios 6618 to 6626).

<sup>90</sup> Cf. Decision of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area of September 10, 2001 (evidence file, volume X, annex 37 to the Merits Report, folio 6625).

<sup>91</sup> Cf. Decision of the Appellate Court of the Caracas Metropolitan Area, Chamber No. 9, of October 11, 2001 (evidence file, volume XXV, annex to the State's answering brief, folios 17436 to 17442).

<sup>92</sup> Cf. Hearing agenda of the Ombudsman for October 3, 2001, Case of No. E11684-01 (evidence file, volume X, annex 39 to the Merits Report, folios 6636 and 6637).

<sup>93</sup> Cf. Communication No. 1977 of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area addressed to Director of the Capital El Rodeo I Detention Center, on November 2, 2001 (evidence file, volume X, annex 41 to the Merits Report, folio 6643).

<sup>94</sup> Cf. Communication No. 1992 of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area addressed to Director of the Autonomous Institute of the Police of Chacao, of November 6, 2001 (evidence file, volume X, annex 42 to the Merits Report, folio 6645).

<sup>95</sup> Cf. Final report of the team of parliamentarians in compliance with the mandate of the National Assembly Plenary Agreement related to the judicial decision taken in the case of the citizen Linda Loaiza López Soto of February 25, 2005 (evidence file, volume X, annex 44 to the Merits Report, folio 6688).

<sup>96</sup> Cf. Record of the opening of the investigation of the Fortieth Prosecutor of the Public Prosecution Service of the Caracas Metropolitan Area of November 6, 2001 (evidence file, volume X, annex 46 to the Merits Report, folio 6710).

<sup>97</sup> Cf. Decision issued by the Forty-fourth Criminal Trial Oversight Court of the Caracas Metropolitan Area on November 8, 2001 (evidence file, volume X, annex 48 to the Merits Report, folio 6743).

<sup>98</sup> Cf. Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004

80. On November 7, 2001, the Committee on the Operation and Restructuring of the Judicial System decided to apply a 60-day suspension on the Eighteenth Judge owing to the serious charges filed against him.<sup>99</sup>

*E.3 The first oral trial and other accusations of irregularities in the judicial proceedings*

81. On November 5, 2001, Prosecutor No. 33 filed charges against Luis Antonio Carrera Almoína for the crimes of aggravated attempted murder, rape and unlawful deprivation of liberty.<sup>100</sup> On November 19, 2001, Linda Loaiza López Soto filed a private prosecution against him for the crimes of aggravated attempted murder, rape and unlawful deprivation of liberty, as well as for the crime of torture pursuant to the Rome Statute of the International Criminal Court, adopted by a Venezuelan law of December 7, 1999.<sup>101</sup> On December 11, 2001, she filed a second private prosecution against the father of the accused and the two individuals involved in the case relating to the escape.<sup>102</sup>

82. After several postponements, the preliminary hearing was held on December 17, 2001. At that time, the Eighteenth Oversight Court admitted the accusation filed against Luis Antonio Carrera Almoína by the Public Prosecution Service for the crimes of attempted first-degree murder; rape and unlawful deprivation of liberty and rejected, as time-barred the accusation of attempted premeditated first degree murder, perpetrated in his home, offending and disrespecting the dignity that the victim merited owing to her age and sex without the victim having provoked the incident; aggravated continuing rape; unlawful deprivation of liberty using threats and cruelty, and forcing the victim to consume narcotic substances using threats and violence. It also admitted the accusation filed against Luis Antonio Carrera Almoína by the Public Prosecution Service for the offense of impeding and obstructing the execution of the judicial proceedings by fraud; against his father for the offense of impeding and obstructing the execution of the judicial proceedings by fraud, as well as misuse of public office, and against another two individuals for the offense of aiding and abetting. Regarding the private prosecution against Luis Antonio Carrera Almoína filed by Linda Loaiza López Soto, the Eighteenth Oversight Court admitted it in relation to the crimes of attempted first-degree murder, rape, unlawful deprivation of liberty and torture, and rejected the accusation against his father and a university employee for the offenses of being accomplices to attempted first-degree murder, rape and unlawful deprivation of liberty, because this accusation was filed by Juan Bernardo Delgado with a special power of attorney granted by Ana Secilia López Soto, and not by Linda Loaiza López Soto.<sup>103</sup>

83. On January 2, 2002, the Eighteenth Oversight Court issued the order to start the criminal trial against Luis Antonio Carrera Almoína, his father and an university employee.<sup>104</sup> On January 10,

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(evidence file, volume IX, annex 4 to the Merits Report, folios 6095 and 6096).

<sup>99</sup> Cf. Resolution No. 073 of the Committee on the Operation and Restructuring of the Judicial System of November 7, 2001 (evidence file, volume X, annex 43 to the Merits Report, folio 6647).

<sup>100</sup> Cf. Charges filed by Prosecutor No. 33 of the Public Prosecution Service of the Caracas Metropolitan Area before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area on November 5, 2001 (evidence file, volume X, annex 49 to the Merits Report, folios 6746 a 6800).

<sup>101</sup> Cf. First private prosecution brief filed on November 19, 2001, before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area (evidence file, volume X, annex 51 to the Merits Report, folios 6804 to 6879).

<sup>102</sup> Cf. Second private prosecution brief filed on December 11, 2001, before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area (evidence file, volume XI, annex 52 to the Merits Report, folios 6881 to 6985).

<sup>103</sup> Cf. Record of the preliminary hearing of the Eighteenth First Instance Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area of December 17, 2001 (evidence file, volume XI, annex 53 to the Merits Report, folios 7028 to 7042).

<sup>104</sup> Cf. Order to start the criminal trial of the Eighteenth First Instance Oversight Court of the Criminal Judicial Circuit of

2002, the date of February 5, 2002, was established for the public oral hearing.<sup>105</sup> However, there were numerous postponements for different reasons, one of which was that the mixed court with jurors had not been constituted;<sup>106</sup> therefore, a new date of October 14, 2002, was established.<sup>107</sup> Between October 2002 and June 2003, the hearing was postponed nine times; four times due to the health of the victim and the other five times owing to requests by the accused, the Public Prosecution Service, and for the Christmas holiday.<sup>108</sup> Between June 2003 and August 2004, the hearing was also postponed on several occasions.<sup>109</sup> On August 3, 2004, Linda Loaiza López Soto's lawyer denounced that, at that date, the hearing had been postponed twenty-nine times, and twenty-six of those postponements could be attributed to the defense counsel of the accused.<sup>110</sup>

84. On June 6, 2003, the Thirtieth Trial Court declared that the private prosecution had been abandoned owing to the victim's "repeated failure to attend" the trial hearing. Linda Loaiza López Soto's lawyer filed a request for reconsideration based on the fact that her absences were health-related. This request was rejected and, therefore, an application for constitutional amparo was filed. This application was rejected in first instance. Finally, the Constitutional Chamber of the Supreme Court of Justice granted the application due to violations of constitutional rights and guarantees. Consequently, Linda Loaiza López Soto was again recognized as a complainant in the proceedings.<sup>111</sup>

85. Linda Loaiza López Soto filed complaints against the judge of the Thirtieth Trial Court before the General Inspectorate of Courts<sup>112</sup> and before the Ombudsman,<sup>113</sup> owing to irregularities in the proceedings, mainly due to the declaration of the abandonment of the private prosecution. In addition, the President of the Permanent Committee on Domestic Policy, Justice, Human Rights and Constitutional Guarantees of the National Assembly filed a complaint before the General Inspectorate of Courts owing to the serious irregularities in the judicial proceedings, and the mistreatment that Linda Loaiza López Soto had received when she had recourse to the Court.<sup>114</sup>

86. During the stage prior to the oral hearing, various judges recused themselves from

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the Caracas Metropolitan Area of January 2, 2002 (evidence file, volume XI, annex 54 to the Merits Report, folio 7044).

<sup>105</sup> Cf. Decision cited by the State in its brief with observations of October 22, 2014 (file of procedure before the Commission, volume II, folio 890).

<sup>106</sup> Cf. Decisions cited by the State in its brief with observations of October 22, 2014 (file of procedure before the Commission, volume II, folios 890 to 892); Decision of the Constitutional Chamber of the Supreme Court of Justice, File No. 04-0469, of August 19, 2004 (evidence file, volume XI, annex 55 to the Merits Report, folios 7080 to 7086), and Decision issued by Contingency Chamber No. 3 of the Appellate Court of the Caracas Metropolitan Area, acting as constitutional judge, on January 26, 2004 (evidence file, volume XI, annex 56 to the Merits Report, folio 7089).

<sup>107</sup> Cf. Decision issued by Contingency Chamber No. 3 of the Appellate Court of the Caracas Metropolitan Area, acting as constitutional judge, on January 26, 2004 (evidence file, volume XI, annex 56 to the Merits Report, folio 7103).

<sup>108</sup> Cf. Decision issued by Contingency Chamber No. 3 of the Appellate Court of the Caracas Metropolitan Area, acting as constitutional judge, on January 26, 2004 (evidence file, volume XI, annex 56 to the Merits Report, folios 7103 to 7104).

<sup>109</sup> Cf. Decisions cited by the State in its brief with observations of October 22, 2014 (file of procedure before the Commission, volume II, folios 893 to 905).

<sup>110</sup> Cf. Brief filed by Juan Bernardo Delgado, in representation of Linda Loaiza López Soto, before the Supreme Court of Justice, Constitutional Chamber, on August 3, 2004 (evidence file, volume XI, annex 64 to the Merits Report, folio 7189).

<sup>111</sup> Cf. Decision issued by Contingency Chamber No. 3 of the Appellate Court of the Caracas Metropolitan Area, acting as constitutional judge, on January 26, 2004 (evidence file, volume XI, annex 56 to the Merits Report, folios 7088 to 7116).

<sup>112</sup> Cf. Complaint filed by Linda Loaiza López Soto on September 9, 2003, against the judge of the Thirtieth Trial Court with the General Inspectorate of Courts (evidence file, volume XI, annex 61 to the Merits Report, folios 7171 and 7172)

<sup>113</sup> Cf. Complaint filed by Linda Loaiza López Soto on November 12, 2003, against the judge of the Thirtieth Trial Court with the Ombudsman (evidence file, volume XI, annex 63 to the Merits Report, folios 7181 to 7184).

<sup>114</sup> Cf. Complaint file by the President of the Permanent Committee on Domestic Policy, Justice, Human Rights and Constitutional Guarantees of the National Assembly with the General Inspectorate of Courts on September 22, 2003 (evidence file, volume XI, annex 62 to the Merits Report, folios 7177 to 7179).

intervening.<sup>115</sup> According to the final report of the joint team of parliamentarians of February 25, 2005, forty-four judges had taken cognizance of the case file between August 2001 and July 2004.<sup>116</sup> On September 3 and 15, 2004, Linda Loaiza López Soto's lawyer denounced the delay in the trial hearing, the numerous postponements and the recusals before the Ombudsman<sup>117</sup> and the General Inspectorate of Courts,<sup>118</sup> respectively.

87. In August 2004, Linda Loaiza López Soto went on hunger strike at the door of the Supreme Court of Justice<sup>119</sup> to demand the start of the oral trial and because, at that time, "[...] more than sixty judges [...] [had] excused themselves from hearing the case simply because the aggressor is the son of an important public figure in Venezuela."<sup>120</sup>

#### *E.4 First oral trial and acquittal*

88. The first oral trial was held from September 6<sup>121</sup> to October 21, 2004,<sup>122</sup> the date on which the hearing ended. The Twentieth Trial Court issued a ruling acquitting Luis Antonio Carrera Almoina, his father and the employee of the Universidad Nacional Abierta, of all the crimes with which they had been charged.<sup>123</sup> On November 5, 2004, the Twentieth Trial Court delivered judgment setting out the grounds for that decision.<sup>124</sup>

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<sup>115</sup> Cf. Recusal of the Third Judge of the Criminal Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area of September 18, 2003 (evidence file, volume XI, annex 65 to the Merits Report, folios 7192 to 7196); Recusal of the Tenth Criminal Trial Court of the Judicial Circuit of the Caracas Metropolitan Area of October 27, 2003 (evidence file, volume XI, annex 66 to the Merits Report, folios 7198 to 7200); Recusal of November 4, 2003, Fifteenth Criminal Trial Court of the Caracas Metropolitan Area (evidence file, volume XI, annex 67 to the Merits Report, folios 7202 to 7203); Recusal of May 10, 2004, Twentieth Criminal Trial Court of the Caracas Metropolitan Area (evidence file, volume XI, annex 68 to the Merits Report, folios 7205 to 7207); Recusal of the Twelfth Criminal Trial Court of the Caracas Metropolitan Area of July 28, 2004 (evidence file, volume XI, annex 69 to the Merits Report, folios 7209 to 7211); Recusal of the Twentieth Criminal Trial Court of the Caracas Metropolitan Area of August 17, 2004 (evidence file, volume XI, annex 70 to the Merits Report, folios 7213 to 7218); Recusal of August 19, 2004, First Criminal Trial Court of the Caracas Metropolitan Area (evidence file, volume XI, annex 71 to the Merits Report, folios 7220 to 7224), and Communication No. FMP-74°-AMC-1802-03 of the Fortieth and Seventy-fourth Prosecutor of the Caracas Metropolitan Area, addressed to the Twentieth Criminal Trial Judge of the Caracas Metropolitan Area of December 4, 2003 (evidence file, volume XI, annex 72 to the Merits Report, folio 7226).

<sup>116</sup> Cf. Final report of the team of parliamentarians in compliance with the mandate of the National Assembly Plenary Agreement related to the judicial decision taken in the case of the citizen Linda Loaiza López Soto, dated February 25, 2005 (evidence file, volume X, annex 44 to the Merits Report, folio 6689 to 6694).

<sup>117</sup> Cf. Complaint filed by Juan Bernardo Delgado with the Ombudsman on September 3, 2004 (evidence file, volume XI, annex 75 to the Merits Report, folios 7233 to 7241).

<sup>118</sup> Cf. Complaint filed by Juan Bernardo Delgado with the General Inspectorate of Courts on September 15, 2004, and its expansion on May 31, 2006 (evidence file, volume XI, annex 76 to the Merits Report, folios 7243 to 7263).

<sup>119</sup> Cf. News article in "eluniversal.com" of August 26, 2004, entitled "Linda Loaiza declares herself on hunger strike" (evidence file, volume XI, annex 79 to the Merits Report, folio 7300).

<sup>120</sup> Inter-American Commission on Human Rights. Merits hearing No. 17. Case of Linda Loaiza López Soto and family (Venezuela), 154th session, March 2015. Statement by Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

<sup>121</sup> Cf. Record of the public oral hearing of the Twentieth Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, volume XXXIII, annex to the State's answering brief, folio 22758).

<sup>122</sup> Prior to the opening of the hearing, Carrera Almoina's defense counsel asked that the oral trial be held "behind closed doors" pursuant to the Organic Code of Criminal Procedure in force at that time for certain actionable offenses. Linda Loaiza López Soto had asked that the trial be held publicly. The judge determined that the trial would be held "partially behind closed doors," specifically when the crimes "against morality" were being examined. Record of the public oral hearing of the Twentieth Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, volume XXXIII, annex to the State's answering brief, folios 22759 to 22760).

<sup>123</sup> Cf. Record of the public oral hearing of the Twentieth Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, volume XXXIII, annex to the State's answering brief, folios 22915 to 22925).

<sup>124</sup> Cf. Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5695 to 6098).

89. That court established that Linda Loaiza López Soto suffered from injuries, depression, post-traumatic stress, eye cataracts, among other ailments, and that she had been “subjected to sexual abuse, as shown by the state of her vagina.”<sup>125</sup> However, it considered that the person responsible for the respective offenses had not been established, or the circumstances of the time and manner in which they had occurred. It considered that Linda Loaiza’s testimony had not been corroborated by other evidence.<sup>126</sup> In addition, the court determined that serious errors had been committed, *inter alia*, in the collection of evidence, the conservation of the place from where Linda Loaiza López had been rescued, the safeguard of the chain of custody of the evidence, and the photographic evidence,<sup>127</sup> which was essential.<sup>128</sup> Regarding the crime of torture, the judgment established that it was not possible to apply this in the case, taking into account that, in the Rome Statute, the content of this wrongful act relates to crimes against humanity.<sup>129</sup>

90. On October 25 and 27, 2004, the representatives of Linda Loaiza López filed complaints against the judge who issued the acquittal before the Judicial Committee of the Supreme Court of Justice,<sup>130</sup> the Prosecutor General,<sup>131</sup> and the Ombudsman<sup>132</sup> based on different irregularities. On November 1, 2004, the Nineteenth and Thirtieth Prosecutors of the Public Prosecution Service filed a complaint against the said judge before the General Inspectorate of Courts, alleging her lack of impartiality in the trial. On June 21, 2005, the Inspectorate decided not to bring charges.<sup>133</sup> Following an objection filed by Linda Loaiza López,<sup>134</sup> that decision became final.<sup>135</sup>

91. On November 26, 2004, the National Assembly issued a public communiqué in which it “reject[ed]the judgment against Linda Loaiza.”<sup>136</sup> On February 25, 2005, the Assembly issued a final report in the investigation undertaken following the creation of a special committee to this end on October 6, 2004. Among other recommendations, it urged the Prosecutor General to undertake an investigation into the actions of all the officials who had intervened in the case.<sup>137</sup>

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<sup>125</sup> Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5850 to 5851).

<sup>126</sup> *Cf.* Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 6004 to 6005).

<sup>127</sup> *Cf.* Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5841 to 5846).

<sup>128</sup> *Cf.* Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5841 to 5842).

<sup>129</sup> *Cf.* Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 6019).

<sup>130</sup> *Cf.* Complaint filed by Juan Bernardo Delgado with the Supreme Court of Justice on October 25, 2004 (evidence file, volume XI, annex 81 to the Merits Report, folios 7353 to 7359).

<sup>131</sup> *Cf.* Complaint filed by Juan Bernardo Delgado with the Prosecutor General on October 25, 2004 (evidence file, volume XI, annex 82 to the Merits Report, folio 7361).

<sup>132</sup> *Cf.* Complaint filed by Juan Bernardo Delgado with the Ombudsman on October 27, 2004 (evidence file, volume XI, annex 83 to the Merits Report, folios 7363 to 7364).

<sup>133</sup> *Cf.* Decision issued by the General Inspectorate of Courts on June 21, 2005 (evidence file, volume XI, annex 85 to the Merits Report, folios 7369 to 7377).

<sup>134</sup> *Cf.* Complaint filed by Juan Bernardo Delgado with the General Inspectorate of Courts on November 13, 2006 (evidence file, volume XI, annex 86 to the Merits Report, folios 7379 to 7383).

<sup>135</sup> *Cf.* Decision No. 1656-07 of the Committee on the Operation and Restructuring of the Judicial System of November 8, 2007 (evidence file, volume XI, annex 87 to the Merits Report, folios 7385 to 7396).

<sup>136</sup> Press release of the National Assembly published on “asamblenacional.gob.ve” entitled “AN repudia sentencia contra Linda Loaiza” [NA rejects judgment against Linda Loaiza] (evidence file, volume XI, annex 88 to the Merits Report, folios 7398 to 7399).

<sup>137</sup> *Cf.* Final report of the team of parliamentarians in compliance with the mandate of the National Assembly Plenary Agreement related to the judicial decision taken in the case of the citizen Linda Loaiza López Soto, dated February 25, 2005 (evidence file, volume X, annex 44 to the Merits Report, folio 6650 to 6694).

92. Both the Public Prosecution Service and Linda Loaiza López Soto's representative appealed against the acquittal decision of November 5, 2004.<sup>138</sup> The complaint denounced the failure to appoint a substitute judge in the Appellate Court that would hear the appeals.<sup>139</sup> On April 12, 2005, the Seventh Chamber of the Appellate Court of the Caracas Metropolitan Area declared the appeals admissible, annulled the contested judgment due to lack of reasons, and ordered that a new trial be held. It also ordered that the measure of deprivation of liberty ordered against Carrera Almoína be maintained in force as well as the precautionary measures in relation to his father and the employee.<sup>140</sup>

#### *E.5 Second oral trial and partially guilty verdict*

93. As a result of the decision of the Seventh Chamber of the Appellate Court of the Caracas Metropolitan Area that annulled the acquittal of November 5, 2004, a second judicial proceeding was initiated based on the charges brought by the Public Prosecution Service against Luis Antonio Carrera Almoína, his father and an employee for the same crimes they had been charged with in the previous trial. Also, Linda Loaiza López Soto's lawyer filed a private prosecution only with regard to Carrera Almoína.<sup>141</sup>

94. The oral trial started on November 8, 2005, before the Seventh Trial Court and, following successive suspensions, culminated on April 8, 2006.<sup>142</sup> The Court decided to convict Luis Antonio Carrera Almoína of the crimes of unlawful deprivation of liberty and extremely serious personal injuries, and acquitted him of the crimes of rape and obstruction of justice by fraud. The Court imposed a sentence of imprisonment of six years and one month. That Court acquitted the father and the university employees.<sup>143</sup>

95. On May 22, 2006, the Seventh Court delivered the respective judgment, which included the grounds for its decision.<sup>144</sup> Regarding the factual and legal grounds for the judicial decision, the court changed the legal categorization of the crime of attempted homicide to that of extremely serious personal injuries established in article 416 of the Criminal Code in force at the time. Regarding the crime of rape, the court again took into account the testimony of the forensic experts and concluded that they had only confirmed the injuries identified in the gynecological examinations, but had not proved who had perpetrated them. Thus, it considered that it was not possible to attribute the accused with criminal responsibility because "the perpetration of that crime ha[d] not been corroborated by witnesses or experts, [and there was] no evidence, either

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<sup>138</sup> Cf. Appeal filed by the Nineteenth Prosecutor of the Public Prosecution Service against the acquittal decreed on November 5, 2004 (evidence file, volume XI, annex 90 to the Merits Report, folios 7419 to 7484), and Actions cited by the State in its brief with observations of October 22, 2014 (file of procedure before the Commission, volume II, folio 907).

<sup>139</sup> Cf. Brief filed by Juan Bernardo Delgado with the Permanent Committee on Domestic Policy, Justice, Human Rights and Constitutional Guarantees on February 16, 2005 (evidence file, volume XI, annex 91 to the Merits Report, folios 7486 to 7487); Brief filed by Juan Bernardo Delgado with the Judicial Committee of the Supreme Court of Justice on February 11, 2005 (evidence file, volume XI, annex 92 to the Merits Report, folio 7489), and Brief filed by Juan Bernardo Delgado with the Executive Directorate of the Judiciary of the Supreme Court of Justice on January 20, 2005 (evidence file, volume XI, annex 93 to the Merits Report, folio 7491).

<sup>140</sup> Cf. Decision issued by the Seventh Chamber of the Appellate Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area on April 12, 2005 (evidence file, volume XI, annex 94 to the Merits Report, folios 7493 to 7672).

<sup>141</sup> Cf. Judgment handed down by the Seventh Trial Court of the Caracas Metropolitan Area on May 22, 2006 (evidence file, volume X, annex 6 to the Merits Report, folios 6102 to 6284).

<sup>142</sup> Cf. Record of the public oral hearing of the Seventh Trial Court of the Caracas Metropolitan Area of November 9, 2006 (evidence file, volume IX, annex 3 to the Merits Report, folios 5537 to 5692).

<sup>143</sup> Cf. Judgment handed down by the Seventh Trial Court of the Caracas Metropolitan Area on May 22, 2006 (evidence file, volume X, annex 6 to the Merits Report, folios 6282 to 6284).

<sup>144</sup> Cf. Judgment handed down by the Seventh Trial Court of the Caracas Metropolitan Area on May 22, 2006 (evidence file, volume X, annex 6 to the Merits Report, folios 6102 to 6284).

medical or legal that [could] lead to a presumption of [its] perpetration."<sup>145</sup> Lastly, the Court acquitted the other persons who had been charged in the proceedings.<sup>146</sup>

96. The judgment was appealed by the Public Prosecution Service and Linda Loaiza López Soto's lawyer. On December 19, 2006, the Sixth Chamber of the Appellate Court of the Caracas Metropolitan Area declared the appeals inadmissible. On March 16, 2007, Linda Loaiza López Soto's lawyer filed a remedy of cassation against the decision of the Appellate Court.<sup>147</sup> On May 11, 2007, the Contingent Criminal Cassation Chamber of the Supreme Court of Justice declared the remedy of cassation inadmissible.<sup>148</sup>

97. On November 6 and 7, 2006, Linda Loaiza López and her lawyer were notified that a disciplinary procedure had been instituted against one of the contested judges who had delivered the judgment of acquittal. However, the General Inspectorate of Courts subsequently decided to archive the case.<sup>149</sup>

#### *E.6 Compliance with the sentence imposed*

98. On May 8, 2008, the Sixth Court for Execution of Judgments of the Caracas Metropolitan Area declared that the prison sentence imposed on Luis Antonio Carrera Almoína in the judgment of May 22, 2006, had been completed. Additionally, an accessory punishment of being "subject to monitoring by the authorities" until November 15, 2009, was imposed on him.<sup>150</sup> On November 26, 2009, the Sixth Court for Execution of Judgments declared that the accessory punishment had been completed and declared that the criminal responsibility of Luis Antonio Carrera Almoína had extinguished.<sup>151</sup>

#### *E.7 Current status of the proceedings*

99. On December 21, 2015, the First Prosecutor of the Public Prosecution Service filed a special remedy of constitutional review against the decision of the Sixth Chamber of the Appellate Court. On December 13, 2016, a justice excused herself from hearing this case; a substitute was appointed, and a Contingent Chamber was constituted to hear the case.

100. On December 15, 2016, the Constitutional Chamber of the Supreme Court of Justice declared admissible the request for constitutional review of the final judgment in the criminal proceedings against Carrera Almoína and ordered that another Chamber of the Appellate Court should again hear the appeals filed by the prosecution and by the victim against the judgment that acquitted the accused of the crime of rape, and this case is still being processed.<sup>152</sup>

<sup>145</sup> Judgment handed down by the Seventh Trial Court of the Caracas Metropolitan Area on May 22, 2006 (evidence file, volume X, annex 6 to the Merits Report, folios 6274 to 6275).

<sup>146</sup> Cf. Judgment handed down by the Seventh Trial Court of the Caracas Metropolitan Area on May 22, 2006 (evidence file, volume X, annex 6 to the Merits Report, folios 6275 to 6284).

<sup>147</sup> Cf. Actions cited by the State in its brief with observations of October 22, 2014 (file of procedure before the Commission, volume II, folios 917 to 918).

<sup>148</sup> Cf. Decision issued by the Contingent Criminal Cassation Chamber of the Supreme Court of Justice on May 11, 2007 (evidence file, volume XI, annex 95 to the Merits Report, folios 7675 to 7688).

<sup>149</sup> Cf. Complaint filed by Juan Bernardo Delgado with the General Inspectorate of Courts on November 10, 2006 (evidence file, volume XI, annex 78 to the Merits Report, folio 7266).

<sup>150</sup> Cf. Decision of the Sixth Court for Execution of Judgments of the Caracas Metropolitan Area of May 8, 2008 (evidence file, volume XI, annex 96 to the Merits Report, folios 7697 to 7699).

<sup>151</sup> Cf. Decision of the Sixth Court for Execution of Judgments of the Caracas Metropolitan Area of May 8, 2008 (evidence file, volume XI, annex 96 to the Merits Report, folios 7700 to 7702).

<sup>152</sup> Cf. Resolution of the Constitutional Chamber of the Supreme Court of the Bolivarian Republic of Venezuela on December 15, 2016 (evidence file, volume XXV, annexes to the answering brief of the State, folios 16734 to 16760).



*E.8 Complaints of threats and harassment and measures of protection adopted*

101. During the two judicial proceedings, measures of protection were granted for Linda Loaiza López Soto and several members of her family. Also, on October 30, 2003, the Forty-first Trial Court of the Caracas Metropolitan Area granted measures of protection for Linda Loaiza López Soto, and these came into effect on December 26, 2003.<sup>153</sup> In view of the fact that these measures were subsequently suspended, in May 2004, Linda Loaiza's personal lawyer again requested that they be imposed and, even though the said court granted them immediately, once again there were delays in their implementation.<sup>154</sup> In this context, on September 14, 2004, Linda Loaiza López Soto reported to the Scientific, Criminal and Criminalistic Investigations Unit (CICPC) that "on leaving the Twentieth Trial Court, several individuals on two motorcycles, who were carrying firearms, [caused injuries to] her father and two other people in different parts of their bodies."<sup>155</sup> The Inter-American Court has no information on the result of this report.

102. As a result of this incident, on September 17, 2004, the Ninth First Instance Oversight Court ratified the measures of protection that had been ordered previously,<sup>156</sup> and notified the Ombudsman so that he could verify their implementation.

103. On February 4, 2005, Linda Loaiza López Soto reported to Regional Command Office No. 5 of the National Guard that an unknown individual, wearing the uniform of the National Guard, had passed himself off as one of the officials assigned to her escort and tried to enter her home. Consequently, the Public Prosecution Service opened an inquiry against an individual who was detained and identified as the person presumably concerned.<sup>157</sup> This Court has no information on the result of that inquiry.

104. On December 29, 2006, measures of protection were requested owing to threats to the life and integrity of Linda Loaiza and Diana Carolina López Soto. The Public Prosecution Service requested the Twenty-sixth First Instance Oversight Court to order measures consisting in "continuous patrolling and police presence at the victim's place of residence."<sup>158</sup> On June 20, 2007,

<sup>153</sup> Cf. Decision of the Forty-first Trial Court of the Caracas Metropolitan Area of October 30, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12797); Communication No. 1610-03 addressed to the General Directorate of the Intelligence and Protection Services (DISIP) on November 25, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12799); Brief filed by Linda Loaiza López Soto with the Forty-first Trial Court of the Caracas Metropolitan Area, of December 5, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12800); Communication No. 1700-03 addressed to the General Directorate of the Intelligence and Protection Services (DISIP) on December 9, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12802), and Communication No. 1502-2003 addressed to the Forty-first Trial Court of the Caracas Metropolitan Area, of December 26, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12806).

<sup>154</sup> Cf. Brief filed by Juan Bernardo Delgado Linares with the Forty-first Trial Court of the Caracas Metropolitan Area on May 28, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12809); Order of the Forty-first Trial Court of the Caracas Metropolitan Area of May 31, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12810); Record of appearance of Linda Loaiza López Soto of July 23, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12815), and Brief filed by Juan Bernardo Delgado Linares with the Forty-first Trial Court of the Caracas Metropolitan Area, on August 18, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12817).

<sup>155</sup> Complaint G-653.612, before the Scientific, Criminal and Criminalistic Investigations Unit (CICPC) of September 14, 2004 (evidence file, volume XI, annex 97 to the Merits Report, folio 7705).

<sup>156</sup> Cf. Resolution of the Ninth First Instance Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area, of September 17, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folios 12840 to 12842), and Communication No. 1343-04 of the Ninth First Instance Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area, of September 17, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12845).

<sup>157</sup> Cf. Complaint filed by Linda Loaiza López Soto with Regional Command Office No. 5 of the National Guard, Ministry of Defense, on February 4, 2005 (evidence file, volume XI, annex 98 to the Merits Report, folios 7707 to 7708).

<sup>158</sup> Actions cited by the State in its brief with observations of October 22, 2014 (file of procedure before the Commission,

Linda Loaiza López Soto reported new acts of aggression following the measures of protection to the Senior Public Prosecutor of the Public Prosecution Service; among other incidents, her sister, Diana, had been assaulted on the street by an unknown individual.<sup>159</sup> A judicial procedure was opened to apprehend the person presumably responsible for these acts and, subsequently, he was subjected to an alternative precautionary measure of appearing before the court and the prohibition to approach Diana López.<sup>160</sup> During these proceedings, the judge of the Fifteenth First Instance Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area recused herself on the grounds of the "repulsion" she felt towards both Linda Loaiza López Soto and her sister, Ana Cecilia, "because they had repeatedly shown a lack of respect [for the judge and for] Venezuelan justice [...]."<sup>161</sup>

105. Linda Loaiza López Soto's lawyer filed a complaint before the Director for Ordinary Crimes of the Prosecutor General's Office for incidents that took place in August 2006, when two men tried to assault Diana Carolina and Elith Johana López Soto. It is on record that the Ordinary Crimes Directorate referred to the file to the Senior Public Prosecutor of the Public Prosecution Service of the Judicial District of the Caracas Metropolitan Area.<sup>162</sup> This Court has no information on the result of that case.

106. Additionally, in October and November 2004, Juan Bernardo Delgado Linares, who was Linda Loaiza's personal lawyer, began to receive threats and therefore requested measures of protection.<sup>163</sup> On October 26, 2004, the Assistant Prosecutor of the Public Prosecution Service of the Office of the Senior Public Prosecutor of the Criminal Judicial District of the Caracas Metropolitan Area asked the Sixteenth First Instance Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area to order measures of protection in favor of Juan Bernardo Delgado Linares until the conclusion of the first domestic criminal proceedings,<sup>164</sup> due to the continuing death threats that this professional had received from both Linda Loaiza López Soto's aggressor and unknown individuals.<sup>165</sup> On the same date, the said court ordered measures of protection for Linda Loaiza's lawyer,<sup>166</sup> instructing the Police of the Libertador municipality to implement them.<sup>167</sup>

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volume II, folios 967 to 968).

<sup>159</sup> Cf. Brief filed by Linda Loaiza López Soto with the Senior Prosecutor of the Public Prosecution Service on June 20, 2007 (evidence file, volume XI, annex 100 to the Merits Report, folios 7713 to 7714).

<sup>160</sup> Cf. Case file No. 10416-07 before the Thirty-ninth First Instance Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area (evidence file, volume XI, annex 101 to the Merits Report, folios 7717 to 7741).

<sup>161</sup> Recusal of Judge Renee Moros Troccoli of June 26, 2007 (evidence file, volume XI, annex 101 to the Merits Report, folios 7728 to 7729).

<sup>162</sup> Cf. Complaint filed by Juan Bernardo Delgado with the Director for Ordinary Crimes of the Prosecutor General's Office on October 20, 2006 (evidence file, volume XI, annex 102 to the Merits Report, folios 7743 to 7744), and Communication No. DDC-SD-972-72460 of November 3, 2006, of the Director for Ordinary Crimes addressed to Juan Bernardo Delgado (evidence file, volume XI, annex 103 to the Merits Report, folio 7746).

<sup>163</sup> Cf. E-mails of November 19, 2004, signed by "family and friends of Carrera," stating that he was "the lawyer of cheap prostitutes," telling him to "die," "learn to be correct; you're so vile and avaricious that it will kill you, you bastard [...];" "[name omitted] beat you with no tricks" (evidence file, volume XI, annex 104 to the Merits Report, folios 7748 to 7773), and Statement made by Juan Bernardo Delgado Linares (evidence file, volume XLIV, affidavits, folios 31100 to 31102).

<sup>164</sup> Cf. Report issued by the Senior Prosecutor of the Public Prosecution Service of the Judicial District of the Caracas Metropolitan Area on October 26, 2004 (evidence file, volume XLIV, affidavits, folios 31104 to 31111).

<sup>165</sup> Cf. Record of interview of Juan Bernardo Delgado Linares with the Fifty-fourth Prosecutor of the Judicial Circuit of the Caracas Metropolitan Area, on October 22, 2004 (evidence file, volume XLIV, affidavits, folios 31116 to 31117).

<sup>166</sup> Cf. Resolution issued by the Sixteenth First Instance Oversight Court of the Criminal Circuit of the Caracas Metropolitan Area on October 26, 2004 (evidence file, affidavits, volume XLIV, folios 31119 to 31123).

<sup>167</sup> Cf. Communication No. 976-04 addressed to the Chief of Police of Libertador municipality of October 26, 2004 (evidence file, volume XLIV, affidavits, folios 31124 to 31125).

## **F. Venezuela's legal framework**

107. The Constitution of the Bolivarian Republic of Venezuela, adopted in 1999 and in force at the time of the facts, guaranteed full legal equality between women and men. It also established that the law would guarantee this equality, truly and effectively, for groups that were vulnerable, marginal or susceptible to discrimination.<sup>168</sup> In addition, it prohibited slavery, servitude, and trafficking in persons, and made special mention of women, children and adolescents, as groups with greater exposure to those evils.<sup>169</sup> It also established the right to physical, mental and moral integrity, specifically prohibiting torture and cruel, inhuman or degrading punishment or treatment, and ensured the "right to rehabilitation" if any of such practices was committed by state agents.<sup>170</sup> Furthermore, a transitory provision included in the constitutional text established that, within the year following the entry into force of the Constitution, the corresponding law punishing torture would be enacted.<sup>171</sup>

108. The Criminal Code in force in Venezuela at the time of the facts contained a chapter on "*crimes against the morality and stability of the family*," which included the definition of the crime of "rape," which was punished with five to ten years' imprisonment for anyone who, by violence or threats, obliged another to participate in a "carnal act."<sup>172</sup> It also established a reduction in the prison sentence in cases in which the victim of the crimes of rape, seduction or kidnapping was a woman who engaged in prostitution.<sup>173</sup> If, following the perpetration of the crime, the victim and the perpetrator married, it established the cessation of any judicial proceedings that were underway or had been initiated owing to the criminal conduct of the perpetrator, and even the suspension of execution of sentence if this had been delivered prior to the marriage. If the perpetrator and the victim did not marry, the former had to "provide the offended party with a dowry, if she was single or a widow and, in any case, an honest woman," as civil compensation.<sup>174</sup>

109. Regarding the crime of torture, the Criminal Code in force at the time of the facts circumscribed the application of a criminal penalty to cases in which the victim of the "suffering, offenses to human dignity, abuse, torture or atrocities" was a person who was detained and the perpetrator was his or her guardian, prison guard or any other person who gave the order to execute such acts.<sup>175</sup> The Code also contained a provision that established a prison sentence for anyone who reduced another person to slavery.<sup>176</sup>

<sup>168</sup> Cf. Constitution of the Bolivarian Republic of Venezuela, Special Official Gazette No. 5908, of February 19, 2009, Article 21.1 and 21.2 (evidence file, volume XIII, Annex 2A to the pleadings and motions brief, folio 8138).

<sup>169</sup> Cf. Constitution of the Bolivarian Republic of Venezuela, Special Official Gazette No. 5908, of February 19, 2009, Article 54 (evidence file, volume XIII, annex 2A to the pleadings and motions brief, folio 8146).

<sup>170</sup> Cf. Constitution of the Bolivarian Republic of Venezuela, Special Official Gazette No. 5908, of February 19, 2009, Article 46 and 46.1 (evidence file, volume XIII, annex 2A to the pleadings and motions brief, folio 8144).

<sup>171</sup> Cf. Constitution of the Bolivarian Republic of Venezuela, Special Official Gazette No. 5908, of February 19, 2009, Fourth Transitory Provision, section 1 (evidence file, volume XIII, annex 2A to the pleadings and motions brief, folio 8222).

<sup>172</sup> Cf. Criminal Code of the Bolivarian Republic of Venezuela, Official Gazette No. 915, of June 30, 1964, article 375 (evidence file, volume XIII, annex 2B to the pleadings and motions brief, folio 8312).

<sup>173</sup> Cf. Criminal Code of the Bolivarian Republic of Venezuela, Official Gazette No. 915, of June 30, 1964, article 393 (evidence file, volume XIII, annex 2B to the pleadings and motions brief, folio 8315).

<sup>174</sup> The possibility of halting criminal proceedings that were underway or the execution of the sentence owing to marriage between the victim and the accused was only established in the case of perpetrators of the crimes of rape, seduction, prostitution and corruption, excluding criminal conducts included in the legal definition of kidnapping, in any of its forms. However, if the marriage did not take place, the perpetrators of the crimes of kidnapping, seduction and rape were sentenced by the civil jurisdiction to payment of a dowry, provided the victim was a widow, a spinster or an honest woman. Cf. Criminal Code of the Bolivarian Republic of Venezuela, Official Gazette No. 915, of June 30, 1964, article 395 (evidence file, volume XIII, annex 2B to the pleadings and motions brief, folio 8315).

<sup>175</sup> Cf. Criminal Code of the Bolivarian Republic of Venezuela, Official Gazette No. 915 of June 30, 1964, article 182, second paragraph (evidence file, volume XIII, annex 2B to the pleadings and motions brief, folio 8285).

<sup>176</sup> The legislators established the penalty of six to twelve years' imprisonment for the crime of reduction to slavery. Cf.

110. In 2001, in addition to the provisions of the Constitution, the Law on Violence against Women and the Family<sup>177</sup> and the Law on Equal Opportunities for Women<sup>178</sup> were in force in Venezuela.

111. The purpose of the Law on Violence against Women and the Family was to prevent, contain, punish and eradicate violence against women and the family, as well as to assist victims of the acts of violence included therein, which related to cases of "abuse, threat or offense exercised against women [or] other members of the family, by husbands, cohabitants, former husbands, former cohabitants, or person who has cohabited, ascendants, descendants, and collateral relatives, blood relatives or similar."<sup>179</sup> This law established special procedures for receiving and processing complaints for the conducts defined in its text as crimes<sup>180</sup> and misdemeanors.<sup>181</sup> One of the misdemeanors consisted in failing to respond to the complaint when the agency receiving it failed to process the complaint within 48 hours.<sup>182</sup> In this regard, the law established that celerity was a procedural principle and meant that "[t]he agencies receiving complaints and the competent courts shall give preference to investigating the acts established in the law."<sup>183</sup> The most relevant element of this aspect was the listing within the law of the agencies authorized to receive this type of complaint, which included justices of the peace and the family, criminal trial courts, prefectures and civil bureaus – envisaging the creation of special departments within them – police departments, the Public Prosecution Service, and also any other agency that, in future, would be attributed with such competence.<sup>184</sup> The legislators also anticipated the training on the issue of violence against women and the family that would be required by the agents responsible for processing complaints and conducting the resulting investigations.<sup>185</sup>

112. According to the law, once the complaint had been filed, the procedure required the authorities in charge of the agencies that received complaints to order a medical examination of the victim. The possibility of ordering precautionary measures of protection was also considered by

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Criminal Code of the Bolivarian Republic of Venezuela, Official Gazette No. 915 of June 30, 1964, article 174 (evidence file, volume XIII, annex 2B to the pleadings and motions brief, folio 8284).

<sup>177</sup> Cf. Official Gazette No. 36,531 of September 3, 1998 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folios 8450 to 8457).

<sup>178</sup> Cf. Special Official Gazette No. 5398 of October 26, 1999 (evidence file, volume XIII, Annex 2E to the pleadings and motions brief, folios 8435 to 8446).

<sup>179</sup> Articles 1 and 4 of the Law on Violence against Women and the Family.

<sup>180</sup> Articles 16 to 21 define as crimes: threats, physical violence, rape, sexual abuse, psychological violence and the aggravating circumstances. Cf. Law on Violence against Women and the Family, Official Gazette No. 36,531 of September 3, 1998, articles 16 to 21 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folios 8452 to 8453).

<sup>181</sup> Articles 22, 23 and 24 establish as misdemeanors the omission of administrative measures in cases of sexual abuse, the failure of the health professional who treat victims of any of the types of violence established by the law to advise the police or judicial authorities, or the failure to respond to complaints by the officials who receive them. Cf. Law on Violence against Women and the Family, Official Gazette No. 36,531 of September 3, 1998, articles 22 to 24 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folio 8453).

<sup>182</sup> Law on Violence against Women and the Family, Official Gazette No. 36,531 of September 3, 1998, article 24 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folio 8453).

<sup>183</sup> Law on Violence against Women and the Family, Official Gazette No. 36,531 of September 3, 1998, article 3 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folio 8450).

<sup>184</sup> Cf. Law on Violence against Women and the Family, Official Gazette No. 36,531 of September 3, 1998, article 32 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folio 8454), and Expert opinion provided by Magaly Mercedes Vásquez González (evidence file, volume XLIV, affidavits, folios 31129 and 31130). Also expert witness María Lucrecia Hernández emphasized that, following the adoption of the Law on Violence against Women and the Family in 1998, the justices of the peace and the family, criminal trial courts, prefectures and civil bureaus, police departments, and the Public Prosecution Service were empowered to act as agencies to which any woman victim of violence could resort to file her complaint, either orally or in writing. Cf. Statement by María Lucrecia Hernández Vitar before the Inter-American Court during the public hearing on February 6, 2018.

<sup>185</sup> Cf. Law on Violence against Women and the Family, Official Gazette No. 36,531 of September 3, 1998, articles 32 and 38 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folios 8454 and 8455).

this law, and it established that these could be ordered by the agents who received complaints at the time the complaint was filed, or by the competent judge in the case, who also had exclusive powers to order specific measures that differed from those that could be adopted by the non-judicial bodies at the time they received the complaint.<sup>186</sup> However, the authority to order measures of protection, attributed by the law to the officials responsible for receiving the complaints was subsequently eliminated owing to the 2006 ruling of the Supreme Court of Justice, which admitted an appeal for annulment filed by the Prosecutor General in 2003.<sup>187</sup>

113. The Law on Equal Opportunities for Women was adopted in order to guarantee women the full exercise of their rights, and the development of their personality, aptitudes and capabilities.<sup>188</sup> The law established provisions regarding the labor, political, trade union, economic and social rights of women. It also established the creation of the National Institute for Women as a “permanent body for the design, implementation, direction, coordination, supervision and evaluation of policies and matters related to the condition and situation of women.”<sup>189</sup> In this regard, it also created the Office for the Defense of Women’s Rights, the main functions of which were to ensure compliance with all the laws on women’s rights and, especially, to receive and process complaints relating to the violation of those laws.<sup>190</sup> Another objective of this law was to guarantee the rights of women in the face of attacks on their physical, sexual, emotional and psychological integrity, obliging public officials who were informed of this type of conduct “to take due precautions” to preserve the physical and moral integrity of victims during the resulting procedures and investigations.<sup>191</sup> This law did not define the concept of violence against women, or the different ways in which such violence may be expressed.

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<sup>186</sup> Among the precautionary measures that the authorities responsible for receiving complaints could establish were ordering: the aggressor to leave the home; the transfer of the victim to a safe place; the arrest of the accused for no more than 72 hours; the return of the victim to the home, or any other measure of personal protection aimed at safeguarding the physical or emotional integrity of the victim, her family, or partner. Meanwhile, the judge, in addition to ordering the said measures or confirming them, was authorized by the law to establish a maintenance allowance for the family group; a regime of guardianship, custody or child visits, or any other measure that was pertinent for the family group. *Cf.* Law on Violence against Women and the Family, Official Gazette No. 36,531 of September 3, 1998, articles 39 and 40 (evidence file, volume XIII, annex 2G to the pleadings and motions brief, folio 8456).

<sup>187</sup> On May 9, 2006, the Supreme Court of Justice ruled on the appeal filed on August 26, 2003, by the Prosecutor General, proposing the annulment of article 3(4), 32 and 39(1), (3) and (5) of the Law on Violence against Women and the Family. Article 3(4) and 39 contested by the Prosecutor General were those that authorized the agencies receiving the complaints to adopt precautionary measures, order arrests, and coordinate conciliation procedures. Article 32 listed the agencies authorized to receive complaints for the crimes or misdemeanors listed in the law – that is the justices of the peace and the family, criminal trial courts, prefectures and civil bureaus, police departments, the Public Prosecution Service. The Supreme Court of Justice partially admitted the proposal, while maintaining the authority to order an arrest pursuant to the law, only for the criminal and family courts, revoking this authority in the case of the non-judicial agencies named in the law as competent to receive complaints. Regarding the establishment of precautionary measures to protect the victims, the Supreme Court authorized the administrative bodies to grant measures of exclusion from the home, but subjected their implementation to the existence of the respective judicial authorization. It made the same ruling with regard to the other measures listed in article 39, because they became subject to review by the judge who intervened in the investigation, provided that an investigation was opened. To the contrary, the measure would automatically be annulled. *Cf.* Judgment of the Supreme Court of Justice of the Bolivarian Republic of Venezuela, Constitutional Chamber, of May 9, 2006 (evidence file, volume XIII, annex 2K to the pleadings and motions brief, folios 8605, 8640 and 8641).

<sup>188</sup> *Cf.* Law on Equal Opportunities for Women, Special Official Gazette No. 5398 of October 26, 1999, article 2 (evidence file, volume XIII, annex 2E to the pleadings and motions brief, folio 8435).

<sup>189</sup> Law on Equal Opportunities for Women, Special Official Gazette No. 5398 of October 26, 1999, article 47 (evidence file, volume XIII, annex 2E to the pleadings and motions brief, folio 8442).

<sup>190</sup> In addition to receiving the complaints, the Office for the Defense of Women’s Rights also had the powers to evaluate whether the acts denounced constituted a violation of women’s rights. Furthermore, the Office was authorized to investigate those acts, to institute conciliatory actions to end the situation of inequality or discrimination against the woman and, even to represent her in judicial and extrajudicial instances. *Cf.* Law on Equal Opportunities for Women, Special Official Gazette No. 5398 of October 26, 1999, articles 52 and 54(d) and (e) (evidence file, volume XIII, annex 2E to the pleadings and motions brief, folios 8443 and 8444).

<sup>191</sup> *Cf.* Law on Equal Opportunities for Women, Special Official Gazette No. 5398 of October 26, 1999, articles 57 and 58 (evidence file, volume XIII, annex 2E to the pleadings and motions brief, folio 8444).

## VIII MERITS

114. The facts of this case relate to the deprivation of liberty of a woman, who was 18 years of age at the time of the events, by a private individual. For almost four months, Linda Loaiza López Soto was constantly subjected to different acts of physical, verbal, psychological and sexual violence, including, *inter alia*, the forced consumption of alcohol, narcotics and medication; she was beaten causing blunt traumas and bruising to her face, ears, thorax and abdomen, a fractured nose and jaw; had bites on her lips, breasts and nipples; cigarette burns on her face and body, and was subjected to forced nudity, repeated vaginal and anal rape and penetration with objects, threatened and humiliated and deprived of food. She was rescued because she was able to call out for help and this resulted in the police and members of the fire department arriving where she was held and entering by climbing into the apartment in which she was deprived of liberty. Following her rescue, Linda Loaiza López Soto had to spend almost one year in hospital due to her numerous injuries, and undergo 15 surgical procedures including reconstruction of her lips, nose, left auricle and vagina.<sup>192</sup>

115. The facts were investigated in the criminal jurisdiction. Two oral trials were held because the first one was annulled. Owing to the second criminal proceedings, Luis Antonio Carrera Almoína was convicted of the crimes of deprivation of liberty and extremely severe injuries, but acquitted of the crime of rape. The two individuals who were accused of other concomitant acts (including misuse of public office and concealment) were acquitted of all the offenses. In 2008, it was declared that the sentence had been served. Currently, the review of the proceedings for the crime of rape remain pending.

116. In this chapter, the Court will examine the merits of the case. It recalls that the State made a partial acknowledgement of responsibility and contested certain facts (*supra* Chapter IV); therefore, the main subsisting dispute relates to the attribution to the State of responsibility for the acts of private individuals because, in general, the facts relating to the judicial investigation were acknowledged by the State. Consequently, in this first section, the Court will examine the alleged failure by the State to comply with its obligation of prevention, as well as the possible acquiescence to, complicity with and/or tolerance of the acts committed by private individuals. In the following section, the Court will define the scope of the State's responsibility for failing to comply with the obligation to investigate violence against a women within a reasonable time and with strict due diligence, also addressing the arguments relating to the obligation to investigate acts of torture established in Articles 1, 6 and 8 of the ICPPT.

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<sup>192</sup> Cf. Expert opinion provided by Maritza Durán (evidence file, volume XLIV, affidavits, folio 31224).

## VIII-1

**RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY,<sup>193</sup> PERSONAL INTEGRITY,<sup>194</sup> PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT,<sup>195</sup> PROHIBITION OF SLAVERY,<sup>196</sup> PERSONAL LIBERTY,<sup>197</sup> DIGNITY, AUTONOMY AND PRIVACY,<sup>198</sup> MOVEMENT AND RESIDENCE<sup>199</sup> AND EQUALITY BEFORE THE LAW,<sup>200</sup> IN RELATION TO THE OBLIGATION TO RESPECT AND TO ENSURE THESE RIGHTS WITHOUT DISCRIMINATION,<sup>201</sup> AS WELL AS TO ARTICLE 7(A) AND (B)<sup>202</sup> OF THE CONVENTION OF BELÉM DO PARÁ<sup>203</sup> AND ARTICLES 1, 6 AND 8<sup>204</sup> OF THE ICPPT**

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

117. The **Commission** stressed that, in cases of violence against women, the duty to act with due diligence took on a special and strict connotation that required an immediate and effective response by the State, especially as regards the search conducted during the initial hours and days after reception of a report. This is for preventive purposes and to protect the woman. The Commission emphasized that if the acts that violate human rights are committed by private individuals, the State has the obligation of enhanced diligence to act immediately, because if it

<sup>193</sup> Article 3 of the Convention establishes: "[e]very person has the right to recognition as a person before the law."

<sup>194</sup> Article 5(1) of the Convention recognizes that: "[e]very person has the right to have his physical, mental, and moral integrity respected."

<sup>195</sup> Article 5(2) of the Convention establishes that: "[n]o one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment."

<sup>196</sup> Article 6(1) of the Convention stipulates that: "[n]o one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women."

<sup>197</sup> The pertinent part of Article 7 of the Convention establishes that: "[e]very person has the right to personal liberty and security."

<sup>198</sup> Article 11(2) and 11(2) of the Convention establish that: "[e]veryone has the right to have his honor respected and his dignity recognized" and "[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>199</sup> Article 22(1) of the Convention stipulates 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>200</sup> Article 24 of the Convention establishes que: "[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

<sup>201</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>202</sup> The pertinent part of Article 7 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: (a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; (b) apply due diligence to prevent, investigate and impose penalties for violence against women [...] ."

<sup>203</sup> Venezuela deposited the instruments ratifying the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," on August 26, 1991, and February 3, 1995, respectively.

<sup>204</sup> Article 1 of the ICPPT stipulates that: "[t]he State Parties undertake to prevent and punish torture in accordance with the terms of this Convention." Meanwhile, Article 6 establishes that: "[...] the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman or degrading treatment or punishment within their jurisdiction." And, the relevant part of Article 8 stipulates that: "[t]he States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process."

does not do so, this may engage its international responsibility. The Commission indicated that the Venezuelan State was or should have been aware that Linda Loaiza López Soto faced a situation of real and imminent danger following the complaint that her sister filed or tried to file on six occasions, and taking into account the context as regards the State's response in cases of violence against women in Venezuela.<sup>205</sup> The Commission added that the, from moment it became aware of the danger and until the moment of her rescue, the State failed to take any measure to determine her whereabouts and to prevent the continuation of the violence against her. The Commission clarified that, although the document provided as evidence indicated that the complaint had been recorded at least two months after Linda López had been abducted, the different elements analyzed allowed probative value to be accorded to the testimony of both victims and established that the Venezuelan State was or should have been aware that Linda Loaiza López Soto faced real and imminent danger at least from the day following her kidnapping on March 27, 2001. It argued that the absolute failure of the Venezuelan authorities to discover the whereabouts of Linda López while she was deprived of liberty, exposed her to becoming the victim of grave violations of her personal integrity, personal liberty, privacy, dignity and autonomy, and her right to a life free of violence and discrimination, and this related directly to the attribution of responsibility to the State in this case. According to the Commission, the said failure "constituted a clear form of tolerance of, or acquiescence to, the egregious situation that Linda López was experiencing while she remained abducted." The Commission argued that certain acts of violence against women, including sexual violence and rape, may be categorized as torture or other conducts prohibited under Article 5(2) of the Convention, as they include elements of that gross human rights violation. This includes acts committed by non-State actors in the private sphere when it has been established that the State failed to comply with its obligation to protect, a failure that can take the form of acquiescence or tolerance. Consequently, the Commission considered that the State was responsible for the physical, psychological and sexual violence experienced by Linda Loaiza López Soto in light of the prohibition of torture established in Articles 5(1), 5(2), 7(1), 11(1), 11(2) and 24 of the American Convention, in relation to Article 1(1) of this instrument, Articles 1 and 6 of the ICPPT and Article 7(a) and (b) of the Convention of Belém do Pará.

118. The **representatives** indicated that Venezuela had not complied with its obligation of general due diligence in this case because it had failed to adopt effective measures of prevention and investigation that would have reduced the risk factors for violence against women. They argued that the State had acknowledged an omission in the general obligation of prevention and that, at the time of the events, Venezuela did not have a special framework for gender-based violence outside the family. They also indicated that the criminal legislation included numerous provisions that explicitly discriminated against women, and that there was a lack of protection and access to justice for women victims of sexual violence at the time of the facts, accompanied by an absence of accessible and disaggregated public statistics on the dynamics and scope of the problem.

119. Regarding the specific obligation of prevention and due diligence, the representatives argued that "a kidnapping or a disappearance is, in itself, an act of gender-based violence that also involves the imminent risk of acts of sexual violence against a woman." Therefore, when the kidnapping or disappearance of a woman is reported, the obligations of strict due diligence are activated, regardless of a context of violence against women. They indicated that the State was aware of a real and imminent risk to the life and integrity of Linda Loaiza from the moment of the report filed by her sister, Ana Secilia, the following day, when she provided the name and

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<sup>205</sup> The Commission clarified that it had made two types of determination about the context in relation to the State's response in cases of violence against women in Venezuela. On the one hand, both the situation recorded at the time of the events and subsequent declarations at both the national and the international level, revealed that the situation of impunity in such cases continued. On the other hand, the Commission's determination of the context was one of the elements used to give probative value to the testimony of Ana Secilia López Soto; specifically, that although she tried to file the report concerning her sister's disappearance almost immediately the police authorities had refused to receive it, at times suggesting that it was related to "relationship problems."



telephone number of the presumed kidnapper; but the police refused to receive the report. The representatives argued that the State grossly neglected its obligation of prevention in this specific case, by disregarding the report and failing to take any reasonable measure, such as initiating a search or collecting more specific information on Linda Loaiza's possible whereabouts, in order to save her from the risk of violence that she faced. It was possible to anticipate this risk, based not only on the victim's situation as a woman who had been kidnapped, but also, in this specific case, because there were clear indications that she was being subjected to physical violence. The representatives indicated that the State's inaction following the repeated reports signified not only the violation of the obligation of prevention, but also a situation of acquiescence and complicity, which presumably involved an omission of the obligation to respect rights. They argued that, contrary to other precedents, in this case the State's attitude resulted in the victim being exposed to an even greater situation of risk because, in addition to refusing to receive the report and to act promptly, the police agents telephoned the aggressor, alerting him to the report that had been filed. In addition, the representatives argued that, since the authorities knew the name of the perpetrator, the State's inaction proved acquiescence to the conduct of this individual.

120. The representatives concluded that the violence employed against Linda Loaiza was of a sexual nature and involved kidnapping and repeated subjection to rape and different forms of sexual, physical and psychological violence, which resulted in the violation of Articles 5 and 11, in relation to Article 1(1) of the Convention and Article 7 of the Convention of Belém do Pará, that could be attributed to the State. Similarly, the representatives categorized the acts perpetrated against Linda Loaiza, including her retention, the physical violence, the sexual violence, and the humiliating and degrading acts as torture, owing to the degree of severity and the acquiescence of the State, in violation of Article 5(2), in relation to Article 1(1) of the Convention and Articles 1, 6 and 8 of the ICPPT.

121. Additionally, the representatives argued that the acts of sexual violence against Linda Loaiza constituted sexual slavery and that this could also be attributed to the State owing to its failure to comply with the obligation of prevention, as well as to its acquiescence. They argued in this regard that the Venezuelan State was responsible for the violation of Article 6 of the Convention, in relation to Articles 1(1), 3, 5, 7, 11 and 22 of this instrument, to the detriment of Linda Loaiza López Soto. The representatives specified that, from March 27 to July 19, 2001, Linda Loaiza was in a situation of *de facto* slavery and that the facts of this case should be categorized as sexual slavery, and slavery, in any of its forms, was expressly prohibited by Article 6 of the Convention. They argued that a situation of slavery also entailed the violation of other rights of the Convention such as recognition of juridical personality, personal integrity, personal liberty, honor and dignity, as well as the right to freedom of movement and residence. Regarding the restriction of the victim's movement, they indicated that, during her captivity, Linda Loaiza López Soto never enjoyed freedom of movement even inside the rooms in which she was locked, because the victim was always tied up or handcuffed either in the bathroom, or sometimes to the bed, and even to her captor. In addition, Linda Loaiza López Soto was subjected to constant and extreme physical, sexual and psychological violence. The purpose of this violence was not only to control her movements, but also to destroy her autonomy and dignity because it was used to control every aspect of her life, including her sexuality, over which the aggressor exercised exclusivity. They also argued that she was subjected to repeated death threats with a firearm, as well as threats to kill her family.

122. The **State** asked the Court to reject the arguments of the Commission and the representatives because the alleged violations were committed by a private individual, without any connection to the State. In other words, it denied responsibility for any act committed by a non-state agent. In particular, the State argued that it was unaware of the dangerous situation faced by Linda Loaiza, and should not have been aware of this because there was no record that any report was filed on the situation of Linda Loaiza López Soto between March 28, and July 19, 2001. It

added that the existence of the report by Linda Loaiza's sister was in dispute, and it considered that the State did not have the burden of proving that the report had not been filed on March 28, 2001, because this violated the basic principles concerning the distribution of the burden of proof in any proceedings. The State indicated that the burden of proof corresponded to the person who needed to prove the existence of something or to prove guilt. It considered that the interpretation that the Commission was trying to make was erroneous because it required the Court to grant probative value, or consider that the existence of a report was proved, based on statements made by the family, when the latter had no available means of proving the State's failure to receive the report and in light of the inexistence of evidence to the contrary from the State.

123. In this regard, it argued that: (i) no report had been filed that advised the competent authorities of the disappearance of Linda Loaiza; (ii) the only report that existed was one concerning a death threat (and not for the disappearance of Linda Loaiza López Soto) filed before the Judicial Technical Police Unit by Ana Secilia López Soto; (iii) inconsistencies and contradictions could be verified in the statements on the supposed attempts to report the disappearance of Linda Loaiza, as regards the dates, place and number of reports, and (iv) it was not true that, at the time of the facts of this case, there was a supposed context of not receiving reports relating to violence against women in Venezuela.

### **B. Considerations of the Court**

124. The depraved and egregious acts of physical, verbal, psychological and sexual violence suffered by Linda Loaiza López Soto, which violated her rights to personal integrity, personal liberty, dignity, autonomy and privacy,<sup>206</sup> and to a life free of violence, were not contested in these proceedings. Also, it was not called into question that these facts constituted acts of violence against women, as well as an expression of the historically unequal power relationship between women and men in the terms of the Convention of Belém do Pará.<sup>207</sup> Indeed, during the public hearing, the State explicitly referred to "the terrible acts of violence against women of which [Linda Loaiza] was a victim" (*supra* para. 22). The right of women to live free of violence is closely related to the right to non-discrimination.<sup>208</sup>

125. The dispute is centered on the fact that the acts were committed by private individuals. Therefore, in addition to questioning their categorization as torture – because no public official

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<sup>206</sup> The Court note that Article 11 of the American Convention protects one of the most fundamental values of the human person, understood as a rational being, and this is the recognition of their dignity. Indeed, the first paragraph of this article contains a universal clause on protection of dignity, which is based on both the principle of a person's autonomy and on the idea that every individual should be treated equally, as ends in themselves, in keeping with their intentions, will and personal life decisions. Meanwhile, the second paragraph establishes the inviolability of private and family life, among other protected spheres. The concept of privacy includes, among other protected areas, a person's sexual life. The Court finds that rape and the other forms of sexual violence perpetrated against Linda Loaiza López Soto violated essential values and aspects of her privacy, constituted interference in her sexual life and annulled her right to freely take decisions regarding who she wished to have sexual relations with, so that she completely lost control over her most personal and intimate decisions, and over her basic bodily functions. *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. 129, and *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 329, para. 149.

<sup>207</sup> In this regard, Article 1 of the Convention of Belém do Pará defines 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." While Article 2 specifies that violence against women includes physical, sexual and psychological violence – mentioning, as examples, conducts such as rape, battery, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment – that occurs within the family or domestic unit, or within any other interpersonal relationship or in the community, and may be perpetrated by either an individual or by the State or its agents, or be condoned by the State.

<sup>208</sup> The Committee on the Elimination of Discrimination against Women has indicated that "[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men." UN, Committee on the Elimination of Discrimination against Women, General recommendation No. 19, *Violence against women*, 1992, para. 1.

intervened in their perpetration – the State has denied that they could be attributed to it and engage its international responsibility. Consequently, in this case, the Court is called on to determine the possible attribution of international responsibility to the State for the acts committed by private individuals. The main points that must be elucidated are: (i) the knowledge that the State had or should have had of the situation of real and imminent danger faced by Linda Loaiza; (ii) the State's supposed acquiescence, complicity and/or tolerance with regard to the acts of physical, verbal, psychological and sexual violence suffered by Linda Loaiza, and (iii) the categorization of those acts as torture and also, according to the autonomous arguments of the representatives, as sexual slavery and its attribution to the State.

126. Based on above and in order to determine whether the international responsibility of the State has been engaged by the violation of Articles 1(1), 3, 5(1), 5(2), 6, 7, 11(1), 11(2), 22 and 24 of the American Convention and 7 of the Convention of Belém do Pará owing to the facts described, the Court finds it pertinent to examine the case as follows: (1) State obligations in light of the American Convention and Article 7 of the Convention of Belém do Pará in cases of violence against women; (2) Attribution to the State of responsibility for acts of individuals; (3) Analysis of attribution of responsibility in this specific case; (4) State responsibility for sexual slavery; (5) State responsibility for acts of torture, and (6) Conclusion on the attribution of responsibility in this specific case.

*B.1 State obligations in light of the American Convention and Article 7 of the Convention of Belém do Pará in cases of violence against women*

127. According to Article 1(1) of the Convention, States are obliged to respect and to ensure the human rights recognized therein. The international responsibility of the State is based on acts or omissions of any power or organ of the State, regardless of its rank, that violate the American Convention.<sup>209</sup>

128. Regarding the obligation of respect, the Court has maintained that the first obligation assumed by the States Parties, pursuant to this article, is "to respect the rights and freedoms" recognized in the Convention. Thus, the notion of the restriction of the exercise of the State's power is necessarily included in the protection of human rights.<sup>210</sup>

129. However, the rights recognized in the American Convention include not only negative obligations such as refraining from violating them owing to the actions of state agents, but also require States to adopt all appropriate measures to ensure them (positive obligation).<sup>211</sup> This obligation encompasses all those measures of a legal, political, administrative and cultural nature that promote the safeguard of human rights and that ensure that eventual violations of those rights are effectively considered and dealt with as a wrongful act that, as such, is subject to the punishment of the person who commits it, and also the obligation to make full reparation to the victims for the harmful consequences.

130. In particular, this Court has established that the obligation to ensure rights supposes the obligation of States to prevent human rights violations, even those committed by private third parties. Nevertheless, a State cannot be held responsible for every human rights violation committed between private individuals under its jurisdiction, as the Court will refer to below (*infra*

<sup>209</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 164, and *Case of I.V. v. Bolivia, supra*, para. 221.

<sup>210</sup> Cf. *The Word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86, May 9, 1986. Series A No. 6, para. 21, and *Case of I.V. v. Bolivia, supra*, para. 222.

<sup>211</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 165 and 166, 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. 106.

paras. 137 to 150). It is also evident that the obligation of prevention is one of means or conduct and non-compliance is not proved by the mere fact that a right has been violated.<sup>212</sup>

131. The Convention of Belém do Pará defines violence against women<sup>213</sup> and in its Article 7 establishes State obligations to prevent, punish and eradicate violence against women, which specify and supplement the obligations that the State has in relation to compliance with the rights recognized in the American Convention, such as those established in Articles 4 and 5.<sup>214</sup> In this regard, the Court has established that States must adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, States must have an adequate legal protection framework that is enforced effectively, and prevention policies and practices that allow it to act effectively when reports are received.<sup>215</sup> The prevention strategy must be comprehensive; that is, it must prevent the risk factors and, also, reinforce the relevant institutions so that they can provide an effective response to cases of violence against women. In addition, States must adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence.<sup>216</sup> The Court has also indicated that States have the obligation to enact laws or implement the necessary measures, pursuant to Article 2 of the American Convention and Article 7(c) of the Convention of Belém do Pará, that allow the authorities to conduct an investigation with due diligence in cases of violence against women.<sup>217</sup> All this should take into account that, in cases of violence against women, States also have the general obligations contained in the American Convention and specific obligations based on the Convention of Belém do Pará, which extend to all the spheres traditionally considered private or in which the State does not intervene.<sup>218</sup> In this regard, the Court notes that, at the time of the facts, Venezuela was a party to the Convention of Belém do Pará and that the Law on Violence against Women and the Family was a first effort to incorporate the rights recognized in that international instrument at the domestic level, even though the law was more restrictive because it only covered conducts of intrafamily violence.

132. The obligation of due diligence to prevent cases of violence against women has been developed in instruments other than the Convention of Belém do Pará since before 2001.<sup>219</sup> The

<sup>212</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of I.V. v. Bolivia, supra*, para. 208.

<sup>213</sup> In its Articles 1 and 2, see *supra*.

<sup>214</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. 346, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 108.

<sup>215</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. 258, and *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary objections, merits, reparations and costs. Judgment of March 8, 2018. Series C No. 350*, para. 153.

<sup>216</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 258, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs. Judgment of February 16, 2017. Series C No. 333*, para. 243.

<sup>217</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 388, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 148. This may be done by standardizing the protocols, manuals, expert and judicial services used in the investigation of all offenses that relate to disappearances, sexual violence and murder of women, based on the Istanbul Protocol, the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and international standards on the search for disappeared persons with a gender-based perspective.

<sup>218</sup> Cf. Expert opinion provided by affidavit by Juan E. Méndez on January 24, 2018 (evidence file, volume XLIV, affidavits, folio 31251).

<sup>219</sup> Thus, the Court has already noted that "CEDAW has established that 'States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.'" *Case of González et al. ("Cotton Field"), supra*, para. 254, citing UN, Committee on the Elimination of Discrimination against Women, General recommendation No. 19, *Violence against women*, 1992, para. 9. Also, article 4 of the Declaration on the Elimination of Violence against Women (proclaimed by the United Nations General Assembly at its 85th plenary session, on December 20, 1993), indicates, *inter alia*, that "States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...] (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons." In addition, in 1995, the Beijing Declaration and Platform of Action, adopted by the Fourth World Conference on Women (at the 16th plenary session, held

Court has also referred to the guidelines developed by the United Nations Special Rapporteur on violence against women which list a series of measures to be taken by States to comply with their international obligations of due diligence in relation to prevention, namely: ratification of the international human rights instruments; constitutional guarantees of equality for women; national legislation and/or administrative sanctions providing adequate redress for women victims of violence; executive policies or plans of action that attempt to deal with the question of violence against women; sensitivity of the criminal justice system and of the police to gender-related matters; accessibility and availability of support services; existence of measures to raise awareness and modify practices that discriminate against women in the field of education and the media, and collection of data and statistics on violence against women.<sup>220</sup>

133. In this case, Venezuela had domestic laws that imposed on the public officials who usually became aware of acts that harmed the dignity of women – and specifically on those responsible for receiving reports – the obligation of due diligence to process such reports promptly and that investigations should ensure the integrity of women (*supra* para. 111).

134. Also, expert witness Kravetz indicated that the “obligation of prevention relates not only to preventing specific acts of sexual violence, but is also an obligation of the State to identify and eradicate the underlying causes of such violence and the agents who contribute to its prevalence. This means combatting the persistence of complacent attitudes and discouragement of filing reports that exists in a society; that may exist among the state institutions, and that contributes to impunity.”<sup>221</sup>

135. Moreover, since some acts of violence against women may constitute acts of torture or other cruel, inhuman or degrading treatment, the Court recalls that the ICPPT establishes obligations to prevent and punish torture and States must adopt “within their jurisdiction” the effective measures required to this end.

136. In sum, when evaluating compliance with the state obligation of due diligence for prevention, the Court will take into account that the facts refer to a situation of violence against women, a circumstance that required an enhanced due diligence that transcended the particular context of this case and resulted in the need to adopt a range of different measures intended, in addition to preventing specific acts of violence, to eradicate any act of gender-based violence in future. In this regard, the Court has already stressed the importance of recognizing, making visible and rejecting negative gender stereotypes, which are one of the causes and consequences of gender-based violence against women, in order to modify the socio-cultural conditions that permit and perpetuate the subordination of women.<sup>222</sup>

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on September 15, 1995) indicated – in paragraph 29 of the Declaration – the commitment of the Governments to, *inter alia*, “[p]revent and eliminate all forms of violence against women and girls.” Paragraph 124 (b) and (d) of the Platform of Action indicated the obligation of Governments to adopt measures to prevent and investigate acts of violence against women, even those perpetrated by private persons. Meanwhile, the United Nations Special Rapporteur on violence against women, its causes and consequences, determined that general international human rights law established the responsibility of the State for violations of women’s rights by private citizens. UN, *Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, E/CN.4/1995/42, November 22, 1994, paras. 5 and 99 to 102.

<sup>220</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, para. 258, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 256, citing UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Violence against women in the family*, E/CN.4/1999/68, March 10, 1999, para. 25.

<sup>221</sup> Expert opinion provided by Daniela Kravetz during the public hearing before the Inter-American Court on February 6, 2018. See also, Written version of the expert opinion provided by Daniela Kravetz during the public hearing before the Inter-American Court on February 6, 2018 (merits file, volume I, folio 836).

<sup>222</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, para. 401, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, paras. 180 to 183.

## B.2 Attribution to the State of responsibility for acts of private individuals

137. The **Commission** and the **representatives** both referred to two criteria to establish the State's responsibility for the violation of Articles 5, 7 and 11 of the American Convention and 7 of the Convention of Belém do Pará. On the one hand, they used a risk analysis to determine the scope of the obligation of due diligence for prevention and protection and, on the other, they argued that a situation of acquiescence and complicity had been constituted in this case. Meanwhile, the **State** argued that it could not be held responsible for the acts of private individuals because Venezuela "was not and should not have been aware of what was happening to Linda Loaiza López Soto before she was rescued by police authorities."

138. Although, in its case law, the Court has recognized that "international responsibility may also arise from acts of private individuals that cannot, in principle, be attributed to the State,"<sup>223</sup> it is also true that a State cannot be held responsible for all the human rights violations committed between private individuals within its jurisdiction. Indeed, the nature *erga omnes* of the treaty-based guarantee obligations of the States does not entail their unlimited responsibility for all acts or deeds of individuals.<sup>224</sup> In other words, even though an act, omission or deed of an individual has the legal consequence of the violation of certain rights of another individual, this cannot automatically be attributed to the State, because it is necessary to take into account the particular circumstances of the case and the implementation of the said obligation of guarantee.<sup>225</sup>

139. The formula used by the Inter-American Court to determine the scope of those obligations and to attribute responsibility to the State for failing in its duty of due diligence to prevent and protect private individuals or a group of individuals from the acts of other individuals was developed starting with the *Case of the Pueblo Bello Massacre v. Colombia*. In that case, it asserted that the "obligations to adopt prevention and protection measures for private individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger."<sup>226</sup>

140. Consequently, based on its consistent case law,<sup>227</sup> and in order to establish non-compliance with the obligation to prevent violations of the rights to life and personal integrity, the Court must verify that: (i) the state authorities knew or should have known of the existence of a real and imminent risk to the life and/or personal integrity of a specific individual or group of individuals,

<sup>223</sup> *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 111, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 77.

<sup>224</sup> *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 123, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs.* Judgment of March 13, 2018. Series C No. 352, para. 161.

<sup>225</sup> *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 123, 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. 140.

<sup>226</sup> *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 123, citing ECHR, *Case of Kiliç v. Turkey*, No. 22492/93. Judgment of March 28, 2000, paras. 62 and 63, and *Osman v. The United Kingdom*, No. 23452/94. Judgment of October 28, 1998, paras. 115 and 116.

<sup>227</sup> *Cf. Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of March 29, 2006. Series C No. 146, para. 155; *Case of González et al. ("Cotton Field") v. Mexico, supra*, paras. 283 and 284; *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 188; *Case of Castillo González et al. v. Venezuela. Merits.* Judgment of November 27, 2012. Series C No. 256, para. 128; *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 124; *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 143; *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 527; *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 109, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 161.

and (ii) those authorities failed to adopt the necessary measures, within their terms of reference, that reasonably considered, could be expected to prevent or avoid that risk.

141. In short, for the State to be held responsible for failure to comply with an obligation of due diligence to prevent violations and to protect the rights of a specific individual or group of individuals in relation to acts of other individuals, it is necessary, first, to establish that the State was aware of a real and imminent danger and, second, to evaluate whether reasonable measures were adopted to prevent or to avoid the danger in question. When examining the reasonableness of the actions implemented by the State, the Court assesses, on the one hand, those that address the problem of violence against women in general and, on the other, those adopted in the specific case once the State became aware of the risk of serious harm to the physical, sexual and/or psychological integrity of the woman, and even to her life, which activates the duty of strict or enhanced due diligence.

142. Thus, the Court has established that the obligation of strict due diligence in cases of the disappearance of women requires conducting exhaustive search activities. In particular, the prompt and immediate actions of the police, and prosecution and judicial authorities are essential, ordering the opportune and necessary measures to determine the victim's whereabouts. Appropriate reporting procedures must exist that result in immediate effective investigations. The authorities must presume that the disappeared person is alive until the uncertainty about their fate ends.<sup>228</sup>

143. To determine whether the State was or should have been aware of the danger for a specific individual or group of individuals, the Court has taken different elements and indications into account, based on the circumstances of the case and the context in which it occurred. In cases of violence against women, the Court has analyzed the particular circumstances of each case, as regards how the State was informed of the facts, including the relevant context, and focusing on the reports filed or on the possibility of persons connected to the victims filing reports. In the *Case of González et al. ("Cotton Field")*, the Court understood that the State had been aware of the specific risk for the victims based on the reports of their disappearance filed before the state authorities, added to the context of violence and discrimination against women of which the State was aware.<sup>229</sup> In the *Case of Véliz Franco*, the Court established the State's awareness following the filing of a report by the victim's mother in which, although she did not indicate explicitly that María Isabel had been the victim of a wrongful act, it was reasonable to understand that she was in danger. The Court indicated that an additional factor that reinforced the State's awareness was constituted by the generalized impunity that existed in the country.<sup>230</sup> Lastly, in the *Case of Velásquez Paiz*, the Court considered that the telephone call that Claudina's parents made to the National Civil Police and the information provided to the patrol that arrived in response was sufficient proof. Added to this, the Court took into account the context of increased homicidal violence against women in Guatemala and the exacerbated acts of violence and cruelty carried out on the bodies of many of the victims.<sup>231</sup>

144. In addition, expert witness Daniela Kravetz indicated in the proceedings before this Court that:

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<sup>228</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 283, and *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, para. 427. Similarly, Expert opinion provided by Daniela Kravetz during the public hearing before the Inter-American Court on February 6, 2018.

<sup>229</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, paras. 283 and 284.

<sup>230</sup> Cf. *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 141 to 146.

<sup>231</sup> Cf. *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 121.

[...] there are certain indicators of predictability that can alert the authorities to the existence of a real and imminent risk for the victim and the source of these indicators of predictability may differ. It will depend on the circumstances of each case. The situation of the kidnapping or disappearance of a woman is one of the indicators of predictability, [...] bearing in mind that the definition of violence against women [in the Convention of Belém do Pará] lists kidnapping as one of the forms of violence against women and this situation of the kidnapping or disappearance of a woman is a factor that, when it occurs, may point to a greater risk, a greater probability that the victim will be harmed; in particular, by attacks on her physical integrity and her sexual integrity. This is because these situations constitute scenarios in which women are particularly vulnerable or exposed to this type of violence. Therefore, when the disappearance or kidnapping of a woman is reported, the State has a duty of strict due diligence in the sense that it should react immediately, taking all appropriate and effective measures to respond promptly to the report, to identify the whereabouts of the victim, and to avoid harm to her.<sup>232</sup>

145. The Court considers that, indeed, the report of the kidnapping or disappearance of a woman should activate the State's duty of enhanced due diligence, because this circumstance give rise to a scenario conducive to the perpetration of acts of violence against women, and entails a particular vulnerability to suffering acts of sexual violence that, *per se*, entail a risk to the life and the integrity of the woman, regardless of a specific context. This is recognized by the Convention of Belém do Pará in its Article 2, which lists kidnapping as one of the conducts included in the concept of violence against women.

146. That said, acquiescence would result in a more direct degree of responsibility than that derived from the risk analysis, because it signifies the State's consent to the action of a private individual, either by deliberate inaction or by its own actions that have created conditions that allowed the act to be executed by individuals.<sup>233</sup> The Court has indicated that the decisive factor is to elucidate "whether a specific violation [...] has taken place with the support or the tolerance of the public authorities or whether they have acted in such a way that the offense has been committed without any prevention, or with impunity."<sup>234</sup>

<sup>232</sup> Expert opinion provided by Daniela Kravetz during the public hearing before the Inter-American Court on February 6, 2018.

<sup>233</sup> In the Inter-American Court's case law, the cases of acquiescence generally refer to the actions of paramilitary agents in Colombia. In the *Case of the 19 Traders*, the Court found Colombia responsible based on its collaboration in acts that preceded the wrongful act of third parties, the State's acquiescence to the meeting of the third parties in which the act was planned, and the State's active collaboration in the execution of the wrongful acts of the third parties. *Cf. Case of the 19 Traders v. Colombia. Merits, reparations and costs.* Judgment of July 5, 2004, Series C No. 109, para. 135. In the *Case of the "Mapiripán Massacre,"* the Court concluded that Colombia was responsible based on the coordination of acts and omissions between state agents and private individuals aimed at the perpetration of the massacre because, even though it was perpetrated by paramilitary groups, it could not have been executed without the assistance of the State's Armed Forces. *Cf. Case of the "Mapiripán Massacre" v. Colombia, supra*, para. 123. In the *Case of the Ituango Massacres*, the Court found the State responsible based on the Army's acquiescence to, or tolerance of, the acts perpetrated by paramilitary agents. *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 1, 2006. Series C No. 148, paras. 132, 150, 153, 166, 197 and 219. Also, in the case of *Operation Genesis*, the Court determined that the State had been acquiescent in the perpetration of the wrongful act based on a "causality test," owing to which it considered that a theory that the wrongful act could have been committed without the State's assistance was inadmissible. *Cf. Case of the Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C No. 270, para. 280. In the cases of *Kawas Fernández v. Honduras* and *Gutiérrez and family v. Argentina*, the Court stressed a series of indications of the participation of state agents in the respective homicides, even when the perpetrators were not fully identified in the domestic sphere, and also the obstruction of the investigation, to conclude that the State could be attributed with responsibility. *Cf. Case of Kawas Fernández v. Honduras. Merits, reparations and costs.* Judgment of April 3, 2009. Series C No. 196, paras. 84 to 99, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 271, paras. 80 to 90. In the *Case of Vereda La Esperanza*, the Court concluded that the forced disappearances that occurred in Vereda La Esperanza could be attributed to the State owing to the support and acquiescence of law enforcement agents to the actions of the paramilitary group, which facilitated the raids on Vereda La Esperanza and encouraged or permitted the perpetration of the acts, contrary to an international obligation; thus constituting the international wrongful act of forced disappearance. *Cf. Case of Vereda La Esperanza v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 341, para. 168.

<sup>234</sup> *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 173, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment August 27, 2014, para. 181.



147. Indeed, since its first judgment on merits, the Court has asserted that:

[...] in principle, any violation of the rights recognized by the Convention committed by an act of the public authorities or by persons who act using their official powers, can be attributed to the State. However, this does not define all the situations in which a State is obliged to prevent, investigate and punish human rights violations, or all the cases in which its responsibility may be engaged owing to a violation of those rights. An unlawful act that violates human rights and that, initially, cannot be attributed to a State (for example, because it is the act of an individual or because the person responsible for the violation has not been identified) may engage the international responsibility of the State, not for the act itself, but for the lack of due diligence to prevent the violation or the failure to respond to it as required by the Convention.<sup>235</sup>

148. The Court has also established in its case law that “to establish state responsibility for violating the obligation to respect rights in relation to the actions of third parties, a general context of collaboration and acquiescence is not sufficient; rather it is necessary that, in the specific case, the State’s collaboration or acquiescence is revealed by the circumstances of the case.”<sup>236</sup>

149. In this regard, and specifically in relation to torture, expert witness Juan E. Méndez indicated that:

[t]he State’s indifference or inaction constitutes a form of acquiescence or *de facto* authorization of torture. This principle applies, in particular, when the State fails to protect victims of domestic violence or makes no effort to prevent gender-based violence. The lack of protection appears when the State fails to protect victims from prohibited conducts; when it fails to act to end torture when it is reasonably aware that it may be perpetrated, and when the State does not proceed to investigate and prosecute the violations committed. This is so because its indifferences to such facts indicates its consent, acquiescence and, at times, justification of the violence.<sup>237</sup>

150. Consequently, pursuant to the allegations made in this case, the Court will now proceed to examine the arguments submitted and to determine, based on the particular circumstances of this specific case and taking into account the foregoing criteria, the State’s awareness of the danger, and the reasonableness of the measures adopted, and will also evaluate, based on the arguments of the Commission and the representatives, the State’s supposed acquiescence, complicity and/or tolerance of the perpetration of acts by private individuals.

### *B.3 Analysis of attribution of responsibility in this specific case*

151. As previously established, international human rights law imposes an obligation of strict due diligence to prevent violence against women. This obligation entails, on the one hand, the adoption of general institutional and legislative measures and, on the other, due diligence in the state response to the report of the disappearance or kidnapping of a woman. The Court notes that, in this case, it has been verified that the State failed to comply with either of these aspects.

152. The Court notes that in Venezuela, at the time of the facts, the institutional and legislative framework for the prevention, investigation and punishment of violence against women was deficient. First, response to cases of violence against women was circumscribed to acts that took place within the family. But, even in this situation, the public officials responsible for receiving reports lacked the technical training to collaborate with due diligence in the State’s response to the report of the disappearance of a woman, taking into account the risk that this circumstance entailed for her life and integrity and even the possibility that she could be forced into prostitution

<sup>235</sup> *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 172.

<sup>236</sup> *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of November 22, 2016. Series C No. 352, para. 180, and Case of Vereda La Esperanza v. Colombia, supra*, para. 152.

<sup>237</sup> Expert opinion provided by affidavit by Juan E. Méndez on January 24, 2018 (evidence file, volume XLIV, affidavits, folio 31249).

in slave-like conditions. The Court also notes that the Criminal Code in force was extremely discriminatory against women, especially in relation to the definition of sexual offenses. For example, it established differentiated and more severe punishments for adultery if a woman incurred in this conduct; it attenuated the penalties when sexual offenses were committed against a woman involved in prostitution, and established the extinction of the punishment if the perpetrator of the crime of rape married his victim. In addition, the legal right protected in sexual offenses was not sexual liberty and a woman's integrity, but "morality and decency." Furthermore, and as will be examined below (*infra* para. 253), the legal definition of torture was insufficient because it was circumscribed to individuals in custody. Consequently, the State had not adapted its laws and practice to the international instruments that it had ratified.

153. Regarding the obligation to act with due diligence to comply with the duty of prevention in this specific case, as previously described, the factual dispute is centered on determining whether the state authorities knew or should have known of the existence of a real and immediate risk to the integrity, liberty, dignity, autonomy and privacy of Linda Loaiza López Soto.

154. Indeed, both the Commission and the representatives argued that, on the day following the disappearance or kidnapping – March 28, 2001 – and on at least six further occasions, Ana Secilia López Soto, Linda Loaiza's sister had tried to file a report with the former Judicial Technical Police located in Urdaneta Avenue in Caracas, without this being received. The report was formalized two and a half months after the disappearance, owing to the death threats against Ana Secilia López Soto. The evidence substantiating the attempts to file the reports corresponds, above all, to the statements of Ana Secilia herself and other members of the family during the criminal proceedings. The State argued that it was not and did not have to be aware, because there was no record that any attempt had been made to file a report on the situation of Linda Loaiza López Soto between March 28, and July 19, 2001, the date on which she was rescued. It also indicated that it was not incumbent on the State to prove that "the report was not filed on March 28, 2001."

155. As previously described (*supra* para. 143), a written record of the filing of a report is not the only way of proving awareness of the risk; rather, the statements of those who assert that they have filed such reports may be sufficient, provided that such statements are consistent as regards fundamental aspects. In addition, the Court underscores that, according to its case law,<sup>238</sup> the statements of the presumed victims cannot be rejected merely because they have an interest in the result of the proceedings, but must be assessed together with the other probative elements. This standard is consonant with the system for assessment of the evidence adopted by the Court, which is sound judicial discretion, under which the judge freely examines the evidence incorporated into the case file in accordance with the rules of logic and based on experience, without the probative weight of each of them being predetermined.

156. That said, in this case, it is argued that Ana Secilia López Soto went to the offices of the Judicial Technical Police located on Urdaneta Avenue in Caracas to inform the police authorities of her sister's situation. However, there is no documentary record of this. Moreover, in addition to denying that a report had been filed, the State indicated that there were certain contradictions and inconsistencies in the different statements made by Ana Secilia, which did not allow the circumstances of time and place at which this report had been filed to be ascertained. However, the representatives submitted to these proceedings, copy of a report filed before the Judicial Technical Police on May 26, 2001, by Ana Secilia against the aggressor, which was processed as a death threat.<sup>239</sup> Despite this being requested, the State failed to submit a complete copy of this document

<sup>238</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>239</sup> Cf. Report filed on May 26, 2001 (merits file, volume I, folio 910).

or of any other report that might have been filed.

157. The evidence provided to the proceedings before this Court includes four statements made by Ana Secilia at different times. The first before the police, immediately after the rescue of Linda Loaiza; the others before the domestic courts during the first and second criminal trials, and the last in the hearing before this Court. The Court notes that, with the exception of the statement made at the police station, in the other statements, Ana Secilia was consistent in indicating that she had gone to the police to report her sister's disappearance prior to the report on the threats.<sup>240</sup> The following statements are also consistent as regards the place she went to – that is, the police station located on Urdaneta Avenue in Caracas. Even though there are some differences in the dates and the number of times that Ana Secilia said she had gone to file a report, she evidently went to the police on more than one occasion. Lastly, Ana Secilia has been consistent in indicating that, prior to May 2001, when she filed the complaint due to the threats, the response she received from the police agents was always that it was a relationship problem and that she should not interfere. In short, her complaints were not processed, which reveals that negative gender stereotypes existed according to which the State should not intervene in relationship problems.

158. However, it is paradoxical that the police agents invoked this circumstance, especially when it is considered that the Law on Violence against Women and the Family that was in force at the time focused specifically on cases of intrafamily violence or violence in interpersonal relations, so that it can be inferred that, despite the existence of a specific legal framework, this was not effective as regards receiving complaints and ensuring the speed required to respond to this type of situation, at least in this particular case.

159. Added to this, the Court considers that the inconsistencies noted in the statements that Ana Secilia made in the legal proceedings compared to the first statement made before the police do not disprove her assertions that she had gone to report Linda Loaiza's situation on at least one other occasion before May 2001; however, it is not possible to specify the exact date. This is corroborated by the context in which the facts took place in which this type of complaint was not processed.<sup>241</sup>

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<sup>240</sup> In the statement she made in the first domestic proceedings, Ana Secilia López Soto indicated: "I tried [to file the report] on six occasions and it was only about two and a half months later that my report was received. [...] I went several times, but the date on which they took a statement from me was about two and a half months later." Statement by Ana Secilia López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5946 and 5949). In the statement she made in the second public oral hearing, Ana Secilia indicated that: "[f]ollowing the disappearance, I filed two reports; as I had obtained the number [of Carrera Almoina], I gave it to the police; they told me that they must be partners [...]. I filed the report at the beginning of April and the other in March, I can't remember the exact dates." Statement by Ana Secilia López Soto in the record of the public oral hearing of the Seventh Trial Court of the Caracas Metropolitan Area on April 8, 2006 (evidence file, volume IX, annex 3 to the Merits Report, folio 5680). In the statement by Ana Secilia López Soto at the public hearing before this Court, she indicated that: "[a]fter I had filed the first report – gone to file the report for the first time – the second day, I received a phone call from Luis Carrera Almoina telling me that he was my sister's boyfriend. [...] I went again in the late evening, 48 hours had already passed, I went to give the information [of the phone call]. I went on other occasions because I wanted some kind of response, but this police unit never gave me a response. [...] I had already been to the Technical Police Unit about four times; I went again because I had received a phone call threatening to kill me [...]. The fifth time they received my report; in reality I went to this police station six times; my report was there but this police unit did not respond in any way and then, a sixth time, there was no response [...]. Of the six occasions, only once did they give me a receipt [...]. I went to the police station six times and they only received the report once."

<sup>241</sup> There is even testimony in this regard provided in the domestic criminal proceedings. Thus, the witness Nohelia María Gomes Rodríguez, a neighbor of the Urbanización El Rosal in Caracas, stated that "some nights, [she] woke up alarmed because she heard a girl crying, moaning; at first [she] thought that someone had turned up the television volume and it was a terror film, but then [she] heard it again; [she] did not call or pass on any information because [she] thought it a family problem and because [she] knew that they did not respond to that type of call [...]." Statement by Nohelia María Gomes Rodríguez recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5902).

160. Indeed, the Court notes that, at the time of the facts, the international agencies were concerned owing to the lack of effective measures to respond to the high rates of violence against women revealed by the incidents reported to the authorities,<sup>242</sup> and also to the reigning impunity, because the cases never advanced beyond the initial stages.<sup>243</sup> Although there were some official figures on the number of cases reported,<sup>244</sup> there were no official data on this phenomenon.<sup>245</sup> The under-recording of cases of sexual violence was the result of two main factors: the dissuasion or lack of incentive for women to file reports or continue with complaints concerning such acts and the dismissal of the complaints when there was no physical evidence of violence.<sup>246</sup>

<sup>242</sup> The 2001 report of the United Nations Development Programme (UNDP) indicated that the phenomenon of violence against women in Venezuelan had taken on “a dramatic cast” because, according to data provided by the Statistics Division of the Judicial Technical Police in the context of couple relationships, only in 1997, every 12 days a man was responsible for the death of a woman; in that year, 7,426 sexual offenses against women had been recorded, including rape and kidnapping, and this resulted in a total of 11.9 women raped every day in Venezuela; however, it clarified that the figures were the result of the complaints filed before the country’s police agencies. Cf. UNDP Regional Project, National reports on the situation of gender-based violence against women. *Informe Nacional*, May 1999 (evidence file, annex to the representatives’ brief on merits before the IACHR, volume VI, folios 2872 and 2873). See also, Human Rights Committee, *Consideration of Reports submitted by States Parties under Article 40 of the Covenant. Concluding observations: Venezuela*, CCPR/CO/71/VEN, April 26, 2001, para. 17, and Committee on Economic, Social and Cultural Rights, *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant. Concluding observations: Venezuela*, E/C.12/1/Add.56, May 21, 2001, para. 16.

<sup>243</sup> The United Nations Human Rights Committee expressed its concern about the level of violence against women recorded in Venezuela in 2001, stressing the many reported cases of kidnapping and murder of women that had not resulted in arrests or prosecution of those responsible. Cf. Human Rights Committee, *Consideration of Reports submitted by States Parties under Article 40 of the Covenant. Concluding observations: Venezuela*, CCPR/CO/71/VEN, April 26, 2001, para. 17. See also, Committee on Economic, Social and Cultural Rights, *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant. Concluding observations: Venezuela*, E/C.12/1/Add.56, May 21, 2001, para. 16.

<sup>244</sup> The 2001 Annual Report of the Ministry of the Interior and Justice indicated that the Judicial Technical Police had received reports of 5,858 cases of the offenses referred to as “against the decency and good order of the family,” 4,979 of which were referred for their subsequent investigation to the prosecutors; the same year, the Ombudsman’s Office received 787 complaints of violence against women, 144 of which occurred within the Caracas Metropolitan Area. Also, over the period 2000-2003, the Office for the Defense of Women’s Rights received a total of 11,456 complaints – that is an average of 2,864 complaints a year. Also, the free help line “0-800-Mujeres” reported that it had received a yearly average of 2,486 complaints from 1999 to 2003. Cf. 2001 Annual Report of the Ministry of the Interior and Justice of the Bolivarian Republic of Venezuela (evidence file, volume XLVI, helpful evidence, folio 31401), and Digital presentation by the State during the public hearing before the Inter-American Court on February 6, 2018 (merits file, volume I, folios 932 to 935). See also United Nations Development Programme, National reports on the situation of gender-based violence against women. *Informe Nacional Venezuela*, May 1999 (evidence file, volume VI, annexes to the representatives’ brief on merits before the IACHR, folio 2872).

<sup>245</sup> The United Nations Development Programme indicated that the information available on domestic and sexual violence against women was “limited because the data obtained only relate to partial records.” Cf. United Nations Development Programme, National reports on the situation of gender-based violence against women. *Informe Nacional Venezuela*, May 1999 (evidence file, volume VI, annex to the representatives’ brief on merits before the IACHR, folio 2870). Similarly, UN, Committee on the Elimination of Discrimination against Women, *Concluding comments: Bolivarian Republic of Venezuela*, CEDAW/C/VEN/CO/6, January 31, 2006, para. 25 *in fine* (evidence file, volume XVI, annex 4C to the pleadings and motions brief, folio 10740); Inter-American Commission of Women – Follow-up Mechanism to the Belém do Pará Convention (MESECVI). *Country report approved by the Committee of Experts on Violence*, OEA/Ser.L/II.7.10, June 25, 2008 (evidence file, volume XVI, annex 4K to the pleadings and motions brief, folio 3732); Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II; Doc. 54, December 30, 2009, para. 945 (evidence file, volume VII, annexes to the representatives’ brief on merits before the IACHR, folio 4502); Venezuelan Observatory on Women’s Human Rights, *Report on the Bolivarian Republic of Venezuela – Twelfth session of the Universal Periodic Review* – October 2011 (evidence file, volume XII, annex 108 to the Merits Report, folio 7989), and UN, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela*, CEDAW/C/VEN/CO/7-8, November 14, 2014, para. 18 (evidence file, volume XVI, annex 4B to the pleadings and motions brief, folio 10727).

<sup>246</sup> The report of the United Nations Development Programme, after indicating that, from 1994 to 1997, a total of 29,471 cases of sexual offenses had been reported – a number significantly lower than for the preceding period (1989-1993) because the number of reports during that period amounted to 41,401 – clarified that those figures were an under-recording of the problem because they only corresponded to the cases reported. That was due to the numerous difficulties that women faced when filing complaints for this type of act, which meant that many of them decided not to come forward. Regarding how cases of sexual violence against women were processed, it indicated that reports of this type of offense were

161. The documentary evidence reveals that, on May 26, 2001, Ana Secilia filed a report before the Judicial Technical Police. Although it has been stated that this report only corresponded to the death threats against her, the Court notes that, on that occasion, Ana Secilia also informed the police agents about her sister's situation. To reach this conclusion, the Court takes into account, first, that this report was processed by the Missing Persons Department located in the said police station, because the copy was in the files of that department. Also, Ana Secilia herself explicitly mentioned, in her first statement before the Chacao Police Station on July 27, 2001, that, in May, she had gone to the police authorities and "notified [her] sister's situation."<sup>247</sup>

162. Regarding this document, it is important to stress with that it was obtained in October 2001 from the files of the Missing Persons Department attached to the Judicial Technical Police as the result of a request to the police agencies by Prosecutor No. 33, who initially intervened in the investigation of the facts after Linda Loaiza had been rescued. This demonstrates that the said department had a filing system for the complaints lodged before it. However, in answer to the Court's request for helpful evidence (*supra* para. 14), the State indicated that the records of those who had filed reports or complaints were not available, and nor was the record of any other complaint filed by Ana Secilia, because "every 10 years, many administrative documents and paperwork are disposed of, mainly for reasons of physical space." Despite this assertion, the State did not provide or cite the administrative regulations that authorize this procedure.

163. In this regard, it should be repeated that, although it is the plaintiff who bears the burden of proving the facts on which his or her allegations are founded, in proceedings on human rights violations the State's defense cannot be based on the plaintiff's impossibility of providing evidence when it is the State that controls the means to clarify facts that occurred within its territory (*supra* para. 53). Therefore, the possibility that other reports were filed cannot be rejected because, even though the fact to be proved is negative – the non-reception or processing of the reports – it is also possible to prove the positive fact that could provide evidence that Ana Secilia had gone to the former Judicial Technical Police located in Urdaneta Avenue in Caracas before May 26, 2001, and the State did not provide evidence to prove the contrary; it merely relied on the supposed absence of records.

164. Based on the foregoing, the Court concludes that, even though it is not possible to determine with certainty the date on which Ana Secilia first reported the disappearance of her sister, at least as of May 26, 2001, the State was aware of a risk to the integrity, liberty, dignity, autonomy and privacy of Linda Loaiza López Soto.

165. Accordingly, the Court considers that, since the State was aware of the risk from the time Ana Secilia reported her sister's situation, this created an obligation for Venezuela to act with due diligence in the understanding that, as already indicated, the disappearance or kidnapping of a woman was involved and this could result in the perpetration of different types of violence and, in particular, violence of a sexual nature. This was also corroborated in this specific case by the existence of other factors, such as that her sister was reporting death threats made by the person who was identified as the perpetrator of the disappearance or kidnapping, which could indicate that this was someone with a violent profile.

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not processed appropriately, unless "physical evidence" was verified; to the contrary, "it was considered that sexual violence had not occurred," and this led to the closure of the police investigation. Cf. UNDP, National reports on the situation of gender-based violence against women. *Informe Nacional Venezuela*, May 1999 (evidence file, volume VI, annex to the representatives' brief on merits before the IACHR, folios 2872, 2873 and 2902).

<sup>247</sup> Statement by Ana Secilia López Soto before the Chacao Police Station on July 27, 2001 (evidence file, volume XLVI, helpful evidence, folio 31422).

166. That said, the Court emphasizes that, contrary to other cases, in the instant case the police authorities not only knew of the risk for Linda Loaiza, but also had information on the identity of the perpetrator, his physical description and his telephone number, which was noted in the complaint filed by Ana Secilia on May 26, 2001. Therefore, the State was not only aware of the dangerous situation in which Linda Loaiza found herself, but had a greater possibility of acting and interrupting the course of events because it knew the identity of the perpetrator. In addition, the Court notes that, as revealed by the statements made during the proceedings, the person denounced was the son of a public figure in Venezuela. Indeed, this circumstance was mentioned by Linda Loaiza at the time of her rescue and even by some of the doctors who treated her at the Caracas University Hospital.<sup>248</sup> This was also mentioned by the Public Prosecution Service when bringing charges against Luis Antonio Carrera Almoina.<sup>249</sup> Several newspaper articles also mention that the aggressor was the son of someone who, at that time, was a university president. Also, in their statements when testifying in the domestic proceedings, the neighbors in the village of Petare – one of the many places in which Linda Loaiza was held captive – mentioned the esteem in which they held the aggressor’s father.<sup>250</sup>

167. In this specific case, the Court considers that the failure to comply with the obligation of due diligence was evident, because the State knew the identity of the aggressor and could have taken specific measures in order to neutralize the risk. The police agents should have conducted measures of investigation to confirm the personal data of the accused in the public records, determine where he lived, corroborate the ownership of the telephone number provided in the complaint and the address the bills were sent to, and obtain lists of incoming and outgoing calls, all in order to identify the residence of the accused and to proceed to make discreet inquiries about the facts that had been reported.

168. To the contrary, as already established, on being made aware of the situation, and having information on the identity and telephone number of the accused, the police agents merely tried to call him by telephone (*supra* para. 68). And, according to Ana Secilia, the police agent told her that she “was trying to interfere in a couple’s relationship and that [...] he was going to call that person and that [...] then he would return for more information.”<sup>251</sup> This action led to reprisals for Linda Loaiza, who declared that her aggressor became aware of the complaints and, therefore, the violence increased.<sup>252</sup> The Court has no information that would indicate that, apart from the said measures, the police undertook other actions to investigate or to try and locate the victim’s whereabouts or even that they requested the intervention of a jurisdictional organ.

169. Based on all the facts examined above, the Court finds that the State cannot be considered

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<sup>248</sup> Cf. Police record of July 19, 2001, No. 2001-1540, of the Services Office of the Operations Division of the Chacao Municipal Police of the State Miranda (evidence file, volume IX, annex 4 to the Merits Report, folios 5824 and 5825); Statement by Giovanni José Chicco Salas recorded in the judgment of the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5820 to 5824), and Statement by Alfredo José Saldeño Madero recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5868 and 5869). See also, Statement by Olaf Sander Montilla in the record of the public oral hearing of the Seventh Trial Court of the Caracas Metropolitan Area of February 8, 2006 (evidence file, volume IX, annex 3 to the Merits Report, folio 5643).

<sup>249</sup> Cf. Request presented by Prosecutor No. 33 of the Public Prosecution Service of the Caracas Metropolitan Area to the First Instance Oversight Court of the same judicial circuit on August 22, 2001 (evidence file, volume XXV, annex to the State’s answering brief, folio 16765).

<sup>250</sup> Cf. Statements by Jorge Luis González and Iginio Manuel Rivas in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5961 and 5967).

<sup>251</sup> Statement made by Ana Secilia López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>252</sup> Cf. Statement made by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018.

directly responsible for the facts suffered by Linda Loaiza; rather, its responsibility arises from the insufficient and negligent reaction of its public officials who, on becoming aware of the risk, failed to take the measures that could reasonably have been expected and, therefore, failed to comply with the duty of due diligence to prevent or interrupt the course of the events; moreover, their actions also alerted the aggressor. This, added to the subsequent total failure to adequately prevent the physical, verbal, psychological and sexual abuse suffered by Linda Loaiza, despite knowing the identity of the accused, reveals a tolerant attitude in the face of a situation that, owing to its characteristics, constituted a risk of violence against women.

170. Based on the above, the Court considers that the State incurred international responsibility, at least from May 26, 2001, onwards, for the acts of violence committed by private individuals against Linda Loaiza López Soto, by tolerating acts that violated her rights to personal integrity, personal liberty, dignity, autonomy and privacy, recognized in Articles 5(1), 7 and 11 of the American Convention, in relation to the obligations established in Article 1(1) of this instrument and Article 7(a) and 7(b) of the Convention of Belém do Pará.

171. The Court will now address the arguments that the facts should be characterized as sexual slavery and torture and attributed to the State.

#### *B.4 State responsibility for sexual slavery*

172. The Court recalls that the representatives may allege the violation of rights other than those submitted to the consideration of the Court by the Commission, provided they respect the factual framework established by the latter, because the presumed victims are titleholders of all the rights recognized in the Convention.<sup>253</sup> On this basis, the Court will now address the arguments of the representatives that these facts should be categorized as sexual slavery and that the State violated Article 6 of the Convention, in relation to Articles 1(1), 3, 5, 7, 11 and 22 of this instrument.

173. Article 6(1) of the Convention stipulates that: “[n]o one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.”

174. The Court, in the *Case of the Hacienda Brasil Verde Workers*, affirmed that the two basic elements to define a situation of slavery were: (i) the situation or condition of a person, and (ii) the exercise of any or all the powers attaching to the right of ownership; in other words, the enslaver exercises power or control over the enslaved person to the point of obliterating the victim’s personality.<sup>254</sup>

175. To assess the manifestation of the so-called “powers attaching to the right of ownership,” the Court has listed a series of components that should be taken into account: (a) the restriction or control of an individual’s autonomy; (b) the loss or restriction of freedom of movement; (c) the accruing of some gain to the perpetrator; (d) the absence of the victim’s consent or free will, or it is rendered impossible or irrelevant by the threat or use of force or other forms of coercion, the fear of violence, deception or false promises; (e) the use of physical force or psychological oppression; (f) the victim’s position of vulnerability; (g) detention or captivity, and (h) exploitation.<sup>255</sup> In addition, expert witness Kravetz stressed that it was also relevant to take into consideration the victims’ perspective when interpreting their perception of the coercion exercised

<sup>253</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 Ramírez Escobar et al. v. Guatemala, supra*, para. 267.

<sup>254</sup> Cf. *Case of the Hacienda Brasil Verde Workers v. Brazil, supra*, para. 269.

<sup>255</sup> Cf. *Case of the Hacienda Brasil Verde Workers v. Brazil, supra*, para. 272.

over them.<sup>256</sup>

176. Sexual slavery is a particular form of slavery in which sexual violence<sup>257</sup> plays a preponderant role in the exercise of the powers attaching to the right of ownership of a person. In such cases, factors related to the limitation of the victim's sexual autonomy and activity are strong indicators of the exercise of control. Sexual slavery differs from other similar slavery practices that are not of a sexual nature. Also, the element of slavery is determinant to differentiate such acts from other forms of sexual violence. The identification of such conducts as a form of slavery makes all the obligations associated with the nature *jus cogens* of its prohibition applicable; that is, the absolute and non-derogable nature of those obligations.<sup>258</sup>

177. The United Nations Special Rapporteur on contemporary forms of slavery has conceived sexual slavery as a form of slavery when defining this as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual violence."<sup>259</sup> In this regard, she asserted that the adjective "sexual" stressed the element of sexual violence in the exercise of the powers attaching to the right of ownership of a person, so that the "limitations on autonomy, [and the] power to decide matters relating to one's sexual activity" and bodily integrity were determinant factors of a situation of sexual slavery.<sup>260</sup>

178. In this understanding, the Court interprets that sexual slavery, as a human rights violation, is included in the prohibition of Article 6 of the Convention. And this is regardless of the existence of a specific context. In addition, the Court has asserted that "when a situation of slavery is verified, there has been a substantial restriction of the juridical personality of the individual concerned and it could also include violations of the rights to personal integrity, personal liberty and dignity, depending on the specific circumstances of each case."<sup>261</sup> In the instant case, the Court understands that in addition to Articles 3, 7 and 22 of the Convention, Articles 5 and 11 of this instrument are relevant because there is an intrinsic connection between physical and psychological integrity and personal autonomy and the freedom to decide matters relating to one's own body and sexuality.<sup>262</sup> In this regard, expert witness Kravetz stated that "[i]mplicit in a situation of sexual slavery are limitations to autonomy, freedom of movement, and the power to decide matters relating to one's own physical autonomy and sexual activity."<sup>263</sup>

179. That said, the Court considers that, to categorize a situation as sexual slavery, the following

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<sup>256</sup> Cf. Written version of the expert opinion provided by Daniela Kravetz during the public hearing before the Inter-American Court on February 6, 2018 (merits file, volume I, folio 830), citing UN, *Systematic rape, sexual slavery and slavery-like practices during armed conflict, Final report submitted by Ms. Gay J. McDougall, Special Rapporteur*, E/CN.4/Sub.2/1998/13, 2000, para. 29.

<sup>257</sup> Sexual violence is understood to mean "any violence, physical or psychological, carried out through sexual means or by targeting sexuality." This "covers both physical and psychological attacks directed at a person's sexual characteristics, such as forcing a person to strip naked in public, mutilating a person's genitals," as well as situations in which the purpose is "to inflict severe humiliation on the victims," such as forcing two victims to perform sexual acts on one another or when others are forced to watch acts of sexual violence for purposes of intimidation. Cf. UN, *Systematic rape, sexual slavery and slavery-like practices during armed conflict, Final report submitted by Ms. Gay J. McDougall, Special Rapporteur*, E/CN.4/Sub.2/1998/13, 2000, paras. 21 and 22.

<sup>258</sup> Cf. *Case of the Hacienda Brasil Verde Workers v. Brazil*, *supra*, paras. 243 and 249.

<sup>259</sup> UN, *Systematic rape, sexual slavery and slavery-like practices during armed conflict, Final report submitted by Ms. Gay J. McDougall, Special Rapporteur*, E/CN.4/Sub.2/1998/13, 2000, para. 27.

<sup>260</sup> Cf. UN, *Systematic rape, sexual slavery and slavery-like practices during armed conflict, Final report submitted by Ms. Gay J. McDougall, Special Rapporteur*, E/CN.4/Sub.2/1998/13, 2000, para. 8.

<sup>261</sup> *Case of the Hacienda Brasil Verde Workers v. Brazil*, *supra*, para. 273.

<sup>262</sup> Cf. *Case of I.V. v. Bolivia*, *supra*, para. 155.

<sup>263</sup> Written version of the expert opinion provided by Daniela Kravetz during the public hearing before the Inter-American Court on February 6, 2018 (merits file, volume I, folio 824).



two elements must be verified: (i) the exercise of the powers attaching to the right of ownership of a person, and (ii) the existence of acts of a sexual nature that restrict or obliterate that person's sexual autonomy.

180. The Court has verified that, in this case, from the time the aggressor deprived Linda Loaiza of liberty until her rescue, he had total control over her movements and autonomy. In particular, it has been established that he kept her tied up or handcuffed, as well as locked up in the different places to which she was transferred.<sup>264</sup> This was so much so that, at the time of her rescue, the police agents and members of the fire department had to climb up to the apartment, and then ask the owner for the key in order to enter it; they also found handcuffs in the apartment. In addition, to the physical control,<sup>265</sup> the Court has verified that the aggressor threatened her constantly and stressed his power owing to his political and social position.<sup>266</sup> This exercise of power by the aggressor was manifested not only in control over her movement, but also in every aspect of her life, including the food she ate, her visits to the bathroom to relieve herself, and her sexuality, which resulted in a situation of absolute helplessness. In addition, the use of extreme violence<sup>267</sup> and, in particular repeated acts of sexual violence,<sup>268</sup> denoted a special cruelty by the aggressor, which led to the obliteration of both the general autonomy and the sexual autonomy of the victim. The sexual violence included physical, verbal and psychological abuse addressed at the sexual characteristics of Linda Loaiza, such as obliging her to be naked or burning her nipples, as well as extremely humiliating acts such as forcing her to watch pornography and to recreate the scenes with her aggressor.

181. In conclusion, the two essential elements are present in this case, which leads the Court to the conviction that it is evident that the aggressor not only exercised the powers attaching to the right of ownership of Linda Loaiza, but also that this was combined with the execution of different acts of sexual violence that were constant and of appalling proportions. On this basis, the Court finds it necessary to highlight the "sexual" nature of the slavery exercised in this case and, thus, to recognize this more specific characteristic that disproportionately affects women, because it exacerbates the historic and persistent relations of subordination and domination between men and women. This is why it constitutes a manifestation of discrimination against women that contravenes the strict protection required pursuant to Article 1(1) of the Convention for reasons of

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<sup>264</sup> Cf. Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 13361 to 13367); Statement by Linda Loaiza López Soto before the IACHR during merits hearing No. 17, 154<sup>th</sup> session, March 2015, and Statement made by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018. See also, Record of interview of Lawrence Edwards Nash at the Chacao Police Station on August 13, 2001 (evidence file, volume XVII, annex 8G to the pleadings and motions brief, folios 11878 and 11879).

<sup>265</sup> The emergency physician indicated that the patient was admitted with malnutrition and signs of evident physical abuse. Cf. Statement by Alfredo José Saldeño recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5867 and 5868).

<sup>266</sup> In her statement before this Court, Linda Loaiza indicated: "[...] when I was in captivity the aggressor threatened me saying that they would never harm him and he would never be in prison and, therefore, my sister Ana must withdraw the complaint that is what he told me during my captivity; he threatened me, telling me that he was a friend of the Vice President of the Republic at the time; that he was, his father was a friend of the Prosecutor General, of the former prosecutor general." Cf. Statement made by Linda Loaiza López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>267</sup> An official present during the rescue stated that "[w]hat caught my attention was her lips, because it was as if they had been torn off [...] in the eight years that I have been in this work I have seen injuries, but not like those; it is one of the most unpleasant cases that I have seen; in my opinion, if she had been there one more day, she would not have come out alive." Statement by Giovanni José Chicco Salas recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Reports, folio 5822).

<sup>268</sup> Cf. Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5807 to 5812).

sex and gender.<sup>269</sup>

182. The Court concludes that the State is responsible, because owing to its gross omission, it enabled the sexual slavery to which Linda Loaiza López Soto was subjected, in the conditions previously indicated, in violation of Article 6(1) of the American Convention, in relation to Articles 1(1), 3, 5, 7, 11 and 22 of this instrument, to the detriment of Linda Loaiza López Soto.

### *B.5 State responsibility for acts of torture*

183. Article 5(1) of the Convention establishes, in general terms, the right to personal integrity, both physical, and also mental and moral. While Article 5(2) establishes, more specifically, the absolute prohibition of subjecting someone to torture or to cruel, inhuman or degrading punishment or treatment. In addition, it has been recognized that, in certain circumstances, threats and the real danger of a person being subjected to severe physical injury cause moral anguish of such proportions that it may be considered "psychological torture."<sup>270</sup> The Court has established that an act of torture may be perpetrated both by acts of physical violence, and by acts that cause the victim acute mental or moral suffering.<sup>271</sup> Nowadays, the absolute prohibition of torture, both physical and psychological, belongs to the domain of international *jus cogens*.<sup>272</sup>

184. In addition, this Court's case law has recognized that rape and other forms of sexual violence may constitute cruel, inhuman or degrading treatment, and even acts of torture if the elements included in the definition are present.<sup>273</sup> A similar opinion has been expressed by the European Court of Human Rights,<sup>274</sup> the Human Rights Committee,<sup>275</sup> the Committee against Torture,<sup>276</sup> the Committee on the Elimination of Discrimination against Women<sup>277</sup> and the United Nations Special Rapporteur against Torture.<sup>278</sup>

185. The Court has indicated that the violation of a person's right to physical and mental integrity

<sup>269</sup> Cf. *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18, September 17, 2003. Series A No. 18, para. 101, and *Case of I.V. v. Bolivia*, *supra*, para. 243.

<sup>270</sup> Cf. *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 102, and *Case of Ruano Torres et al. v. El Salvador*, *supra*, para. 121.

<sup>271</sup> Cf. *Case of Cantoral Benavides v. Peru. Merits*, *supra*, para. 100, and *Case of Rosendo Cantú v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 114.

<sup>272</sup> Cf. *Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs*. Judgment of November 27, 2003. Series C No. 103, para. 92, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 141.

<sup>273</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 312, and *Case of Favela Nova Brasília v. Brazil*, *supra*, para. 352.

<sup>274</sup> Cf. ECHR, *Aydın v. Turkey* [GS], No. 23178/94. Judgment of September 25, 1997, para. 86. The European Court has also ruled on the positive obligations derived from Article 3 of the European Convention (Prohibition of torture) in cases of rape and sexual abuse. Cf., *inter alia*, ECHR, *M.C. v. Bulgaria*, No. 39272/98. Judgment of December 4, 2003, para. 153, and ECHR, *I.C. v. Romania*, No. 36934/08. Judgment of May 24, 2016, para. 52.

<sup>275</sup> Cf. UN, Human Rights Committee, General Comment No. 28, *Equality of rights between men and women*, CCPR/C/21/Rev.1/Add.10, March 29, 2000, paras. 11 and 20.

<sup>276</sup> Cf. Committee against Torture, General Comment No. 2, *Implementation of Article 2 by States Parties*, CAT/C/GC/2, January 24, 2008, para. 18.

<sup>277</sup> Cf. UN, Committee on the Elimination of Discrimination against Women, General recommendation No. 35, *Gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, July 26, 2017, para. 16: "[g]ender-based violence against women, may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices."

<sup>278</sup> Cf. UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3, January 15, 2008, paras. 28 to 31, and *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, A/HRC/31/57, January 5, 2016, para. 51. See also, Expert opinion provided by affidavit by Juan E. Méndez on January 24, 2018 (evidence file, volume XLIV, affidavits, folio 31251).

has different levels and that it ranges from torture to other types of abuse or cruel, inhuman or degrading treatment, the physical and mental effects of which vary in intensity according to endogenous and exogenous factors (including duration of the treatment, age, sex, health, context and vulnerability) that must be analyzed in each specific situation.<sup>279</sup> In other words, the personal characteristics of the alleged victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether their personal integrity was violated, because those characteristics may change an individual's perception of the reality and, consequently, increase the suffering and the feeling of humiliation when they are subjected to certain types of treatment.<sup>280</sup>

186. In light of Article 5(2) of the American Convention and pursuant to this Court's case law, an act that constitutes torture is present when the ill-treatment: (i) is intentional; (ii) causes severe physical or mental suffering, and (iii) is committed with any objective or purpose.<sup>281</sup>

187. Based on the evidence provided, the Court finds that the gravity and intensity of the severe physical, verbal, psychological and sexual abuse suffered by Linda Loaiza has been proved<sup>282</sup> (*supra* para. 114); that this was perpetrated intentionally and persisted for almost four months, when she was in a situation of total helplessness and under the control of her aggressor. In addition, it has been established that she was subjected to reiterated rape, an extremely traumatic experience that has severe consequences and causes great physical and mental harm leaving the victim "physically and emotionally humiliated."<sup>283</sup> In this regard, the Court has affirmed that the severe suffering of the victim is inherent in rape and, in this case, it was accompanied by extremely severe bodily injuries and physical ailments. The Court also notes that the victim stated that her aggressor showed her photographs of other women who he had subjected to the same treatment,<sup>284</sup> which constituted a form of threat that had a significant psychological impact.

188. In addition, the evidence received reveals that the aggressor's purpose was to intimidate her, obliterate her personality and subjugate her. Ultimately, it was to assert a position of domination over women, and assert his relationship of power and patriarchal domination over the victim, which demonstrated the discriminatory purpose. In this regard, the Court has emphasized the significant role played by discrimination when examining violations of women's human rights and its alignment with torture and ill-treatment from a gender perspective.<sup>285</sup> Consequently, the Court

<sup>279</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, para. 57, and *Case of San Miguel Sosa et al. v. Venezuela, supra*, para. 169.

<sup>280</sup> Cf. *Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Series C No. 149, para. 127, and Case of Favela Nova Brasília v. Brazil, supra*, para. 250.

<sup>281</sup> Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs. Judgment of May 11, 2007. Series C No. 164, para. 79, and Case of Espinoza Gonzáles v. Peru, supra*, para. 143.

<sup>282</sup> For example, the surgeon who treated her stated: "I have more than 50 years' experience; [...] we receive individuals injured by firearms and we have never seen a case where there has been so much brutality and cruelty against someone; it seems that the most powerful weapons were used to cause this harm; [...] she had injuries to the abdomen, the genital area, the face, [...] her jaw was fractured and her lips torn; [...] extreme brutality and cruelty were evident; [...] the lower lip was torn and she had lost almost all the red part of it and it appeared as if it had been crushed, the tissue was completely swollen, it was misshapen by blows; [...] she had what we call cauliflower ears, which is chronic, and due to repeated blows; the injuries to her jaw and lips could not have been caused more than 15 days previously; such injuries cannot be congenital, [...] if she had not been treated, she would not have been able to eat, talk or appear in public [...] because she would have been a monster; her face would have been sunken, apart from the pain, the blows had caused so much destruction that the mucous lining was showing; two *setaplasmas* (sic) were performed; to look at, it appeared that she had no lower lip [...]." Statement by Olaf Sandner Montilla recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5862 and 5863).

<sup>283</sup> *Case of the Miguel Castro Castro Prison v. Peru, supra*, para. 311, and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 163.

<sup>284</sup> Cf. Statement by Linda Loaiza López Soto recorded in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folio 5812).

<sup>285</sup> Cf. *Case of I.V. v. Bolivia, supra*, para. 263, citing UN, *Report of the Special Rapporteur on torture and other cruel,*

finds that Linda Loaiza was subjected to acts of physical, sexual and psychological torture, in keeping with the three elements that the Court has enumerated and in the terms of Article 5(2) of the American Convention.

189. The State has disputed the categorization of these acts as torture because they were not perpetrated directly by a public official. However, it is pertinent to recall that the definition adopted by this Court only refers to three elements (*supra* para. 186),<sup>286</sup> which are present in this case. Indeed, since Article 5(2) of the American Convention does not specify what should be understood as "torture," the Court has had recourse to both Article 2 of the ICPPT,<sup>287</sup> and to other definitions contained in the international instruments that establish the prohibition of torture<sup>288</sup> in order to interpret the elements that constitute torture.<sup>289</sup> When adopting these elements, the Court did not establish a requirement that the act had to be committed by a public official.

190. This interpretation is corroborated by the literal meaning of the text of the ICPPT, which leads to the conclusion that the provisions of its Article 3 refer to the criminal responsibilities and not to the attribution of responsibility to the State, which is a function of this Court. Thus, in its definition of torture in Article 2, ICPPT does not incorporate a connection to the State, but establishes this separately in its Article 3 when referring to those "guilty of the crime of torture,"<sup>290</sup> in evident reference to the domestic criminal jurisdiction. Thus, this would not be relevant for establishing the State's international responsibility, which must be governed by the rules of international law. Moreover, if the provisions of Article 3 are considered to be a condition for the definition of torture, it is pertinent to stress that this instrument also refers expressly to situations in which private individuals could participate, if the public officials failed to prevent the acts of torture, while being in a position to do so.

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*inhuman or degrading treatment or punishment*, Juan E. Méndez, A/HRC/31/57, January 5, 2016, paras. 5 and 9.

<sup>286</sup> This is corroborated by the *travaux préparatoires* in which the States requested that two separate provisions be established: one for the definition (Article 2) and another for those responsible (Article 3). Cf. OAS Permanent Council, *Report of the Working Group on the draft convention defining torture as an international crime*, OEA/Ser.G CP/CAJP-518/83 rev.1, November 1, 1983, p. 6; OAS Permanent Council, *Report of the Committee on Juridical and Political Affairs on the draft convention defining torture as an international crime*, OEA/Ser.G CP/doc.1403/83, November 2, 1983, Annex III Comparative Table of the observations and comments of the Governments of Members States, pp. 107 to 100, and OAS Permanent Council, *Report of the Working Group on the draft convention defining torture as an international crime*, OEA/Ser.G CP/CAJP-533/84 corr.1, May 10, 1984, pp. 11 and 12.

<sup>287</sup> The pertinent part of Article 2 of the ICPPT establishes that: "[f]or the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. [...]"

<sup>288</sup> In particular, Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which establishes:

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

<sup>289</sup> Cf. *Case of Bueno Alves v. Argentina*, *supra*, paras. 78 and 79.

<sup>290</sup> Article 3 ICPPT. The following shall be held guilty of the crime of torture:

- a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.
- b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

191. Meanwhile, the United Nations Convention against Torture also includes the situation in which a non-state agent inflicts torture with the consent or acquiescence of a State agent. In this regard, the Committee against Torture has indicated that:

[...] where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or *de facto* permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.<sup>291</sup>

192. In sum, the Court understands that, from the way in which the said instruments are worded, the constitution of torture is not circumscribed merely to its perpetration by public officials, and the State's responsibility is not engaged merely by the direct action of its agents; the instruments also establish actions of instigation, consent, acquiescence, and failure to act to prevent such acts when this is possible.

193. In addition, it should be emphasized that, when interpreting Article 5(2) of the Convention, the Court has understood that, both the systematic and the evolutive interpretation play a crucial role in upholding the practical effects of the prohibition of torture, based on current circumstances in the societies of our hemisphere.<sup>292</sup> This is consequent with the general rules of interpretation established in Article 29 of the American Convention, and in the Vienna Convention on the Law of Treaties.<sup>293</sup>

194. Under the systematic method, it is necessary to consider other inter-American instruments, such as the Convention of Belém do Pará. In this regard, the Court notes that, in certain cases, violence against women may constitute torture and, moreover, violence against women also encompasses the private sphere. Therefore, based on the postulates of the Convention of Belém do Pará, it is necessary to recognize that intentional acts perpetrated by a private individual that cause a woman severe physical, sexual or psychological suffering may constitute acts of torture and deserve a punishment adapted to their severity to achieve the goal of their eradication.

195. Regarding the evolutive method, the Court has recognized that:

[h]istorically, the framework of protection against torture and ill-treatment has been developed in response to acts and practices that are mainly verified during interrogations in relation to an inquiry or proceedings regarding the perpetration of a crime, and also in the context of the deprivation of liberty as an instrument of punishment or intimidation. However, the international community has gradually been recognizing that torture and other inhuman treatment can also occur in other contexts of custody, dominance or control in which the victims is helpless [...].<sup>294</sup>

<sup>291</sup> Committee against Torture, General Comment No. 2, *Implementation of article 2 by the States Parties* CAT/C/GC/2, January 24, 2008, para. 18.

<sup>292</sup> *Cf. Case of Bueno Alves v. Argentina, supra*, para. 78.

<sup>293</sup> *Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, October 1, 1999. Series A No. 16, para. 114, and *The Institution of Asylum and its Recognition as a Human Right under Inter-American Protection System (interpretation and scope of Articles 5, 22(7) and 22(8), in relation to Article 1(1) of the American Convention on Human Rights)*. Advisory Opinion OC-25/18, May 30, 2018. Series A No. 258, para. 137.

<sup>294</sup> *Case of I.V. v. Bolivia, supra*, para. 263, citing UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, E/CN.4/1999/68/Add.4, January 21, 1999, para. 44; *Report of*

196. In this regard, the Special Rapporteur on torture, referring to Article 1 of the United Nations Convention against Torture, noted that this article:

[...] has frequently been used to exclude violence against women outside direct State control from the scope of protection of [the Convention]. However, [...] the language used [in this article] concerning consent and acquiescence by a public official clearly extends State obligations into the private sphere and should be interpreted to include State failure to protect persons within its jurisdiction from torture and ill-treatment committed by private individuals.<sup>295</sup>

197. Accordingly, based on the normative framework of the Convention of Belém do Pará, which should permeate the evolutive interpretation of conducts and acts of violence against women that may be categorized as torture, the Court considers that acts of violence against women perpetrated by private individuals cannot be excluded, when they are committed with the State's tolerance or acquiescence because it has deliberately failed to prevent them, as in this case.

198. In this regard, the Court has already affirmed that:

For the purposes of analysis, the intent or motivation of the agent who has violated the rights recognized by the Convention is irrelevant – the violation can be established even if the identity of the individual perpetrator is unknown. What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the public authorities, or whether they have allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation of human rights is the result of a State's failure to fulfill its obligation to respect and to ensure those rights, as required by Article 1 (1) of the Convention.<sup>296</sup>

199. The Court concludes that the State is responsible because, owing to its gross failure to act, it enable the acts of torture to which Linda Loaiza López Soto was subjected, in the conditions indicated previously, in violation of Article 5(2) of the American Convention, in relation to Article 1(1) of this instrument and Articles 1, 6 and 8 of the ICPPT.

#### *B.6 Conclusion*

200. Pursuant to the analysis and the determinations made in this chapter, the Court finds that Venezuela is responsible for the violation of Articles 3, 5(1), 5(2), 6(1), 7(1), 11(1), 11(2), 22 and 24 of the American Convention, in relation to Article 1(1) of this instrument, Article 7(a) and 7(b) of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the ICPPT, to the detriment of Linda Loaiza López Soto.

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*the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, A/HRC/22/53, February 1, 2013, para. 15, and Committee against Torture, General Comment No. 2, *Implementation of article 2 by States Parties*, CAT/C/GC/2, January 24, 2008, para. 15.

<sup>295</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3, of January 15, 2008, para. 31.

<sup>296</sup> *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 173.

## VIII-2

### **RIGHTS TO PERSONAL INTEGRITY, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT, DIGNITY, AUTONOMY AND PRIVACY, JUDICIAL GUARANTEES,<sup>297</sup> EQUALITY BEFORE THE LAW AND JUDICIAL PROTECTION,<sup>298</sup> IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE THESE RIGHTS WITHOUT DISCRIMINATION, AND TO ADOPT DOMESTIC LEGAL PROVISIONS,<sup>299</sup> AS WELL AS TO ARTICLE 7 OF THE CONVENTION OF BELÉM DO PARÁ AND ARTICLES 1, 6 AND 8 OF THE ICPPT**

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

201. The *Commission* argued that “[t]he Venezuelan authorities committed serious omissions from the first moment of the rescue of Linda [Loaiza] López” because “that the reports on the rescue and records of her admission to the public hospital where she was taken make no mention that Linda Loaiza López had stated [...] that she was a victim of sexual violence.” The Commission also observed “the superficial nature of the initial examinations of Linda Loaiza,” because there was a failure to make a “detailed examination of the assault that took into account the obligation to establish whether gender-based violence had occurred.” The Commission also underscored that the “forensic medical examination [...] was performed [...] eight days after the rescue of Linda Loaiza López,” which constituted a “delay that had not been justified by the State.”

202. Regarding the “handling and preservation of the apartment where Linda Loaiza was found,” the Commission argued that “the place was not duly protected [...] and the scene was not adequately safeguarded,” which signified that the State had incurred in significant negligence and omissions. As for the evidence, the Commission underscored that “any measure tending to identify the aggressor was omitted,” because neither a “forensic appraisal” nor a “DNA test to identify the aggressor” were conducted, even though there was “evidence [such as] traces of blood, semen [and] hair.”

203. The Commission stressed that the “prosecution focused on taking repeated statements from Linda Loaiza López, without [...] justification,” despite a “risk of revictimization.” The Commission also indicated that Linda Loaiza had to “remain in the apartment where she had been deprived of liberty for several hours,” despite “her fear and desperation to leave that place.” The Commission also alleged that “the forensic examinations, the visual inspections [...] and the forensic psychiatric evaluation were performed by male officials with no indication that the victim was provided with privacy for these procedures.” On this basis, the Commission argued that Linda Loaiza had “not received appropriate treatment” for her situation as a “victim of extreme physical, psychological and sexual violence.”

204. Regarding the lines of investigation, the Commission considered that these were not designed

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<sup>297</sup> Article 8(1) of the Convention stipulates that “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>298</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>299</sup> Article 2 of the Convention establishes that: “[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”

based on the information and details provided by the victim, and were not related "to possible acts of concealment by the father of the presumed aggressor"; nevertheless, "the Public Prosecution Service did conduct detailed follow-up actions and ordered specific evidence to be obtained to investigate the hypothesis put forward by the presumed aggressor." In this regard, the Commission argued that the judgments of November 5, 2004 and May 22, 2006, ignored the "content of the medical examinations performed on Linda Loaiza López" that revealed "the assaults she had suffered" and the "physical and psychological impact she experienced." However, the judgment of May 22, 2006, "did take into account the content of the expert psychiatric appraisal performed on Luis Carrera Almoína." Moreover, the Commission indicated that those rulings were based "on comparing the statement of the victim with that of the aggressor, and not on a comprehensive analysis from a gender perspective." It also indicated that the hypotheses "submitted by the defense related to the victim's supposed activities relating to sex work, and to a romantic relationship she had allegedly had with Mr. Carrera Almoína" were used "to discredit the testimony of Linda Loaiza López and to attribute her with a certain prior sexual conduct that, under the applicable criminal legislation, devalued her or suggested that she deserved the abuse she received"; all of which constituted "a scenario in which the victim was constantly questioned and stigmatized," by both the defense counsel and her aggressor.

205. With regard to the irregularities during the proceedings, the Commission argued that although these were reported by Linda Loaiza and her lawyer, they did not receive a prompt or effective response, which contributed to "perpetuating and aggravating the said context of impunity," and "sending a message that violence against women is tolerated." The Commission considered that "by failing to investigate the reports of the different acts of obstruction throughout the proceedings," the State failed to provide "the necessary guarantees to avoid [...] the creation of a threatening and intimidating climate."

206. Lastly, with reference to the Criminal Code in force at the time of the facts, the Commission argued that it "did not protect aspects such as the sexual liberty and autonomy of the person. Rather, crimes such as rape were considered a violation of inadequate legal rights such as 'the morality and good order of the family.'" In this regard, it referred to the "discriminatory stereotypes and prejudices" in the laws, which established "mitigating circumstances for the punishment based on the personal circumstances of the victim; for example, [...] if she was a 'prostitute,' 'single,' a 'widow' or an 'honest' woman." It argued that the said omissions, as well as the legal framework at the time, had resulted in "the failure of the domestic judicial proceedings to acknowledge the sexual violence suffered by Linda Loaiza López and also the absence of criminal responsibility for this violence," which meant that the "discussions centered on the allegations of sex work made by the defense."

207. The **representatives** indicated that the "forensic medical, physical and gynecological examination was performed [...] eight days after Linda's release, even though, from the moment she was rescued, Linda stated that she had been a victims of sexual violence"; thus, this delay constituted "non-compliance with the obligation to investigate diligently." They also argued that "Linda Loaiza did not undergo a rigorous medical evaluation that recorded all the injuries to her body." In addition, the representatives referred to the prohibition "for the lawyer, Juan Bernardo Delgado, to attend the interview with Linda [or] to have access to the criminal case file despite requesting it several time. Regarding the evidence, the representatives argued that "none of the blood and semen samples found in the apartment were compared with those of the victim or the accused." In this regard, they pointed out the failure to document the investigation actions, and the lack of coordination in these actions because "the evidence was not handled diligently and [...] insufficient samples were collected to determine the possible perpetrator of the rape suffered by Linda Loaiza." Also, the State failed to ensure the proper chain of custody, which led to the mislaying of evidence.



208. In addition, the representatives argued that, even though a complaint had been filed based on the intimidating and harassing conditions under which the prosecutor had interviewed Linda Loaiza while she was in the Caracas University Hospital, no disciplinary procedure of any kind was undertaken. They also alleged that the judge in charge of the proceedings had treated Linda Loaiza in a similar way. The representatives argued that, "to avoid the immediate revictimization," the medical examination should have been performed by "suitable and qualified personnel [...] in a comfortable and safe place." They indicated that "a victim of sexual violence has the right to be assisted by personnel of the gender of her preference" and this did not occur in the instant case, because all the professionals who treated her were men. Lastly, they underlined that, without any justification by the State and without it being reflected in the lines of investigation, Linda Loaiza had to make her statements three times during the proceedings.

209. Regarding the stereotypes used during the proceedings, the representatives alleged that "officials involved in the proceedings referred to Linda Loaiza as the aggressor's partner, minimizing the situation." This resulted in the authorities' failure to comply with enhanced due diligence in the investigation, as required in this type of case. The representatives indicated that "the first judgment [...] determined that there was insufficient evidence to conclude that the accused was responsible for the offenses he had been charged with, including torture and sexual violence," and "established that it was necessary that the victim's statement be corroborated by additional evidence"; while, "the second judgment [...] also acquitted him of that offense based on lack of evidence, discrediting the probative value of Linda Loaiza's statement." They also indicated that the State had "not provided the victims and their lawyer with measures of protection in view of the threats they suffered."

210. Regarding the legal framework in force at the time, the representatives argued that "various errors in the investigation procedure resulted from the lack of an appropriate legal framework and the absence of protocols." They alleged that the State, "by permitting its domestic laws [to contain] discriminatory articles, failed to comply with the obligations of the international instruments and jurisprudence." They indicated that article 383 of the Criminal Code, on the reduction of the penalty if the victim was a prostitute, had a significant impact in this case, because the strategy of the accused's defense consisted in alleging supposed sex work by the victim. As a result, the Twentieth Trial Court ordered the opening of an investigation against the victim's father and one of her sisters for presumably committing perjury. In addition, the representatives pointed out that, at the time of the facts, since the Criminal Code did not specifically define the crime of torture pursuant to international standards, it was not possible to charge the accused with the crime of torture, but only of extremely serious injuries. They clarified that it was only in 2013 that the State enacted the "Law to punish torture," which did comply with international standards.

211. Lastly, the representatives argued that, "[s]ince the State lacked adequate protocols for the investigation and documentation of sexual violence, it did not have the necessary guidelines and tools to clarify what had occurred effectively and to ensure the appropriate punishment," and this encouraged a tendency of the courts to request evidence to confirm the victim's statement. They also argued that the various flaws in the investigation process resulted from the lack of an appropriate legal framework and the absence of protocols that regulated the reception of complaints, the performance of medical examinations in keeping with the international standards, and the execution of procedures for the investigation of sexual violence. Furthermore, they indicated that the State had no medical protocols establishing how medical examinations that would be used as expert evidence in cases of rape should be performed. According to the representatives, the examinations performed in the instant case did not comply with the relevant international standards and were subsequently used in the trial as expert evidence.

212. The **State** acknowledged responsibility for the violation of the rights to judicial guarantees, judicial protection and the obligation to investigate acts of violence against women recognized in

Articles 8(1), 25(1), 5(1), 11, 24 and 2 of the American Convention, because "Linda Loaiza López did not receive the assistance and treatment that was required by her condition as a victim of violence against women from the time of her rescue and in the following moments, and it was evident that the severe acts of violence that she had experienced were investigated and tried under a legal framework that could even be categorized as discriminatory. All these situations affected not only her right of access to justice, but also constituted additional forms of revictimization that could evidently have violated both her privacy and dignity as well as her mental and moral integrity." Despite the foregoing, the State indicated that, both the guidelines for the actions of officials responsible for processing similar situations, and the legal framework applicable in cases of gender-based violence had been modified substantially in Venezuela, adapting them to the highest international standards in this regard. It also indicated that, in March 2007, the Law on the Right of Women to a Life Free of Violence had entered into force, and this increased the forms of violence against women defined by law, and created the courts for violence against women in Caracas and in each state capital, as well as in places determined by the Supreme Court of Justice.

### **B. Considerations of the Court**

213. The Court has admitted the acknowledgement of responsibility made by the State and, therefore, finds that it has been established that Venezuela incurred international responsibility for the violation of the rights to judicial guarantees and judicial protection, as well as of the obligation to investigate acts of violence against women, established in Articles 8(1) and 25(1) of the American Convention and Article 7(a) and (b) of the Convention of Belém do Pará, to the detriment of Linda Loaiza López Soto, owing to the "omissions and inadequate actions, as well as to the unjustified delays that resulted in a failure to comply with the obligation to investigate with due diligence within a reasonable time," as well as the rights to judicial guarantees, judicial protection, personal integrity, privacy, and equality and non-discrimination, established in Articles 8(1), 25(1), 5(1), 11 and 24 of the American Convention, in relation to the obligation to adopt domestic legal provisions recognized in Article 2 of this instrument, in view of the fact that Linda Loaiza López Soto "did not have access to justice in equal conditions, because she received treatment that was inappropriate for her condition as a victim of violence against women."

214. The case file reveals that there were repeated postponements and an unjustified delay in the judicial proceedings. In addition, the Court has noted various irregularities in the initial investigation procedures. These included: (a) a luminol test was not conducted to establish whether blood was present at the scene of the crime; (b) the blood and the blood stains located in the apartment from which Linda Loaiza López Soto was rescued were not photographed, or subjected to legal recognition or forensic appraisal, or to comparative DNA testing; (c) blood samples were not taken from either Luis Antonio Carrera Almoina or Linda Loaiza López Soto to compare them to the samples collected; also, the semen was not analyzed to determine whether it belonged to the accused or to another person; (d) the chain of custody record was not completed appropriately,<sup>300</sup> and (e) the order given by the Public Prosecution Service to seal the apartment was not complied with; consequently, the crime scene was altered and it was not possible to conduct any subsequent procedures in relation to the scene.<sup>301</sup> The Court notes that several complaints were filed as a result of the irregularities in the conduct of the judicial proceedings, specifically as a result of the postponements owing to the recusals of judges, the delay in holding the hearing, and the unjustified suspension of hearings; one of these complaints was found

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<sup>300</sup> A review of the tracking forms reveals that they are signed, but without the names of the signatories, so that their identity and the agency they belong to cannot be identified. *Cf.* Tracking forms of the Chacao Police Station of August 15, 2001 (evidence file, volume XVII, annex 8.g to the pleadings and motions brief, folio 11891).

<sup>301</sup> *Cf.* Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 5841, 5846, 5895 and 6006).

inadmissible, and the Court is unaware of the result of the others (*supra* paras. 77, 83, 85, 86, 90 and 91).

215. The Court does not find it pertinent to include further considerations on these aspects; rather, it will concentrate its analysis on: (i) developing the components of the right of access to justice in equal conditions for women victims of violence; (ii) the lack of a special legal framework and the absence of guidelines for the agents involved; (iii) the criminal legal framework that established an unjustified unequal treatment; (iv) highlighting, recognizing and rejecting the use of prejudicial gender stereotypes during the investigations and court proceedings in this case; (v) the factors that led to the revictimization of Linda Loaiza owing to the inadequate treatment by the authorities in view of her condition as a victim of violence against women, and (vi) the lack of adequate measures of protection and investigation in light of the threats and harassment of Linda Loaiza López Soto, her family and her lawyer.

216. The Court also notes that the State did not acknowledge the duty to investigate acts of torture. However, since the Court concluded in the previous chapter that acts of torture had been perpetrated in this case, it finds it relevant to also address the duty to investigate torture and ensure that criminal law defines it appropriately.

#### *B.1 Access to justice in equal conditions for women victims of violence*

217. The Court has established that, pursuant to the American Convention, the States Parties are obliged to provide effective judicial remedies to victims of human rights violations (Article 25), and these remedies must be substantiated in accordance with the rule of due process of law (Article 8(1)), all of this within the general obligation of these States 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>302</sup> The Court has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their families 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>303</sup> In cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are supplemented and reinforced for those States that are Parties by the obligations derived from the specific inter-American treaty, the Convention of Belém do Pará.<sup>304</sup>

218. In addition, the Court recalls that, pursuant to Article 2 of the American Convention and Article 7(c) of the Convention of Belém do Pará, the States are obliged to adopt norms or implement the necessary measures to permit the authorities to conduct an investigation with due diligence in cases of violence against women (*supra* para. 131). Moreover, Article 2 of the Convention requires the elimination of norms and practices of any nature that entail a violation of the guarantees established in the Convention.<sup>305</sup>

219. In this case, the Court has determined that the acts suffered by Linda Loaiza López Soto relate to different human rights violations that were classified not only as violations of her personal integrity, dignity, autonomy and privacy, but also as acts of torture and sexual slavery, pursuant to

<sup>302</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs*. Judgment of August 22, 2018. Series C No. 356, para. 77.

<sup>303</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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 79.

<sup>304</sup> Cf. *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 152.

<sup>305</sup> Cf. *Case of Hilaire, Constantine and Benjamín v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 113, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 259.

the American Convention. Consequently, when addressing the obligation to investigate, the relevant standards developed by the Court in those different spheres must be taken into account to ensure that the investigations and criminal proceedings are executed with due diligence.<sup>306</sup>

220. The Court also notes that, with regard to violence against women, women face certain obstacles and restrictions when having recourse to the state authorities that impede the effective realization of their right of access to justice.<sup>307</sup> In this regard, the absence of gender training and awareness of the state agents in the institutions involved in the investigations and the administration of justice, as well as the existence of stereotypes that detract from the credibility of the statements made by women victims, constitute fundamental factors that, together with the high rates of impunity in cases of this nature,<sup>308</sup> lead women to decide not to report acts of violence or not to continue with the legal proceedings undertaken.<sup>309</sup> To these factors should be added the lack of access to quality legal assistance and the services able to provide social assistance and care to victims, and also the failure of the state authorities who intervene in this type of incident to adopt immediate measures of protection.<sup>310</sup>

221. In particular, regarding victims of sexual violence, expert witness Kravetz indicated that:

In cases of sexual violence, the activities of investigation and prosecution should adopt an approach centered on the victim. This means that the agents of justice must prioritize the safety, privacy and well-being of the victims, verifying the risks, the conditions of special vulnerability, and the differentiated needs they may have to ensure their effective participation in the investigation and in the eventual criminal proceedings. This approach also requires the agents of justice to understand the differentiated impacts, reactions and needs that victims of sexual violence may have in relation to traumatic acts, and adapt their procedures in order to act with sensitivity and professionalism towards the victims, avoiding their revictimization. Lastly, it requires that victims be kept informed of the progress of the investigation and of the proceedings so that they may take free and informed decisions regarding their participation in the different procedural stages.<sup>311</sup>

222. Based on the foregoing, certain international instruments are useful to clarify and provide content to the state obligation of protection for women victims of violence, in order to ensure effective access to the services of both justice and health. The appropriate measures to this end include: (i) facilitate safe and accessible surroundings so that victims are able to report acts of violence; (ii) possess a system of immediate measures of protection in order to safeguard the

<sup>306</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 455, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 146.

<sup>307</sup> Cf. UN, Committee on the Elimination of Discrimination against Women, General recommendation No. 33, *Women's access to justice*, CEDAW/C/GC/33, August 3, 2015, para. 3.

<sup>308</sup> The Special Rapporteur on violence against women, its causes and consequences indicated that "failures of law enforcement authorities to seriously investigate crimes of violence against women appear to be common." This was also true of the jurisdictional organs. She underscored the scant number of convictions for this type of crime. The Special Rapporteur concluded that "as a result women either remain silent or if they do report the crime they may become re-victimized," Cf. UN, *Integration of the human rights of women and the gender perspective: violence against women. The due diligence standards as a tool for the elimination of violence against women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, E/CN.4/2006/61, January 20, 2006, paras. 47 to 49 and 54.

<sup>309</sup> Cf. UN, Committee on the Elimination of Discrimination against Women, General recommendation No. 33, *Women's access to justice*, CEDAW/C/GC/33, August 3, 2015, paras. 13, 26 and 27, and UN, *Integration of the human rights of women and the gender perspective: violence against women. The due diligence standards as a tool for the elimination of violence against women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, E/CN.4/2006/61, January 20, 2006, paras. 53 and 54.

<sup>310</sup> Cf. UN, Committee on the Elimination of Discrimination against Women, General recommendation No. 33, *Women's access to justice*, CEDAW/C/GC/33, August 3, 2015, paras. 13 and 36, and UN, *Integration of the human rights of women and the gender perspective: violence against women. The due diligence standards as a tool for the elimination of violence against women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, E/CN.4/2006/61, January 20, 2006, paras. 47 to 49.

<sup>311</sup> Written version of the expert opinion provided by Daniela Kravetz during the public hearing before the Inter-American Court on February 6, 2018 (merits file, volume I, folios 838 and 839).

integrity of victims; (iii) provide victims with access to free legal assistance at all stages of the proceedings; (iv) facilitate medical and psychological care to victims, and (v) implement short- and medium-term material and social support mechanisms (through shelters or safe houses).<sup>312</sup>

223. The Court reiterates that the ineffectiveness of the courts in individual cases of violence against women promotes an environment of impunity and facilitates and encourages the repetition of acts of violence in general. It also sends a message that violence against women may be tolerated and accepted, which leads to its perpetuation and the social acceptance of the phenomenon, and results in women feeling unsafe and having a persistent lack of trust in the system for the administration of justice.<sup>313</sup> This ineffectiveness or indifferences constitutes, in itself, discrimination against women in access to justice. Consequently, when indications or more specific suspicions exist of gender-based violence, the failure of the authorities to investigate the possible discriminatory motives for the act of violence against women may constitute, in itself, a form of gender-based discrimination.<sup>314</sup>

224. This is why, in cases of violence against women, the due diligence of the state organs to ensure access to justice signifies that States must have a legal protection framework and practices that permit an effective response to reports of acts of this nature. In this regard, the reinforcement of the institutions that intervene in this type of case is also essential to ensure effective and non-revictimized state responses.

225. The Court notes that even though, at the time of the facts, a special law on intrafamily violence was in force in Venezuela that established the intervention of specialized agencies, both to receive complaints, and to investigate and prosecute those cases, and that those agencies should be composed of personnel who had received training on violence against women, the State did not have a protocol to guide the investigation of cases of sexual violence, or similar instruments with rules for addressing cases of women victims of violence comprehensively.

226. The Court notes that the lack of a special legal framework that ensured the intervention of police and judicial agents who were duly trained to process and investigate complaints of every type of violence against women, wherever it occurred, as well as the inexistence of specific guidelines for agents on both the collection of evidence and the treatment of victims, constituted fundamental factors that contributed to both the errors and the omissions verified in the investigation procedure (*supra* para. 214), and also the revictimization of Linda Loaiza López Soto (*infra* paras. 241 to 245).

## B.2 Unjustified unequal treatment in the Venezuelan Criminal Code

227. The Court recalls that the Venezuelan Criminal Code in force at the time of the facts was extremely discriminatory against women (*supra* para. 152). In particular, as regard the definition of sexual offenses as crimes – they were contained in a chapter that did not protect the essential rights of the person individually, but rather collective aspects such as morality and decency.

228. The Court also notes that the Venezuelan Criminal Code, in a chapter on common provisions of Title VIII “Crimes against morality and the good order of the family,” established the following in

<sup>312</sup> The Special Rapporteur explained that the assistance provided to women generally constitutes emergency aid, but does not provide the victims with tools to avoid re-victimization. Cf. UN, *Integration of the human rights of women and the gender perspective: violence against women. The due diligence standards as a tool for the elimination of violence against women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, E/CN.4/2006/61, January 20, 2006, paras. 47, 49, 82 and 83.

<sup>313</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, paras. 388 and 400, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, *supra*, para. 291.

<sup>314</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 208, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 176.

is article 393: “[w]hen any of the offenses established in articles 375, 376, 377, 384 and 385 have been committed with a prostitute, the penalties established by law shall be reduced to one-fifth.”<sup>315</sup> These articles defined the offenses of rape, seduction, and the prostitution or corruption of minors, and also kidnapping.

229. The State acknowledged that “the facts were investigated and prosecuted in light of a discriminatory normative framework that has now been rectified.” The Court has taken note that, on March 16, 2005, Venezuela adopted a law partially amending the Criminal Code, which eliminated the said article 393.<sup>316</sup> Nevertheless, the Title on “Crimes against morality and the good order of the family” remains in force, as well as other provisions that have been challenged.<sup>317</sup>

230. In the case of the said article 393, at the time of the facts, the Criminal Code was in force that established a distinction in treatment if the offense of sexual violence was committed “with a prostitute,” in other words with women engaged in prostitution, and this was used during the criminal proceedings to discredit her testimony and to focus the discussion on aspects that had no relevance to demonstrate the harm to Linda Loaiza’s integrity and liberty. Therefore, the Court will now describe how the fact that this article was in force at the time of the proceedings in this case entailed a violation of the right to equal protection of the law and the obligation to adopt domestic legal provisions, established in Articles 24 and 2, in relation to Articles 5 and 11 of the American Convention.

231. The Court has determined that a difference in treatment is discriminatory when it has no objective and reasonable justification;<sup>318</sup> in other words, when it does not seek a legitimate purpose and there is no reasonable proportionality between the means used and the end sought.<sup>319</sup> Thus, the State has the burden of proof to demonstrate that the difference in the treatment accorded to the victim of a crime who engages in prostitution as compared to another who does not is justified, without basing its decision on stereotypes.<sup>320</sup>

232. In this case, the State has acknowledged that this provision was discriminatory. Indeed, the differences in the scale of the punishment revealed an unjustified difference in treatment. This difference, only addressed at women who engaged in prostitution, responded to negative or prejudicial gender stereotypes and, ultimately legitimized sexual violence against them and displaced the discussion from the criminal action and its result to the victim’s private life and

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<sup>315</sup> Criminal Code of the Bolivarian Republic of Venezuela, Official Gazette No. 915, of June 30, 1964, article 393 (evidence file, volume XIII, annex 2B to the pleadings and motions brief, folio 8315).

<sup>316</sup> Cf. Law on the partial amendment of the Criminal Code, Special Official Gazette No. 5,763, March 16, 2005, article 20 (evidence file, volume XIII, annex 2C to the pleadings and motions brief, folio 8347).

<sup>317</sup> A 2014 report of the Mechanism to Follow Up on the Convention of Belém do Pará indicated that, in 2014 the chapter of the Venezuelan Criminal Code entitled “Crimes against morality and the good order of the family,” was still in force almost without any change, and indicated that this regulated “sexual offenses from an androcentric and sexist perspective.” It also indicated that the title chosen by the legislator to group together the sexual offenses revealed that this type of violence was an issue related to customs “rather than to human rights, integrity and sexual autonomy.” It also expressed concern owing to the persistence of discriminatory penalties for women in the case of adultery. Cf. Mechanism to Follow Up on the Convention of Belém do Pará (MESECVI). *Venezuela: Report on implementation of the recommendations of the Committee of Experts (CEVI). Second round*, OEA/Ser.L/II.7.10, of August 19, 2014, para. 9 (evidence file, volume XVI, annex 4L to the pleadings and motions brief, folio 11007).

<sup>318</sup> Cf. *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17., para. 55, and *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, para. 125.

<sup>319</sup> Cf. *Case of Norín Catrimán (Leaders, Members and Activist of the Mapuche Indigenous People) et al. v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 200, and *Case of Flor Freire v. Ecuador, supra*, para. 125.

<sup>320</sup> Cf. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 125, and *Case of Flor Freire v. Ecuador, supra*, para. 125.

sexual conduct. In this case, this resulted in a discussion as to whether or not Linda Loaiza and her sister provided “escort services.” In this Court’s opinion, this aspect was completely irrelevant as there are no circumstances under which acts of violence can be justified.

233. In this regard, expert witness Chinkin indicated that the inclusion in criminal law of a reduction of the punishment if the victims is a sex worker – “a prostitute” – signifies that some women are less deserving of the protection of the law than others. This minimizes the severity of the offense and also allows arguments to be introduced concerning prostitution, which relate to previously sexual conduct, and that focus on a stereotype that casts doubts on the evidence provided by the woman, thus discrediting and humiliating her. In this way, criminal law can shape the way in which proceedings advance, including the possibility of a potential revictimization. For example, provisions of criminal law that establish a lesser punishment when acts of sexual violence are committed against a prostitute permits revictimization by considering that crimes of sexual violence are less severe when they are committed against sex workers, denying them the same rights to physical and mental integrity, sexual autonomy and to live free of violence as all the other women.<sup>321</sup>

234. In short, based on the State’s acknowledgement of responsibility and the foregoing considerations, the Court concludes that the legal framework contained provisions that established an unjustified unequal treatment. Therefore, the use of article 393 of the Criminal Code that was in force until 2005 in the investigation and the judicial proceedings on the facts of this case engaged the State’s international responsibility for failing to comply with its obligation to adapt its legislation as a way of ensuring equality before the law.

### *B.3 Use of prejudicial gender stereotypes during the investigation and the trial*

235. The Court reiterates that gender stereotyping refers to a preconception of the attributes, conducts or characteristics or the roles that are or should be played by men and women, respectively, and that it is possible to associate the subordination of women to practices based on socially dominant and socially persistent gender stereotypes. Their creation and use becomes one of the causes and consequences of gender-based violence against women, conditions that are exacerbated when they are implicitly or explicitly reflected in policies and practices, particularly in the rationale and language used by the state authorities.<sup>322</sup>

236. In particular, the Court has recognized that personal prejudices and gender stereotypes affect the objectivity of the state officials responsible for investigating the complaints filed before them, influencing their perceptions when determining whether an act of violence occurred, and their evaluation of the credibility of the witnesses and the victim herself. Stereotyping “distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts,” which may lead to the denial of justice, “including the revictimization of complainants.”<sup>323</sup> When stereotypes are used in the investigation of violence against women the right to a life free of violence is infringed, especially in those cases when its use by law enforcement agents prevents the implementation of appropriate investigations, and this also denies women the right of access to justice. Moreover, when the State fails to take concrete actions to eradicate stereotypes, it reinforces and institutionalizes them, which generates and reproduces violence against women.<sup>324</sup>

<sup>321</sup> Cf. Expert opinion provided by Marie Christine Chinkin during the public hearing before the Inter-American Court on February 6, 2018.

<sup>322</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico, supra*, para. 401, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 180.

<sup>323</sup> Cf. UN, Committee on the Elimination of Discrimination against Women, General recommendation No. 33, *Women’s access to justice*, CEDAW/C/GC/33, August 3, 2015, para. 26.

<sup>324</sup> Cf. *Case of Gutiérrez Hernández et al. v. Guatemala, supra*, para. 173.

237. In the instant case, the Court has verified that the fact that, on repeated occasions, it was mentioned that Linda Loaiza was in a romantic relationship with her aggressor (*supra* paras. 68, 157 and 168), meant that, in practice, the authorities failed to provide an opportune and immediate response, minimized – institutionally – the gravity of the situation and the violations of her personal integrity and, during the initial stages, did not treat the case with the thoroughness that it called for. It has not gone unnoticed by the Court that, traditionally, the sphere of couples and the family was considered exempt from public scrutiny; that is, it was circumscribed to the private sphere and was, therefore, less serious or did not warrant the attention of the authorities.<sup>325</sup> Moreover, owing to the discriminatory criminal legislation that existed (*supra* paras. 232 and 234), during the investigation and prosecution of this case, opinions were expressed on the supposed promiscuity of the victim that blamed her for what had happened.<sup>326</sup>

238. In this regard, the Court notes that, in the first judgment, the judicial authorities determined that there was insufficient evidence to conclude that the accused was responsible for the offenses he was charged with, including torture and sexual violence and, in the second judgment, they also acquitted him of the crime of rape based on lack of evidence, discrediting the probative value of Linda Loaiza's statement, requiring its corroboration by additional evidence, or that supposed background information on the victim's sexual life be assessed, contravening international standards.<sup>327</sup> The Court recalls that a guarantee for the access to justice of women victims of sexual violence is the establishment of rules for the assessment of evidence that avoids stereotypical affirmations, insinuations and allusions.<sup>328</sup>

239. The Court reaffirms that practices such as those indicated, which tend to belittle the victim based on any negative stereotype and to offset the downgrading of eventual responsibilities should be rejected and considered incompatible with international human rights law.<sup>329</sup> The Court rejects any state practice used to justify violence against women and to blame them for such acts, because an assessment of this nature reveal a discretionary and discriminatory standard based on the victim's conduct merely because she is a woman.<sup>330</sup>

240. Consequently, the Court establishes that, during the initial stage and also during the trials, various public officials resorted to the use of stereotypes, and this had a negative impact and became a barrier to access to justice and the effective investigation and prosecution of the facts of this case.

#### *B.4 Violations of personal integrity and revictimization*

241. In cases of sexual violence, the Court has emphasized that the investigation should try,

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<sup>325</sup> Cf. UN, *Integration of the human rights of women and the gender perspective: violence against women. The due diligence standards as a tool for the elimination of violence against women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, E/CN.4/2006/61, January 20, 2006, paras. 59 to 63.

<sup>326</sup> The Public Prosecution Service offered as an expert witness, a gynecologist who, based on the gynecological examination of Linda Loaiza López Soto, stated that "this revealed injuries and the human papilloma virus (HPV) was found, which relates to the degree of promiscuity." Cf. Record of the public oral hearing of the Seventh Criminal Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area of September 9, 2006 (evidence file, volume IX, annex 3 to the Merits Report, folio 5589).

<sup>327</sup> Cf. Judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004 (evidence file, volume IX, annex 4 to the Merits Report, folios 6004 and 6005), and Judgment handed down by the Seventh Criminal Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area on May 22, 2006 (evidence file, volume XX, annex 8JJ to the pleadings and motions brief, folio 13827).

<sup>328</sup> Cf. *Case of Espinoza González v. Peru*, *supra*, para. 278.

<sup>329</sup> Cf. *Case of Gutiérrez Hernández et al. v. Guatemala*, *supra*, paras. 171 and 172.

<sup>330</sup> Cf. *Case of Gutiérrez Hernández et al. v. Guatemala*, *supra*, para. 171.



insofar as possible, to avoid revictimization or the re-experiencing of the victim's severely traumatic experience.<sup>331</sup> To this end, in cases of violence against women, certain safeguards should be put in place when taking the victims' statements during the investigations and the judicial proceedings;<sup>332</sup> also, when medical or psychological forensic examinations are conducted, especially in the case of victims of sexual violence.<sup>333</sup>

242. The Court notes that, following her rescue, Linda Loaiza López Soto was transferred to the Caracas University Hospital where, in addition to receiving emergency medical care, the first medical examinations were performed.<sup>334</sup> Approximately one week after her rescue, at the request of Prosecutor No. 33 who was conducting the investigation, Linda Loaiza was again examined by a male gynecologist attached to the Forensic Medicine Unit, who verified her injuries resulting from the sexual violence she had undergone during her captivity.<sup>335</sup> Also, at the request of this Prosecutor, a psychiatric examination was carried out to ascertain her mental health, and this was performed by a male psychiatrist and a male neurologist, both attached to the Forensic Medicine Division of the Judicial Technical Police.<sup>336</sup> Then, when she was transferred to the Military Hospital, Linda Loaiza was subjected to other psychiatric examinations, which were also performed by male physicians, even though she had asked to be treated by a female expert. In short, most of the examinations performed on Linda Loaiza following her rescue were conducted by men, and she was not given the opportunity to choose a female professional.

243. The Court also notes that, in the domestic sphere, Linda Loaiza had to provide her statement on the acts of violence perpetrated against her twice and, on both occasions, she had to describe the details of the acts of sexual abuse.<sup>337</sup> The first of these statements was taken less than a week

<sup>331</sup> Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 196, and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 171.

<sup>332</sup> In this regard, the Court has indicated that, in the case of a presumed victim of rape or sexual violence, it is necessary that their statement be taken in a comfortable and safe place, that provides privacy and trust, and that the statement is recorded so as to avoid or limit the need to repeat it. Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 194, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 344. With the victim's consent, this statement should contain: (i) the date, time and location of the act of sexual violence perpetrated, including a description of the surface on which it 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 or restraints; (v) use of medication, drugs, alcohol, inhaled substances; (vi) how clothing was removed, if applicable; (vii) details of actual or attempted sexual activity against the presumed victim; (viii) use of condoms and lubricant; (ix) any subsequent activities by the patient that may alter evidence, and (x) details of any symptoms that the presumed victim may have developed since the assault. Cf. *Case of Espinoza Gonzáles v. Peru, supra*, para. 249, citing World Health Organization, *Guidelines for medico-legal care for victims of sexual violence, supra, inter alia*, pp. 36 and 37.

<sup>333</sup> The Court has established that, in cases of violence against women, as soon as the alleged acts are reported, it is necessary that a suitable and qualified professional, if possible of the sex indicated by the victim, performs an immediate complete and detailed medical and psychological examination offering the victim the possibility of being accompanied by someone she trusts if she wishes. This examination must be performed in keeping with protocols specifically designed to document evidence in cases of gender-based violence. Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 194, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 252.

<sup>334</sup> Cf. Medical report signed by Dr. Robert A. Lam, Caracas University Hospital, Surgery Department, dated September 4, 2001 (evidence file, volume X, annex 10 to the Merits Report, folio 6306), and Statement by Robert Ángel Lam Leung, general surgeon of the Caracas University Hospital, transcribed in the judgment handed down by the Twentieth Trial Court of the Caracas Metropolitan Area on November 5, 2004, pp. 162 to 166 (evidence file, volume IX, annex 4 to the Merits Report, folios 5853 to 5857).

<sup>335</sup> Cf. Forensic medical examination signed by Dr. José Enrique Moros, forensic physician of the National Criminal Investigations Directorate, Judicial Technical Police, Forensic Medicine Division, dated July 30, 2001 (evidence file, volume X, annex 13 to the Merits Report, folios 6312 and 6313).

<sup>336</sup> Cf. Medical report signed by Dr. Osiel David Giménez González and Dr. Juan Carlos Guedes Rivas, of October 2, 2001 (evidence file, volume X, annex 25 to the Merits Report, folios 6359 to 6361).

<sup>337</sup> Cf. Record of interview signed by Lino Hidalgo and Linda Loaiza López Soto, on July 26, 2001 (evidence file, volume XLVI, helpful evidence, folios 31411 to 31414), and Statement by Linda Loaiza López Soto in the record of the public oral hearing of the Twentieth Trial Court of the Caracas Metropolitan Area of September 9, 2004 (evidence file, volume XXXIII, annexes to the answering brief, folios 22803 to 22808).

after her rescue, in her bed in the University Hospital, after she had undergone an operation on her jaw that made it difficult for her to talk,<sup>338</sup> and in the presence of male security personnel from the Technical Judicial Police who accompanied an assistant to Prosecutor No. 33 in charge of the procedure, who was also male<sup>339</sup> - and this, despite the fact that, at that time, it had already been verified that she had experienced injuries compatible with sexual violence. Regarding the second statement, it took place during the first public oral hearing in the domestic proceedings, in the presence of her aggressor. On completing her statement, Linda Loaiza indicated that she was "extremely exhausted by the interrogation," which led to the suspension of the hearing.<sup>340</sup> The evidence does not show that she received or had been offered professional assistance or support at any time before, during or after any of these actions.

244. After examining Linda Loaiza, expert witness Ramírez Velasco indicated that, "the tests revealed a person who feels that she has been exposed to the world, and observed by it [...] during which she felt she had been judge inappropriately by the authorities and others in that setting, making her feel vulnerable."<sup>341</sup> She also indicated that the psychological harm and the harm to her cognitive functions owing to what happened had increased "due to the permanent emotional stress associated with the fear of new abuse by the perpetrator and the flaws in the due process of law by the State's legal representatives in charge of the case."<sup>342</sup>

245. The Court concludes that the circumstances surrounding the different statements made by Linda Loaiza in the domestic proceedings, especially the first one, and the fact that the authorities in charge of the investigation failed to ensure the intervention and support of female professionals in the medical examinations performed on Linda Loaiza constituted acts of revictimization that violated her personal integrity.

*B.5 Lack of adequate measures of protection and investigation of the threats and harassment of Linda Loaiza López Soto, her family and her lawyer*

246. During the domestic judicial proceedings, Linda Loaiza and the members of her family were subjected to threats and harassment that resulted in a request to the domestic jurisdictional organs for measures of protection (*supra* paras. 101 to 106). Regarding the measures established during the processing of the first criminal proceedings, this Court notes that they were initially ordered by the Forty-first Trial Court of the Caracas Metropolitan Area on October 30, 2003, but were not put in place until December 26, 2003, owing to the lack of coordination with the security agency assigned to carry out the measure.<sup>343</sup> Subsequently, in May 2004, Linda Loaiza's lawyer

<sup>338</sup> Cf. Statements made by Linda Loaiza López Soto and Ana Secilia López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>339</sup> Cf. Record of interview signed by Lino Hidalgo and Linda Loaiza López Soto, on July 26, 2001 (evidence file, volume XLVI, helpful evidence, folios 31411 to 31414).

<sup>340</sup> Cf. Statement by Linda Loaiza López Soto in the record of the public oral hearing of the Twentieth Trial Court of the Caracas Metropolitan Area of September 9, 2004 (evidence file, volume XXXIII, annexes to the answering brief, folios 22803 to 22808).

<sup>341</sup> Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folio 31213).

<sup>342</sup> Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folio 31220).

<sup>343</sup> On October 30, 2003, the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area ordered that "the necessary protection" be provided to Linda Loaiza López Soto by the General Directorate of Intelligence and Protection Services. This agency was informed of the decision, and again on November 25, 2003, and again on December 9, 2003, based on a request by Linda Loaiza and her lawyer on December 5 that year. It was not until December 26 that, finally, the said Directorate provided the information of the two agents who would protect her. Cf. Decision issued by the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area of October 30, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12797); Communication No. 1610-03 addressed to the General Directorate of Intelligence and Protection Services (DISIP),

again requested measures of protection because those initially ordered had been suspended.<sup>344</sup> This petition had to be repeated on several occasions,<sup>345</sup> and although the judge ordered the continuation of the measures of protection their implementation was delayed because the office responsible for this task failed to obey the judicial order; also, other offices alleged a lack of available personnel and resources.<sup>346</sup> Furthermore, while awaiting the implementation of these measures of protection, Linda Loaiza reported to the Scientific, Criminal and Criminalistic Investigations Unit that, after one of the days of the oral public hearing, unknown men on a motorcycle injured her father and another two people who were with him.<sup>347</sup>

247. The Court also notes that, during the processing of the domestic proceedings, and after the first judgment acquitting the aggressor had been delivered, Linda Loaiza's lawyer received e-mails with threatening and offensive messages and had to request measures of protection, and these were also inadequate (*supra* para. 106).

248. The Court has no information on the processing of three reports filed by Linda Loaiza on acts of intimidation and injuries against her and her family or whether, following those incidents, the authorities took any additional measure of protection. In addition, it does not know whether the corresponding court ordered any type of measure after a witness reported that he had been threatened after testifying in the first public oral hearing against the aggressor.<sup>348</sup>

249. In summary, the Court concludes that, although measures of protection were adopted for

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of November 25, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12799); Brief filed by Linda Loaiza López Soto with the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area, of December 5, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12801); Communication No. 1700-03 addressed to the General Directorate of Intelligence and Protection Services (DISIP), on December 9, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12802), and Communication No. 1502-2003 addressed to the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area, on December 26, 2003 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12806).

<sup>344</sup> Cf. Brief filed by Juan Bernardo Delgado Linares with the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area, on May 28, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12809).

<sup>345</sup> Cf. Record of appearance by Linda Loaiza López Soto dated July 23, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12815), and Brief filed by Juan Bernardo Delgado Linares with the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area on August 18, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12817).

<sup>346</sup> Cf. Order issued by the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area on May 31, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12810); Communication No. 774-04 addressed to the General Directorate of the Intelligence and Protection Services (DISIP) on May 31, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12811); Communication No. 775-04 addressed to the Autonomous Institute of Public Safety and Transport of May 31, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12812); Note of the General Directorate of the Intelligence and Protection Services of June 16, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12813); Order issued by the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area on August 19, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12818); Communication No. 1222-04 addressed to Instituto the Autonomous Institute of Public Safety and Transport on August 19, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12819), and Order issued by the Forty-first Criminal Trial Oversight Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area, on August 26, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folio 12820).

<sup>347</sup> Cf. Complaint G-653.612 filed by Linda Loaiza López Soto with the Scientific, Criminal and Criminalistic Investigations Unit (CICPC) on September 14, 2004 (evidence file, volume XI, annex 97 to the Merits Report, folio 7705), and Report issued by the Senior Prosecutor of the Public Prosecution Service of the Criminal Judicial Circuit of the Caracas Metropolitan Area, on September 16, 2004 (evidence file, volume XIX, annex 8X to the pleadings and motions brief, folios 12836 to 12839).

<sup>348</sup> Cf. Brief filed by Ángel Alberto Rodríguez Torres with the Twentieth Trial Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area on October 13, 2004 (evidence file, volume XIX, annex 8Y to the pleadings and motions brief, folio 12857).

Linda Loaiza, some members of her family and her lawyer in the domestic sphere, they were not implemented either immediately or constantly, and they were therefore ineffective to prevent situations of intimidation and harassment during the proceedings.

*B.6 Inadequate legal definition of the crime of torture*

250. In view of the fact that some acts violence against women may constitute acts of torture or other cruel, inhuman or degrading treatment, the Court reaffirms the State's obligation to investigate such acts. Article 6 of the ICPPT establishes the obligation of the States Parties to "take effective measures to prevent and punish" such conducts "within their jurisdiction." This reflects the absolute prohibition of torture and cruel, inhuman or degrading treatment in international law. The second paragraph of Articles 6 imposes on the States the explicit obligation to adapt their laws so that acts of torture are defined as criminal offenses in a way that accords with the definition contained in this instrument.<sup>349</sup> In this regard, the Court has determined that international law establishes a minimum standard for a correct legal definition of this type of conduct and the basic elements that this must include in light of Article 1 of the ICPPT, in the understanding that criminal prosecution is fundamental to prevent future human rights violations.<sup>350</sup>

251. The second part of Article 182 of the Criminal Code in force in Venezuela established the following:

Suffering, offenses against human dignity, ill-treatment, torture or physical or moral abuse committed against a person who is detained by his custodians or prison guards, or the person who gives the order to execute such treatment, in contravention of the individual rights recognized in paragraph 3 of article 60 of the Constitution, shall be punished by 3 to 6 years' imprisonment.<sup>351</sup>

252. As noted, the fact that the legal definition of the crime was circumscribed to a situation in which a person was detained did not allow the facts to be considered under that criminal offense in this specific case. In addition, when the plaintiff alleged this crime under the Rome Statute, the court in charge of the case did not admit this charge because it did not meet the specific requirements (*supra* para. 89).

253. The Court notes that the Criminal Code in force at the time of the facts<sup>352</sup> (*supra* para. 109) established prison sentences for those who perpetrated "suffering, offenses against human dignity, ill-treatment, torture or physical or moral abuse," without specifying the elements that constituted such acts or the purpose of the conduct. In addition, it circumscribed the application of the criminal sanction to those cases in which the victim was detained and when the perpetrator was his custodian, prison guard or anyone who gave the order to execute that type of act. In other words, it did not contemplate other persons acting in the exercise of public functions, or at the instigation,

<sup>349</sup> Cf. *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2015. Series C No. 308, paras. 222 and 223.

<sup>350</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 92.

<sup>351</sup> Criminal Code of the Bolivarian Republic of Venezuela, Official Gazette No. 915, of June 30, 1964 (evidence file, volume XIII, annex 2B to the pleadings and motions brief, folio 8285).

<sup>352</sup> In 2013, the Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment was adopted and this derogated article 181 of the 2005 Criminal Code, which corresponded to article 182 transcribed above. In the new law, the crime of torture was defined as follows: "the public official who, in the functions inherent in his position, harms the physical, mental or moral integrity of a person who is in his custody, or does so for a reason based on any type of discrimination, with the intention of intimidating, punishing or obtaining information or a confession, shall be punished with 15 to 25 years' imprisonment or disqualification from exercising public or political functions, for a period equivalent to the punishment decreed. The disqualification from the exercise of both public and political office shall not be subject to any reduction." Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment, Official Gazette No. 40,212, of July 22, 2013, sole derogation provision (evidence file, volume XIV, annex 2T to the pleadings and motions brief, folio 9702).

or with the consent or acquiescence of public officials as perpetrators of the crime.<sup>353</sup> In addition, the punishment envisaged – 3 to 6 years – was not commensurate with the nature and gravity of the crime, when compared to the punishments established for other crimes.

254. The Court recalls that “if elements considered non-derogable in the prosecution formula established at the international level are eliminated, or mechanisms are introduced that detract from meaning or effectiveness, this may lead to the impunity of conducts that the States are obliged to prevent, eliminate and punish under international law.”<sup>354</sup>

255. In this case, even though it is unclear whether the failure to define the autonomous crime of torture appropriately impeded the effective development of the said criminal proceedings, the Court considers that the failure to legally define torture in accordance with the international parameters resulted in the accused being convicted of the crime of extremely serious injuries, a lesser crime that did not reflect the level of blame required for acts of this nature.

256. The foregoing reveals that the State failed to comply with its obligation to amend its domestic laws in order to define the crime of torture in keeping with the international parameters, a circumstance that, if this had been the case, would presumably have allowed its application in the investigation and prosecution of the facts of this case.

### *B.7 Conclusion*

257. Based on the acknowledgement of state responsibility as well as on the findings in this judgment, the Court concludes that, owing to the absence of a special legal framework and the actions of the State’s law enforcement, investigation and forensic authorities and agents of justice in this specific case, the State of Venezuela did not act with the enhanced due diligence required in the investigations and criminal proceedings for the violence against women and acts of torture suffered by Linda Loaiza López Soto. In addition, serious omissions and irregularities have been verified in the gathering of evidence in the initial stages of the investigation. Even though the authorities were informed of these irregularities, they were not investigated. Also, the existence of a discriminatory legal framework facilitated her revictimization and the use of stereotypes in the assessment of her statements and in the adjudication of the case. Furthermore, the inadequate legal definition of the crime of torture resulted in this crime being rejected and a crime with a less severe punishment was applied. In addition, the proceedings before the Venezuelan courts were not conducted within a reasonable time. Lastly, the inadequacy and ineffectiveness of the measures of protection from, and investigation of, the threats and harassment against Linda Loaiza López Soto, her family members and her lawyer have been verified.

258. The foregoing signifies the perpetration of acts that violated the rights of Linda Loaiza López Soto to personal integrity, prohibition of torture, judicial guarantees, dignity, autonomy and privacy, equality before the law and judicial protection, recognized in Articles 5(1), 5(2), 8(1), 11, 24 and 25(1) of the American Convention, in relation to the obligations contained in Articles 1(1) and 2 of this instrument, Article 7 of the Convention of Belém do Pará and Articles 1, 6 and 8 of the ICPPT.

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<sup>353</sup> Taking into account that Venezuela has also been party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since July 29, 1991.

<sup>354</sup> *Case of Goiburú et al. v. Paraguay, supra*, para. 92.

**VIII-3**  
**RIGHT TO PERSONAL INTEGRITY<sup>355</sup> OF THE FAMILY IN RELATION TO THE OBLIGATION**  
**TO RESPECT RIGHTS**

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

259. The **Commission** indicated that “the acts of violence suffered by Linda Loaiza López directly affected her family.” This suffering was increased as a result of the authorities’ failure to act in response to the report that, starting on the day after her sister’s disappearance, Ana Secilia López Soto tried to file in order to locate her. The testimony of Linda Loaiza’s parents and her siblings reveals the anguish they experienced on not knowing her whereabouts and not being able to do anything to find her. The Commission also indicated that the López Soto family had reported having been subject to threats and harassment by the person allegedly responsible for the acts of violence suffered by Linda Loaiza; however, the authorities failed to respond to their reports, which increased their situation of vulnerability. In addition, the Commission took into account the testimony of Linda Loaiza’s parents on the impact they suffered when they saw her for the first time following her rescue, which affected their health, especially that of her mother who was pregnant. The Commission also stressed the negligible sensitivity of the treatment accorded to the parents by the authorities because, initially, they were not allowed to see Linda Loaiza and had to prove that they were her parents. Lastly, the Commission considered that the denial of justice established in this case had also affected the members of the López Soto family, altered the family dynamic, had an impact on their financial situation, which was increased by the different expenses they had to incur in order to move to Caracas and pay for all the procedures for the criminal proceedings that they themselves expedited to demand justice. Based on the foregoing, the Commission considered that the State was responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the family members who have been identified. Regarding the arguments on the inadequate treatment received by the parents when they moved to Caracas, the Commission clarified that “the determinations on the additional and unnecessary suffering caused to the family of Linda Loaiza, who already faced a traumatic situation on meeting up with her, were not verified with regard to a single moment or to a specific extent, but encompass the aggravated suffering in view of the failure of the authorities to respond to the report of her disappearance [...], the situation of helplessness that the family experienced as a result of the threats and harassment by the aggressor, the situation of uncertainty, and the impact on the family’s financial situation and their life projects.”

260. The **representatives** indicated that the egregious violations suffered by Linda Loaiza during her captivity caused profound suffering to the members of her family, which has been increased and remained over the years owing to the absence of an opportune and adequate judicial response. They noted that, from the moment of her disappearance, Linda Loaiza’s family had been prejudiced directly because “they have all been victims of serious material and emotional harm that they have been unable to overcome.” They stressed that, as a result, Linda Loaiza’s parents were much less present in the life of their other children who had to assume responsibilities that did not correspond to their ages. Regarding Linda Loaiza’s parents, they indicated that they had to wait five days in order to see her for five minutes, because an order had been given prohibiting visits and, therefore, they had to prove their relationship to her. In addition, the representatives indicated that the failure of the Venezuelan authorities to respond to the reports filed on Linda Loaiza’s disappearance, their lack of sensitivity and their indifference, as well as the deficiencies in the investigation, prosecution and adequate punishment of all the facts, caused severe distress to all the members of the family, who suffered from hunger, lack of sleep, tiredness, anguish, and

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<sup>355</sup> Article 5(1) of the Convention stipulates that: “[e]very person has the right to have his physical, mental, and moral integrity respected.”

inhuman and degrading treatment by the different institutions. Consequently, the representatives concluded that the State was responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the members of Linda Loaiza López Soto's family.

261. The **State** acknowledged its international responsibility derived from the violation of the right to personal integrity established in Article 5 of the American Convention with regard to the members of Linda Loaiza López Soto's family as a result of their suffering owing to the particular circumstances of the violations perpetrated against a loved one and the absence of an opportune and adequate judicial response that brought an end to criminal proceedings in which the person or persons responsible for each and every fact that gave rise to this case was determined definitively. However, it specified that this acknowledgement of responsibility did not signify that it accepted that the family's suffering was aggravated by the supposed failure of the authorities to respond to the report that Ana Secilia López Soto had tried to file, or that it accepted the Commission's assertion that the Venezuelan authorities had revealed negligible sensitivity in the treatment given to Nelson López and Paulina Soto when they came to Caracas to meet up with their daughter.

### **B. Considerations of the Court**

262. The Court has affirmed on numerous occasions that the next of kin of the victims of human rights violations may, in turn, be victims.<sup>356</sup> The Court has considered that it is possible to declare that the right to mental and moral integrity of the "direct family" or other persons with close ties to the victims has been violated based on the additional suffering they have experienced as a result of the particular circumstances of the violations perpetrated against their loved ones, and owing to the subsequent acts or omissions of the state authorities in relation to those facts,<sup>357</sup> taking into account, *inter alia*, the steps taken to obtain justice and the existence of close family ties.<sup>358</sup>

263. The Court notes that the State has acknowledged responsibility for the violation of the personal integrity of the family members, but contested the fact that the authorities had treated the parents insensitively when they arrived at the University Hospital in Caracas (*supra* para. 261). The Court has verified that, when they heard from Ana Secilia that Linda Loaiza had been rescued, her parents had to travel to Caracas by their own means and take different steps to prove their relationship to their daughter in order to be allowed to visit her in the University Hospital. This was because Prosecutor No. 33 had issued an order "prohibiting visits to Linda Loaiza López Soto [...] to preserve her physical integrity and to assist the investigation."<sup>359</sup> Apart from the pertinence of a measure of protection such as this in the circumstances of the case, the result was that Linda Loaiza's parents could only meet up with her more than 24 hours after they had arrived in the capital, which caused them even greater anguish and desperation.<sup>360</sup> The Court takes this circumstance into account to establish a violation of the parent's personal integrity.

<sup>356</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 176, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 123.

<sup>357</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, para. 351.

<sup>358</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 15, 2000. Series C No. 70, para. 163, and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 327.

<sup>359</sup> Communication No. Am. C-33-660-2001 of Prosecutor No. 33, addressed to the Legal Department of the University Hospital, of July 25, 2001 (evidence file, volume XXV, annexes to the answering brief, folio 16868).

<sup>360</sup> Cf. Statement made by Paulina Soto Chaustre (evidence file, volume XLIV, affidavits, folio 31028), and Statement made by Nelson López Meza (evidence file, volume XLIV, affidavits, folio 31020). Similarly, Diana Carolina López Soto, Linda Loaiza's sister, described the steps taken by her parents to visit her sister in hospital as "an immense odyssey," because they had to prove to the Judicial Technical Police and to the Prosecutor that "they were Linda's parents." Affidavit made by Diana Carolina López Soto on January 18, 2018 (evidence file, volume XLIV, affidavits, folios 31039 and 31041).

264. That said, based on the State's acknowledgement of responsibility and in order to appreciate the dimension of the violations verified in this case, the Court notes that the statements<sup>361</sup> and the expert opinion<sup>362</sup> received reveal that the personal integrity of the members of Linda Loaiza López Soto's family was affected significantly owing to the uncertainty about her whereabouts for almost four months and the facts that occurred after her rescue, and also as a result of the judicial proceedings, which has caused them: (i) personal repercussions on their physical and emotional health, and an irreversible alteration of their life projects; (ii) the total rupture of the family dynamic, which in this case is particularly serious bearing in mind that most of the siblings were minors at the time of the facts;<sup>363</sup> (iii) severe effects at the financial level and the inadequacy of the available resources; (iv) feelings of fear and helplessness in the face of the threats and harassment suffered, and (v) individual and social effects revealed by anguish, powerlessness and vulnerability as a result of the prolonged search for justice, and the revictimizing actions of the organs responsible for the investigation and prosecution, as well as owing to the indications during the judicial proceedings that they were part of a prostitution network, or the accusations that the father was a drug-trafficker or a paramilitary.

265. Specifically, Nelson López, Linda Loaiza's father, stated that: "[...] all of this changed my life; I didn't know how to get around and adapt to the city and to deal with so many problems all at the same time; the financial problems, the family separated, and the saddest thing was to see my daughter destroyed and without obtaining justice."<sup>364</sup> Similarly, Paulina Soto, Linda Loaiza's mother indicated that: "[t]his whole situation has had a tremendous impact on our family; at home, we had to begin to sell animals to cover Linda's expenses. In general, the institutions closed their doors to us; this meant that I had to be away from my younger children for a long time; we had to sell everything we had; it was very distressing. [...] Time has passed, but we have still got a lot of sadness and pain; as a family it has affected us a lot; they destroyed our reputation [...] Overall, I feel that justice has not been done; we have had to suffer many things, many institutions have humiliated us."<sup>365</sup>

266. Meanwhile, Anyi Karina López Soto indicated that she was 13 years of age when the events occurred and the process of seeking justice affected her greatly because her parents had to move to help Linda Loaiza, so they entrusted her with the care of her younger siblings. According to her statement, Anyi Karina and her younger siblings suffered financial and emotional hardship as a result of the family's separation due to the search for justice for her sister. She affirmed the following:

Those of us who stayed at home in the countryside, we had to stay alone in order to help Linda; it was very difficult for us to be able to survive as we were so young, without understanding what was happening and to provide support even though we did not know what was happening in Caracas; we sold clothes and food in order to survive [...]. Before, we were a normal family and, afterwards, we had to sell many things, even the livestock and rent out the house to help Linda and to pay for necessities. The impact has been very great; I would even say that it was a 180 degree change for each of us; today, life has changed us and continues to change us in all aspects – personal, family and social; personal, because we had to take on roles that did not

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<sup>361</sup> Cf. Statements made by Nelson López Meza, Paulina Soto Chaustre, Diana Carolina López Soto, Anyi Karina López Soto, Nelson Enrique López Soto, Elith Johana López Soto, Yusmely del Valle López Soto, Luz Paulina López Soto and José Isidro López Soto (evidence file, volume XLIV, affidavits, folios 31019 and 31099), and Statement made by Ana Secilia López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>362</sup> Cf. Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folios 31207 to 31221).

<sup>363</sup> With the exception of Ana Secilia, who was 20 years of age at the time, the other siblings ranged in age from 2 to 15 years. Also, Paulina Soto Chaustre was pregnant at the time of the events with the youngest brother who was born eight months later with special needs.

<sup>364</sup> Statement made by Nelson López Meza (evidence file, volume XLIV, affidavits, folios 31022 and 31023).

<sup>365</sup> Statement made by Paulina Soto Chaustre (evidence file, volume XLIV, affidavits, folios 31027 to 31033).



correspond to us at that age and to survive with the lack of many basic resources for development as a human being; in the family aspect, we missed out on a large part of that valuable time in life due to this process, and social, because we have had to face defamation by relatives and the perpetrator, in TV interviews, in the newspapers [...]. It has caused us psychological harm that it is difficult to describe; everyone's life changed.<sup>366</sup>

267. Based on the foregoing, the Court concludes 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 Linda Loaiza López Soto's family, identified as Nelson López Meza, Paulina Soto Chaustre, Ana Secilia López Soto, Diana Carolina López Soto, Anyi Karina López Soto, Nelson Enrique López Soto, Elith Johana López Soto, Yusmely del Valle López Soto, Gerson José López Soto, Luz Paulina López Soto, José Isidro López Soto and Emmanuel Adrián López Soto.

## **IX REPARATIONS (Application of Article 63(1) of the American Convention)**

268. Based on the provisions of Article 63(1) of the American Convention,<sup>367</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>368</sup>

269. 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 re-establishment 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 the violations.<sup>369</sup> Therefore, the Court has found it necessary 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 also guarantees of non-repetition have special relevance for the harm caused.<sup>370</sup>

270. The Court has established that the reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm. Therefore, the Court must observe the concurrence of these factors to rule appropriately and in accordance with law.<sup>371</sup> The Court also considers that the reparations must include an analysis that contemplates not only the right of the victim to obtain reparation, but that also incorporates a gender perspective, in both their formulation and their implementation.<sup>372</sup>

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<sup>366</sup> Statement made by Anyi Karina López Soto (evidence file, volume XLIV, affidavits, folio 31062).

<sup>367</sup> Article 63(1) of the Convention stipulates that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>368</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 143.

<sup>369</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 26, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 144.

<sup>370</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 Ramírez Escobar et al. v. Guatemala, supra*, para. 371.

<sup>371</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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 144.

<sup>372</sup> Cf. *Case of I.V. v. Bolivia, supra*, para. 326, and *Case of V.R.P., V.P.C. et al. v. Nicaragua, supra*, para. 337.

271. Taking into account the violations of the American Convention declared in the preceding chapters, in light of the standards established in the Court's case law in relation to the nature and scope of the obligation to make reparation,<sup>373</sup> the Court will examine the claims presented by the Commission and the representatives, together with the respective arguments of the State, in order to establish measures addressed at redressing the said violations.

**A. Injured party**

272. The Court considers that, pursuant to Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any right established therein is the injured party. Therefore, this Court considers that Linda Loaiza López Soto, Nelson López Meza, Paulina Soto Chaustre, Ana Secilia López Soto, Diana Carolina López Soto, Anyi Karina López Soto, Nelson Enrique López Soto, Elith Johana López Soto, Gerson José López Soto<sup>374</sup>, Yasmely del Valle López Soto, Luz Paulina López Soto, José Isidro López Soto, and Emmanuel Adrián López Soto are the "injured party" and, in their condition 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**

*B.1 Investigation, determination, prosecution and punishment, as appropriate, of all those responsible*

273. The **Commission** indicated that it was necessary to investigate with due diligence and within a reasonable time the acts of sexual violence suffered by Linda Loaiza López Soto, respecting the standards indicated in the Merits Report.

274. The **representatives** asked the Court to order the State to conduct effective investigations, prosecute and punish the persons responsible for and those who collaborated in "the kidnapping, torture and sexual slavery" of Linda Loaiza López Soto. They also asked that the State should rescind of the latter's statement about the details of her captivity and the sexual violence suffered, taking into account that this was very traumatic for the victim, and also that they considered that those details had been "amply proved" by the statements she had provided previously. They also asked that the State order the effective investigation and sanction of those responsible for the threats, harassment and other attacks suffered both by the victims and by Linda Loaiza's lawyer, Juan Bernardo Delgado Linares. In this regard, they asked that, during the investigations and judicial proceedings, State implement mechanisms to avoid the revictimization of Linda Loaiza, and to safeguard the integrity of all the victims. To this end, they requested that the State provide a "humanitarian channel" for the eventual case in which the victims feel threatened, so that they may leave the country, with the State assuming the costs of this move. Lastly, the representatives asked that the Court order the investigation of other acts of sexual violence presumably committed by Carrera Almoina against other women, which Linda Loaiza López Soto had opportunely reported to the Venezuelan Public Prosecution Service.

275. The **State** indicated that it had complied with its obligation to duly investigate and punish the facts that had occurred to the detriment of Linda Loaiza López Soto, because on December 15, 2016, the Constitutional Chamber of the Supreme Court of Justice had decided to annul the acquittal delivered with regard to Carrera Almoina for the crime of rape. Also, regarding the

<sup>373</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, supra, paras. 25 to 27, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala*, supra, para. 145.

<sup>374</sup> Deceased on January 2, 2013. Cf. Death certificate of Gerson José López Soto of January 3, 2013 (evidence file, volume XIII, annex 1A to the pleadings and motions brief, folio 8028).

“humanitarian channel” requested by the representatives, it indicated that this measure was not admissible because it was not contemplated as a measure of protection for victims under the Venezuelan Law on Protection of Victims, Witnesses and other procedural subjects, which did include, a series of protection mechanisms within national territory. It also indicated that the measure requested could be considered a punishment of expulsion or exile, which was prohibited by the Venezuelan Constitution.

276. In this judgment, the Court has declared, *inter alia*, that owing to the lack of a special legal framework and the actions of the State’s law enforcement, investigation and forensic authorities, and those responsible for imparting justice in this specific case, the State failed to act with the enhanced due diligence required in the investigations and criminal proceedings for the violence against women and acts of torture suffered by Linda Loaiza López Soto; that the initial procedures and the safeguard of the evidentiary material lacked the minimum diligence, and that the proceedings before the Venezuelan courts were not concluded within a reasonable time; and even, currently, there is a possibility that new proceedings may be held with regard to the facts relating to the crime of rape (*supra* paras. 213, 214 and 257). Thus, on December 15, 2016, the Constitutional Chamber of the Supreme Court of Justice declared admissible the constitutional review of the final judgment of the criminal proceedings against Luis Antonio Carrera Almoina and ordered another Chamber of the Appellate Court to again hear the appeals filed by the prosecutor and the victim against the judgment that acquitted the accused of that crime (*supra* para. 100).

277. The Court has no information on the measures taken to respond to the different complaints filed by the victims and the lawyer, Juan Bernardo Delgado Linares, for the attacks, threats and acts of harassment against them and, consequently, whether any progress has been made in the investigation (*supra* paras. 101 to 106).

278. Based on the foregoing, and taking into account that, currently, a decision is pending in the criminal proceedings on the sexual abuse perpetrated against Linda Loaiza López Soto, the Court establishes that the State must, within a reasonable time, continue those domestic proceedings effectively and punish, as appropriate, those responsible for the acts of torture and sexual violence suffered by the victim in this case, avoiding the application of prejudicial gender stereotypes and any other act that could be revictimizing for her.

279. In addition, the State must, within a reasonable time, conduct all the necessary investigations to identify, prosecute and eventually punish those responsible for the harassment, attacks and threats opportunely reported by the victims and by Juan Bernardo Delgado Linares.

280. Lastly, since one element of the violation of the personal integrity of Linda Loaiza and of her family resulted from the feeling of constant fear and helplessness, owing to the harassment, attacks and threats of which they were victims as a result of their search for justice (*supra* paras. 101 to 106, 244, 246 to 249 and 264), the Court establishes that the State must adopt all necessary measures to ensure that the victims and their legal representatives have due guarantees for their safety during the investigations and judicial proceedings ordered above, in agreement and coordination with the interested parties. These measures must be implemented immediately.

*B.2 Investigation, determination, prosecution and punishment, as appropriate, of those responsible for obstructing access to justice*

281. The **Commission** asked the Court to order administrative, disciplinary or, eventually, criminal measures for the State officials who, by act or omission, contributed in any way to the denial of justice to the victims in this case.

282. The **representatives** asked that judicial proceedings be instituted and sanctions applied to

the state officials responsible for the irregularities and omissions that occurred during the domestic judicial proceedings. They also asked that the corresponding investigations be conducted into the police officials who refused to receive Ana Secilia López Soto's report on the disappearance of her sister, Linda Loaiza. In this regard, in addition to asking that these proceedings should – insofar as possible – be public, in their final written arguments, they asked that the results should be publicized, and that the State should be prohibited from adopting any type of measure that could entail the impunity of those responsible.

283. The **State** only commented on the request to investigate, prosecute and punish the police officials who had refused to receive the report of the disappearance of Linda Loaiza. In this regard, it indicated that this request by the representatives should be rejected because Ana Secilia López Soto had not tried to file any report on her sister's disappearance.

284. The Court takes into consideration that, despite the complaints filed by Linda Loaiza and her personal lawyer, as well as by the Permanent Committee on Domestic Policy, Justice, Human Rights and Constitutional Guarantees of the National Assembly, based on the irregularities and delays in the judicial processing of the domestic criminal proceedings, no concrete investigations have been conducted in this regard (*supra* paras. 85 and 214). This is the same situation as regard the complaint filed by the victims against Prosecutor No. 33, who conducted the criminal investigation into the facts of this case and implemented revictimizing actions (*supra* para. 77).

285. This Court has established that various state officials in charge of law enforcement and of the investigation committed a series of errors in the collection, documentation and chain of custody of the evidence, which meant that the State did not investigate with the enhanced due diligence required by the facts of which Linda Loaiza was a victim (*supra* paras. 213 and 214). The Court has also concluded that the State failed to comply with its obligation of due diligence to prevent violations of personal integrity, because the law enforcement agencies failed to process the report of Linda Loaiza's disappearance appropriately (*supra* paras. 167, 168 and 169). The Court has no information as to whether any inquiries have been made into these circumstances.

286. Consequently, the Court considers that the State must, within a reasonable time, determine, through the competent public institutions, the eventual responsibilities of the officials who failed to investigate immediately what happened to Linda Loaiza López Soto, and also those responsible for the irregularities and unjustified delays during the investigation and the domestic judicial proceedings. Furthermore, the legal consequences must be applied, as appropriate,. The Court also finds that, insofar as possible and provided that this is authorized by the relevant domestic law, the result of these proceedings should be public.

287. Lastly, regarding the investigation, prosecution and eventual punishment of the acts of violence against women presumably committed by the aggressor against other victims, the Court does not consider it pertinent to order this measure because these facts were not included in the factual framework of this case and the presumed victims of such offenses are not part of these proceedings.

### **C. Measures of rehabilitation and satisfaction and guarantees of non-repetition**

#### *C.1 Measures of rehabilitation*

288. The **Commission** requested that the victims in this case should be provided with medical and psychological or psychiatric treatment, free of charge and immediately, always based on their requests and in coordination with the interested parties.

289. The **representatives** asked that Linda Loaiza López Soto be ensured the necessary medical

care to redress the physical, emotional and psychological harm caused to her. Regarding Linda Loaiza's parents and siblings, who are also victims in this case, they requested that they should be provided with the same type of treatment, taking into account the psychological and emotional harm suffered. In both cases, the representatives asked that these treatments be provided by the professionals preferred by the victims, irrespective of whether they belonged to the private health sector or to international organizations. Furthermore, the representatives also requested that Emmanuel Adrián López Soto, who has special needs, should be provided with appropriate medical and educational care so that he can develop his linguistic, psychomotor and cognitive skills. In their final written arguments, they specified that this treatment should also take into account his "musical inclinations."

290. The **State** did not refer to these measures of rehabilitation.

291. The Court finds, as it has in other cases,<sup>375</sup> that a measure of reparation should be established that provides appropriate treatment for the psychological and physical ailments of the victims, based on their gender and personal information.

292. The Court notes that the representatives emphasized that "the medical care provided to Linda while she was in the country's public hospitals to treat her physical and psychological ailments was neither opportune nor appropriate." The indicated that "her confidence in the public health system has been affected."

293. Bearing in mind the preceding considerations, the Court finds it pertinent to order the State to provide, free of charge and immediately, appropriate, adequate and effective medical and psychological and/or psychiatric treatment to Linda Loaiza López Soto and the members of her family who have been declared beneficiaries of this judgment, which must be provided by professionals of their choice in Venezuela for the reasons indicated in the preceding paragraphs. This treatment must include the provision of any medicines they may eventually require free of charge. The beneficiaries have six months following notification of this judgment to advise the State of their intention to receive this measure and to indicate the institutions or professionals of their preference.

294. In order to contribute to the reparation of the physical, psychological and/or psychiatric harm suffered by Diana Carolina López Soto, and considering that she does not live in Venezuela, the Court establishes the State's obligation to pay, once, the sum of US\$7,500.00 (seven thousand five hundred United States dollars) for the expense of medical, psychological and/or psychiatric treatment, as well as medicines and other related expenses, so that she may receive this treatment in the place she resides. The State has one year following notification of this judgment to make this payment.

295. The Court also notes that, at the time of Linda Loaiza López Soto's rescue, her mother was three months pregnant with her youngest child, Emmanuel Adrián, so that in the following months up until his birth she did not receive adequate controls, because she was dedicated to taking care of Linda Loaiza, who was hospitalized. Following his birth, Emmanuel was diagnosed with a disability and, even though it was indicated that he would require treatment all his life, the care he received was only partial owing to the family's financial needs and the housing constraints experienced by Paulina Soto while her daughter remained in hospital.<sup>376</sup>

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<sup>375</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45; *Case of Fernández Ortega et al. v. Mexico, supra*, para. 251, and *Case of I.V. v. Bolivia, supra*, para. 332.

<sup>376</sup> Cf. Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folio 31217), and Statement made by Paulina Soto Chaustre (evidence file, volume XLIV, affidavits, folios 31028 and 31029).

296. Based on the foregoing and taking into account the recommendation of expert witness Ramírez regarding the need to provide Emmanuel Adrián López Soto with a comprehensive medical and psychological evaluation,<sup>377</sup> the Court considers it appropriate to order the State, through its specialized institutions in the area, to make a comprehensive evaluation of Emmanuel Adrián López Soto in order to provide him with the appropriate medical and educational care, immediately and free of charge, so that he may develop his linguistic psychomotor and cognitive skills.

## C.2 Measures of satisfaction

### C.2.a) Publication of the judgment

297. The **representatives** asked the Court to order the State to publish an official summary of this judgment in the two newspapers with the most widespread circulation in Venezuela. They also requested that the entire judgment be published, for one year, on the official websites of the Ministry of People's Power for Internal Affairs, Justice and Peace and the Ministry of People's Power for Health. In their final written arguments, the representatives expanded the request for publication on official website to two other Venezuelan ministries: the Ministry of People's Power for Women and Gender Equality, and the Ministry of People's Power for Education.

298. Neither the **State** nor the **Commission** presented specific arguments on this point.

299. The Court finds, as it has in other cases,<sup>378</sup> that, within six months of notification of this judgment, the State must publish: (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, so that it is accessible to the public from the home page. The State must advise the Court immediately when it has made each of the said publications, regardless of the one-year time frame for presenting its first report established in the twenty-sixth operative paragraph of the judgment.

### C.2.b) Public act to acknowledge international responsibility

300. The **Commission** asked the Court to order the State to organize an act of public apology to Linda Loaiza López Soto and her family owing to the denial of justice they suffered.

301. The **representatives** requested that the State hold a public act of acknowledgment, to be coordinated previously with the victims. In their final written arguments, they explained that, during this act, the State must apologize publicly to Linda Loaiza as a survivor of sexual violence and torture "because the State failed to act to prevent, investigate and punish the said crimes."

302. The **State** indicated that the statement made during the public hearing held before the Court on February 6, 2018, by the agent of the Venezuelan State – who, according to the information provided, was also the Executive Secretary of the country's National Human Rights Council – constituted an act of acknowledgement of international responsibility for the situation experienced by Linda Loaiza López Soto and her family. It argued that, on that occasion, the State's representative had "apologized publicly" to Linda Loaiza for the human rights violations in this

<sup>377</sup> Cf. Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folios 31207 to 31221).

<sup>378</sup> Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 227, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 474.

case. Consequently, it asked the Court to take this circumstance into account when determining the pertinent reparations.

303. The Court appreciates the apology offered by the State during the public hearing held on February 6, 2018, at the seat of the Court (*supra* para. 22), as well as the partial acknowledgement of responsibility made in its answering brief. On previous occasions, the Court has assessed favorably the acts carried out by the States during the processing of cases before it that have had the effect of recovering the memory of the victims, recognizing their dignity, and consoling their next of kin.<sup>379</sup> However, the Court considers that such acts may represent only a partial satisfaction for the victims given the violations declared in this judgment.<sup>380</sup> Consequently, as it has in other cases,<sup>381</sup> the Court finds it necessary, in order to redress the harm cause to the victims and to avoid the repetition of facts such as these, to order the State to hold a public act in Venezuela to acknowledge international responsibility for the facts of the case. During the act, reference must be made to the human rights violations declared in this judgment. In addition, the acknowledgement must be made in a public ceremony in the presence of senior State officials and the victims in this case. The State must reach agreement with the victims or their representatives on the way in which this public act of acknowledgement will be held, and on details such as the date and place. To this end, the State has one year from notification of this judgment.

#### C.2.c) Scholarships

304. The **Commission** asked that the State grant Linda Loaiza López Soto a scholarship for her professional development, to be coordinated with her previously.

305. The **representatives** asked that the State award Linda Loaiza López Soto a scholarship to pursue graduate studies in any university in the world in which she is accepted. When submitting its final arguments, the representatives specified that it was the explicit desire of Linda Loaiza that the scholarship cover graduate studies, doctoral studies and universal languages such as English, as a necessary tool for achieving her objective, which was the defense and promotion of human rights.

306. They also alleged that, as a result of the facts of this case, Linda Loaiza's siblings had to interrupt their studies temporarily, or return to the educational establishments available to them. Therefore, they asked that the Court order the State to grant scholarships for university studies in Venezuela to those who had been unable to conclude such studies, and also scholarships for specialized studies to those who had been able to conclude their studies, specifying that Diana Carolina, Nelson Enrique and Elith Johana had already graduated from university. In this regard, when presenting their final written arguments, based on the specific requests of the victims, the representatives indicated that all the scholarships should be granted in the country chosen by the beneficiaries, taking into account their academic needs and preferences. In general, they specified that these scholarships for all the victims in this case should not be subject to study plans or programs of the Venezuelan Government. Lastly, they also asked that scholarships be granted to Ana Secilia López Soto's two children.

307. Although the **State** did not contest the granting of scholarships for Linda Loaiza and the other victims, it did contest the type of scholarships requested. It argued that Venezuela had universities

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<sup>379</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 Ortiz Hernández et al. v. Venezuela, supra*, para. 209.

<sup>380</sup> Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, supra*, para. 576, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 209.

<sup>381</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra*, para. 209, and *Case of Ortiz Hernández et al. v. Venezuela, supra*, para. 209.

that the victims could attend to pursue their studies at both the undergraduate and graduate level, so it found that the representatives' request that the scholarships in question be granted to study abroad was disproportionate.

308. The Court has established in this judgment that the facts of the case harmed Linda Loaiza López Soto and her family, and caused significant changes in their lives and in their relationships, thus affecting their personal development (*supra* Chapter VIII-3). Expert witness Ramírez Velasco indicated that "in discussions with the family, the difficulty they have had to pursue their academic studies due to the lack of financial resources due to the loss of the family's assets is mentioned repeatedly."<sup>382</sup> She also indicated that "[a]ccording to them, the prolonged court proceedings and the results have affected them in the work environment, as well as in the choice of their professional careers, which had to differ from their original choices."<sup>383</sup> Linda Loaiza's siblings referred to the direct effects on their possibilities of pursuing their studies on several occasions.<sup>384</sup>

309. In particular, the Court stresses that the facts occurred when Linda Loaiza and her sister Ana Secilia were beginning their university studies, and they were obliged to change the study programmes that had originally brought them to Caracas. According to Ramírez Velasco's expert opinion, Linda Loaiza finally decided to study law, but her possibility of exercising this profession had been "curtailed" owing to the exposure she had had in her country as a result of her search to obtain justice.<sup>385</sup> During the public hearing, Ana Secilia stated that she had not studied to be a veterinarian as she had always planned; rather, she had "studied another career to help [Linda with] the therapies."<sup>386</sup> Regarding Linda Loaiza's other siblings, at the time of the facts, Diana Carolina, Anyi Karina, Nelson Enrique, Elith Johana and Yusmely del Valle were in primary school because they were very young;<sup>387</sup> however, according to the information available, Diana Carolina, Anyi Karina, Nelson Enrique and Elith Johana have now completed their university studies.<sup>388</sup>

310. Based on the above, as it has in other cases,<sup>389</sup> the Court finds it appropriate to order, as a measure of satisfaction in this case, that the State grant Linda Loaiza a scholarship so that she is able to conclude her professional training in the local or foreign university to which she is admitted. The State must cover the academic and maintenance costs previously, in keeping with the cost of living of the country in which Linda Loaiza will pursue her studies, so that the victim does not have to disburse the corresponding amounts for these items and then be reimbursed.

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<sup>382</sup> Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folio 31217).

<sup>383</sup> Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folio 31218).

<sup>384</sup> Expert witness Ramírez Velasco mentioned the words of José Isidro, who "stopped studying owing to the absence of financial resources"; and also the words of Nelson Enrique, that "he did not pass fifth grade owing to the family situation at the time"; and of Anyi Karina who stated that she "lost the first year because sometimes there was no money to pay even for the paper for the exams" and, finally, the words of Diana Carolina that she "wanted to study medicine, but with Linda's court proceedings, it was not possible." Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folios 31218 to 31219).

<sup>385</sup> Cf. Expert opinion provided by Rossana Margarita Ramírez Velasco on January 22, 2018 (evidence file, volume XLIV, affidavits, folio 31214).

<sup>386</sup> Statement made by Ana Secilia López Soto during the public hearing before the Inter-American Court on February 6, 2018.

<sup>387</sup> Cf. Statement made by Anyi Karina López Soto (evidence file, volume XLIV, affidavits, folio 31062).

<sup>388</sup> Cf. Affidavit made by Diana Carolina López Soto on January 18, 2018 (evidence file, volume XLIV, affidavits, folio 31048); Statement made by Anyi Karina López Soto (evidence file, volume XLIV, affidavits, folio 31064); Statement made by Nelson Enrique López Soto (evidence file, volume XLIV, affidavits, folio 31078), and Statement made by Elith Johana López Soto (evidence file, volume XLIV, affidavits, folios 31083 and 31084).

<sup>389</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 Ruano Torres et al. v. El Salvador, supra*, para. 219.



311. In addition, the Court establishes that the State must grant a scholarship in a Venezuelan public institution of their choice to Ana Secilia, Anyi Karina, Nelson Enrique, Elith Johana, Yusmely del Valle, Luz Paulina and José Isidro, all with the last name López Soto, to pursue advanced technical or university undergraduate or graduate studies, as applicable, or to undergo professional training. This scholarship must be granted as soon as the beneficiaries submit a request to the State until the conclusion of their advanced technical or university studies and must cover all the expenses until they finalize these studies including academic and educational material. In addition, the scholarship must be awarded as soon as possible following notification of this judgment, so that the beneficiaries may commence their studies the next academic year, if they so wish. As it has in other cases,<sup>390</sup> the Court considers it sufficient to grant scholarships as indicated above; accordingly, it does not admit the representatives' request that they should be awarded to pursue studies in countries chosen by the beneficiaries.

312. The victims have six months as of notification of this judgment to advise the State of their intention to receive the said scholarships.

313. In the case of Diana Carolina López Soto, the Court notes that she currently resides in Colombia;<sup>391</sup> accordingly, the Court finds it appropriate to order the State to grant her, once, the sum of US\$25,000.00 (twenty-five thousand United States dollars) to be able to cover the expenses required to conclude her professional training in her country of residence. The State has one year from notification of this judgment to pay the sum ordered.

314. Lastly, with regard to the representatives' request in their final arguments concerning the award of scholarships to the children of Ana Secilia López Soto, the Court notes that they have not been considered beneficiaries of reparations in this judgment. Moreover, the measure was requested belatedly; consequently, it is inadmissible.

### *C.3 Guarantees of non-repetition*

#### *C.3.a) Adoption of measures to strengthen institutional capacity in order to ensure access to justice for women victims of violence*

315. The **Commission** asked the Court to order the State to adopt legislative, administrative or other measures to guarantee access to justice for women who are victims of violence in Venezuela. In this regard, it requested that the State implement, at the state level, accessible reporting mechanisms for women victims of violence, taking into account the standards established by the Commission in the Merits Report. It also requested that the State design and implement policies to prevent violence against women and gender-based violence that included the corresponding monitoring and oversight mechanisms.

316. The **representatives** asked that the State adapt its domestic legislation to international standards in order to establish an effective remedy that would allow women and girls who are victims of any kind of violence to file complaints on the violation of their rights. In this regard, they asked this Court to oblige the State to regulate the Organic Law on the Right of Women to a Life Free of Violence. Also, in order to ensure effective investigations and appropriate punishments in cases of violence against women, they asked that the Court order the State to ensure that the public institutions responsible for these tasks have sufficient authority and human and financial resources.

<sup>390</sup> Cf. *Case of the Gómez Paquiyauri Brothers v. Peru*, *supra*, para. 237, and *Case of Ruano Torres et al. v. El Salvador*, *supra*, para. 219.

<sup>391</sup> Cf. Affidavit made by Diana Carolina López Soto on January 18, 2018 (evidence file, volume XLIV, affidavits, folio 31035).

317. The **State** argued that, to address violence against women and to adapt its domestic laws to the Venezuelan Constitution, the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women and the Convention for the Elimination of All Forms of Violence against Women, in 2007, the country had enacted the Organic Law on the Right of Women to a Life Free of Violence, which was subsequently amended in 2014. It indicated that this law defined 21 criminal offenses that constituted crimes against women, providing protection in every sphere, and not only within the family. With regard to the judicial agents responsible for processing this type of case, it argued that, in 2008, it had created special courts for cases of crimes against women composed of personnel who were specially trained in this area. It also indicated that, currently, there were 108 special prosecutors for the defense of women's rights throughout the country, and one public prosecution office dedicated exclusively to cases of femicides and sexual offenses. According to the State, these jurisdictional agencies are advised by interdisciplinary teams that operate in the different judicial circuits. At the same time, the State explained that, in the Caracas Metropolitan Area, a Service providing a Comprehensive Approach to Victims of Gender-based Violence operates, without providing further details of its work.

318. This Court notes that, following the facts of this case, in 2007, Venezuela enacted the Organic Law on the Right of Women to a Life Free of Violence in order to prevent, punish and eradicate all forms of violence against women.<sup>392</sup> In addition to listing different forms that violence against women may take and defining them as crimes – including, since 2014, femicide and instigation to commit suicide – this law contains specific regulations on the functions of the specialized police and jurisdictional organs that intervene in the investigation and prosecution of such incidents, respectively, in order to facilitate access to justice for women who are subjected to any of the types of violence listed therein. At the same time, the law contemplates the existence of a series of mechanisms designed to protect victims and to deal with their aggressors. In addition, the text includes a chapter devoted specifically to public policies to prevent and to address the phenomenon of violence against women, the design and implementation of which was entrusted to the executive organ with exclusive competence in this area – currently known as the Ministry of the People's Power for Women and Gender Equality – in coordination with the country's other ministries.<sup>393</sup>

319. The Court underscores the positive nature of the fact that, currently, some of the mechanisms and institutions envisaged by the said special law are functioning in Venezuela, and these facilitate access to justice for women, particularly those who are victims of violence. They include the creation of specialized courts, the Ministry of the People's Power for Women and Gender Equality – responsible for the design and implementation of public policies for the protection of women's rights<sup>394</sup> – and some other agencies that have the main function of supporting victims during judicial proceedings, such as the Office for the Defense of Women's Rights,<sup>395</sup> the Centers for Assistance and Comprehensive Training for Women, and the Community Defenders composed of women trained to support and counsel victims of violence. In addition, there is a special

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<sup>392</sup> Cf. Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 38,668, of April 23, 2007 (evidence file, volume XIII, annex 2H to the pleadings and motions brief, folios 8458 to 8498).

<sup>393</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, Chapter IV *Public prevention policies* (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8508).

<sup>394</sup> Cf. National report presented by the Bolivarian Republic of Venezuela to the United Nations Human Rights Council, A/HRC/WG.6/26/VEN/1, August 22, 2016 (evidence file, volume XVI, annex 5B to the pleadings and motions brief, folio 11420), and Affidavit made by Merelis Pérez Marcano on January 24, 2018 (evidence file, volume XLIV, affidavits, folio 31008).

<sup>395</sup> Cf. Affidavit made by Merelis Pérez Marcano on January 24, 2018 (evidence file, volume XLIV, affidavits, folios 31010 and 31011). See also, National report presented by the Bolivarian Republic of Venezuela to the United Nations Human Rights Council, A/HRC/WG.6/26/VEN/1, of August 22, 2016 (evidence file, volume XVI, annex 5B to the pleadings and motions brief, folio 11420).

telephone service that women can use to obtain advice in situations of violence, and that triggers the immediate response of the State.<sup>396</sup>

320. Despite the foregoing, it has been verified that there remain weaknesses in implementation of the law<sup>397</sup> owing to errors in the design and execution of training programs for state agents, the absence of uniform standards with regard to assistance, investigation and prosecution in this type of case, as well as the absence of regulations to this law that would coordinate public policy on violence against women so that facts such as those in this case are not repeated in future. In this regard, the Court notes that, even though the text of the law explicitly requires the State, through the corresponding executive organ<sup>398</sup> – that is, the Ministry of the People’s Power for Women and Gender Equality – to draw up a bill for its regulation, this has not been done yet.<sup>399</sup>

321. Consequently, the Court finds it pertinent to order the State, within one year, to enact the regulations to the Organic Law on the Right of Women to a Life Free of Violence.

322. On a separate issue, the Court notes that a dispute exists on the effective operation of the jurisdictional organs with special competence to investigate, prosecute and, eventually, punish cases of violence against women. Although the State indicated that, currently, both courts and public prosecutors specialized in gender matters have been established<sup>400</sup> (*supra* para. 317), the representatives questioned the effectiveness of these organs owing to a lack of autonomy and financial resources.

323. In this regard, the Court notes that article 116 of the Organic Law on the Right of Women to a Life Free of Violence establishes the creation of courts for violence against women “in Caracas and in each state capital, and also in places determined by the Supreme Court of Justice, through the Executive Directorate of the Judiciary.” According to the law, these courts are organized in

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<sup>396</sup> Cf. Affidavit made by Merelis Pérez Marcano on January 24, 2018 (evidence file, volume XLIV, affidavits, folios 31010 and 31011).

<sup>397</sup> Cf. Amnesty International, *The Law is there let’s use it. Ending domestic violence in Venezuela*. AMR/53/001/2008, of July 2008 (evidence file, volume XVI, annex 4R to the pleadings and motions brief, folio 11104); Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc. 54, of December 30, 2009, paras. 945 to 948 (evidence file, volume VII, annexes to the representatives’ brief on merits before the IACHR, folios 4508 and 4509); UN, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela*, CEDAW/C/VEN/CO/7-8, November 14, 2014, para. 18 (evidence file, annex 4b to the pleadings and motions brief, volume XVI, folio 10727), and Amnesty International, *Report 2015/2016: The State of the World’s Human Rights*. POL 10/2552/2016, of February 23, 2016 (evidence file, volume XVI, annex 4L to the pleadings and motions brief, folios 11031 and 11032).

<sup>398</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, Chapter IV, article 21.7 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8509).

<sup>399</sup> Cf. Amnesty International, *The Law is there let’s use it. Ending domestic violence in Venezuela*. AMR/53/001/2008, of July 2008 (evidence file, volume XVI, annex 4R to the pleadings and motions brief, folio 11104). Observatorio Venezolano de los Derechos de las Mujeres. *Report on the Bolivarian Republic of Venezuela – Twelfth session of the Universal Periodic Review – October 2011, March 2011* (evidence file, volume XII, annex 108 to the Merits Report, folio 7989), and AVESA, Asociación Civil Mujeres en Línea, Centro de Justicia and Paz and FREYA: *Mujeres al límite. El peso de la emergencia humanitaria: vulneración de derechos humanos de las mujeres en Venezuela*, November 2017, paragraph 3.1 (evidence file, volume XLV, annexes to the final arguments, folio 31302).

<sup>400</sup> According to the State’s final arguments, currently a total of 91 courts with jurisdiction for crimes of violence against women were functioning and there were also 108 special public prosecution offices. In this regard the expert witness proposed by the State, Carmen Zuleta de Merchán, indicated that, currently, there were 79 trial courts and seven appellate courts, all specialized in gender-related matters and distributed throughout Venezuelan territory. Meanwhile, a 2016 report prepared by the Venezuelan authorities, which was submitted to the United Nations Human Rights Council indicated that, at that time, there were 78 courts and 69 public prosecution offices specializing in gender-related matters. Cf. Affidavit made by Carmen Zuleta de Merchán on January 23, 2018 (evidence file, volume XLIV, affidavits, folio 30996), and National report presented by the Bolivarian Republic of Venezuela to the United Nations Human Rights Council, A/HRC/WG.6/26/VEN/1, of August 22, 2016 (evidence file, volume XVI, annex 5B to the pleadings and motions brief, folio 11420).

judicial circuits, and more than one circuit may be created within the same judicial district if the service requires this; in each judicial circuit, these courts are composed of judges responsible for oversight, hearings and measures, and also of trial judges and judges for execution of sentence, while in second instance appellate courts will be created.<sup>401</sup> In addition, article 126 of the law indicates that these courts must “be provided with the necessary facilities, equipment and personnel to fulfill their functions,” and this is in addition to the fact that they must have a multidisciplinary team to provide “biopsychosocial expertise” to the organs of justice.<sup>402</sup> Lastly, it should be pointed out that, in the Fourth Transitory Provision, the law requires the “National Executive to include in the annual budgetary laws, starting in the year immediately following the enactment of the law, the necessary resources for the functioning of the organs, entities and programs established therein.” Nevertheless, the Court notes that, according to the information provided, at the present time, this special jurisdiction has only been implemented in 17 of the 23 states that, together with the capital district, compose Venezuelan territory,<sup>403</sup> and that the functioning of these jurisdictional organs is increasingly more deficient, with long judicial proceedings and unjustified delays, added to the fact that the number of complaints “exceeds the response capacity of the competent institutions,” including the system of justice.<sup>404</sup>

324. Based on the foregoing, and taking into account the provisions of the Organic Law on the Right of Women to a Life Free of Violence, the Court finds it pertinent to order the State, within a reasonable time, to implement adequately the courts for violence against women in each state capital.

325. Regarding the implementation of the complaint mechanism for acts of violence against women, the Court notes that the Organic Law on the Right of Women to a Life Free of Violence contemplates various institutions, some of which are not police stations, where victims can go to file complaints.<sup>405</sup> Therefore, the Court considers that it is not necessary to order this measure; rather the appropriate functioning of these institutions must be guaranteed by providing specialized training for state officials responsible for receiving and processing complaints of incidents of violence against women, and this will be ordered below.

*C.3.b) Adoption of standardized protocols for investigation and comprehensive assistance in cases of violence against women*

326. The **Commission** asked that the Court order the State to develop protocols for the “effective, uniform and transparent” investigation of acts of physical, sexual and psychological violence, based on the standards established in the Istanbul Protocol, ensuring that such protocols include a description of the minimum evidence that must be collected to ensure the appropriate evidentiary basis for a case.

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<sup>401</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, articles 119 and 120 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8516).

<sup>402</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, articles 124 and 125 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8516).

<sup>403</sup> Cf. Affidavit made by Carmen Zuleta de Merchán on January 23, 2018 (evidence file, volume XLIV, affidavits, folio 30996).

<sup>404</sup> Cf. AVESA, Asociación Civil Mujeres en Línea, Centro de Justicia and Paz and FREYA: *Mujeres al límite. El peso de la emergencia humanitaria: vulneración de derechos humanos de las mujeres en Venezuela* [Women on the brink. The weight of the humanitarian emergency: violation of women’s human rights in Venezuela], November 2017, paragraph 3.1 (evidence file, volume XLV, annexes to the final arguments, folio 31302).

<sup>405</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, Article 74 and 75 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8513).

327. The **representatives** requested that a protocol be implemented for the investigation of cases of sexual violence against women and that, at the same time, all the manuals and protocols for the investigation of such facts, as well as on the disappearance and murder of women be standardized, taking into account the gender perspective and based on the standards of the Istanbul Protocol and the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and also the standards proposed by the World Health Organization.

328. The **State** did not refer to this matter.

329. The Court notes that the Organic Law on the Right of Women to a Life Free of Violence establishes that cases of violence against women must be investigated and prosecuted under a special judicial proceeding.<sup>406</sup> The law contains specific indications that regulate both the opening of the proceeding for this type of act by the agencies that receive complaints, and also the processing of such complaints before the specialized jurisdictional organs.<sup>407</sup> In addition, it is worth stressing that, although the law in question stipulates that a medical examination should be performed on the women at the time reports of this type of act are filed,<sup>408</sup> it does not include a specific procedure or instructions for the measures to be taken by the personnel of the health care system in such cases.

330. The Court notes that the evidence provided reveals that, within the Public Prosecution Service, as the agency responsible for conducting judicial investigations into acts of violence against women, draft protocols have been drawn up in order to unify standards on assistance and investigation in cases of violence against women.<sup>409</sup> However, the Court has no current information that would allow it to affirm that the said protocols have been implemented.

331. Accordingly, it is not possible to assert that, currently, there is any instrument that regulates, uniformly and in a binding manner, the actions of the state agents who intervene in cases of violence against women, especially when these relate to acts of sexual violence. However, this is notwithstanding the fact that some agents may have prudently adapted their practices to the standards established in international instruments such as the Istanbul Protocol.<sup>410</sup>

332. Consequently, the Court finds it desirable to order the State to adopt, implement and monitor protocols that establish clear and uniform standards for both the investigation and the comprehensive assistance required in the case of acts of violence in which the victim is a woman.

<sup>406</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette of the Bolivarian Republic of Venezuela No. 40,548, of November 25, 2014, article 12 (evidence file, volume XIII, annex 2I to the brief with pleadings, motions and evidence, folio 8507).

<sup>407</sup> Chapter IX of the Organic Law on the Right of Women to a Life Free of Violence establishes a specific procedure for treating cases arising from acts of violence against women. Thus, the First Section regulates everything related to the opening of these proceedings, starting with the filing of the complaint; then the Second Section develops everything related to the investigation stage by the Public Prosecution Service, while the Sixth Section establishes everything related to the process before the jurisdictional organs when the case is being prosecuted by the courts. Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, articles 73 to 111 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folios 8513 to 8516).

<sup>408</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, article 75.2 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8513).

<sup>409</sup> Cf. Office of the Prosecutor General, 2012 Annual Report (evidence file, volume XIII, annex 2N to the pleadings and motions brief, folio 8859), and Office of the Prosecutor General, 2013 Annual Report, pp. 28, 80 and 81 (evidence file, volume XIV, annex 2O to the pleadings and motions brief, folio 9009).

<sup>410</sup> Cf. Committee against Torture, *Concluding observations on the third and fourth periodic reports of the Bolivarian Republic of Venezuela*, CAT/C/VEN/CO/3-4, of December 12, 2014, para. 11 (evidence file, volume XVI, annex 4D to the pleadings and motions brief, folio 10747), and Coalition of Venezuelan non-governmental organizations, academic institutions and organized civil society: "Alternative report to the fourth periodic report of the Bolivarian Republic of Venezuela on compliance with the International Covenant on Civil and Political Rights to the United Nations Human Rights Committee," of June 2015 (evidence file, volume XVI, annex 4Q to the pleadings and motions brief, folio 11078).

These instruments should be adapted to the guidelines established in the Istanbul Protocol, the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the guidelines of the World Health Organization, as well as the case law of this Court. These protocols must be addressed at agents of the administration of justice and those who work in the public and private health care sector and those who, in any way, intervene in the investigation, processing and/or provision of assistance in cases of women victims of any type of violence indicated in the Organic Law on the Right of Women to a Life Free of Violence.

333. The State must comply with the measure ordered in this section within two years of notification of this judgment.

*C.3.c) Specialized training for public officials*

334. The **Commission** recommended that the State design education and training programs for all legal agents who, owing to their work, are in contact with and/or responsible for investigations in cases of violence against women.

335. The **representatives** asked that a state program be adopted to provide compulsory continuing training for all the agents of the judicial and the health care system on investigation methods in cases of sexual violence and/or assistance to victims. They indicated that this training should also include references to the different international human rights instruments on the protection of women, in order to compare them with certain domestic norms or practices that have discriminatory effects in the daily life of women.

336. The **State** underscored that, in addition to the provisions of a punitive nature stipulated in the 2007 Organic Law on the Right of Women to a Life Free of Violence, this law also contains stipulations of a preventive nature, and indicated that the education and guidance of the officials who intervene in cases of violence against women was essential. In this regard, it argued that, under this law, jurisdictional and non-jurisdictional organs have been urged to create comprehensive public policies aimed at eradicating this type of violence, and the authorities have been obliged to implement awareness-raising programs addressed at public opinion, and also to combat the attitude of those agents who tolerate or conceal this type of violence. However, it did not provide further details on specific programs or mechanisms to train law enforcement agents, judicial agents and those working in the health care service.

337. The Court notes that, the objectives of the Organic Law on the Right of Women to a Life Free of Violence include promoting the specialization of all the professionals who, in any way, intervene in the process of information, assistance, and protection for women victims of violence.<sup>411</sup> Thus, the Organic Law entrusted the Ministry of the People's Power for Women and Gender Equality with the implementation of training programs on gender for state officials who intervene, in any way, in the processing of acts of violence against women.<sup>412</sup> Although the State provided information on some training, education and upgrading activities with regard to defending women for agents of the Public Prosecution Service,<sup>413</sup> it provided no specific information on the implementation and permanence of specific education and training in the area of public health and justice.

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<sup>411</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, article 2.7 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8506).

<sup>412</sup> Cf. Law amending the Organic Law on the Right of Women to a Life Free of Violence, Official Gazette No. 40,548, of November 25, 2014, articles 21.2, 21.3, 22, 23, 26 and 27 (evidence file, volume XIII, annex 2I to the pleadings and motions brief, folio 8509).

<sup>413</sup> Cf. Office of the Prosecutor General, 2015 Annual Report (evidence file, volume XIV, annex 2Q to the pleadings and motions brief, folios 9335 and 9336).

338. Consequently, the Court establishes that the State must adopt and implement compulsory permanent training programs and courses for public officials who, owing to their functions within the system for the administration of justice, are in contact with, work or intervene in cases of violence against women. These training programs and courses must address the standards of due diligence in the investigation and prosecution of such cases developed in this judgment and, especially, in cases of sexual violence against women, as well as the issue of measures of protection for the victim during the development of these procedures. In addition, the training programs must be imparted from a perspective of gender and protection of women's rights in order to deconstruct negative or prejudicial gender stereotypes and, thus, ensure that the investigation and prosecution of this type of act is conducted in accordance with the strictest standards of due diligence, the protocols ordered by this Court (*supra* para. 332), and the relevant international human rights instruments.

339. The Court also orders the State to adopt and implement compulsory permanent training programs and courses for health care professionals working in the public health system who intervene in the diagnosis, treatment or support of women victims of any type of violence. These training programs or courses must address the methods for the investigation and treatment of cases of violence against women, especially cases of sexual violence, in order to treat victims appropriately during the performance of the medical examinations and to ensure that these are in keeping with the standardized protocols ordered by this Court (*supra* para. 332), as well as with the international human rights instruments on the protection of women's rights.

340. In addition, the State must adopt and implement compulsory permanent training programs and courses for members of the police forces who, in their official capacity, intervene in the procedure for reporting acts of violence against women. These training programs and courses must address the standards of due diligence in receiving and processing reports of this type of incident, as well as the issue of the measures of protection for the victim that, under domestic law, they are authorized to adopt. The training programs must also be imparted from a perspective of gender and protection of women's rights in order to eradicate prejudicial gender stereotypes and thus ensure that reports are received appropriately.

341. The State must comply with the measures ordered in this section within two years of notification of this judgment.

#### *C.3.d) Educational measures*

342. The **representatives** requested implementation of awareness-raising programs on gender issues in basic, mid-level and university education in Venezuela named after "Linda Loaiza."

343. Neither the **Commission** nor the **State** submitted arguments on this measure.

344. The Court notes that the Organic Law on the Right of Women to a Life Free of Violence establishes the design and incorporation of programs and plans to disseminate values of gender equality, respect and tolerance among students at all levels and types of education. Moreover, the State has also provided evidence of the existence of a Gender Equality and Equity Plan entitled "Mamá Rosa."<sup>414</sup> However, the Court has no specific information on the implementation of this awareness-raising program in the educational sector.

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<sup>414</sup> The "Mamá Rosa" program addresses different factors to achieve equality between men and women, and promote the autonomy of women, consolidate a gender-based approach in the State's public policies, and generate social awareness of gender issues. Cf. Affidavit made by Marelis Pérez Marcano on January 24, 2001 (evidence file, volume XLIV, affidavits, folio 31009), and National report presented by the Bolivarian Republic of Venezuela to the United Nations Human Rights Council, A/HRC/WG.6/26/VEN/1, on August 22, 2016 (evidence file, volume XVI, annex 5B to the pleadings and motions brief, folio 11420).

345. Taking the foregoing into account, and considering that the measure requested would not only constitute a tool to raise awareness and educate the new generations on this phenomenon and on gender inequalities, but would also contribute to acknowledging Linda Loaiza's struggle to obtain justice owing to the acts of physical, verbal, psychological and sexual violence of which she was a victim, this Court considers it appropriate that the State, within a reasonable time, incorporate into the national curriculum of the national educational service, at all levels and types of education, a permanent education program under the name of "Linda Loaiza," pursuant to the Organic Law on the Right of Women to a Life Free of Violence, with the aim of eradicating gender discrimination, gender stereotypes and violence against women in Venezuela, in keeping with the relevant international laws and the case law of this Court.<sup>415</sup> To this end, for three years, the State must present an annual report indicating the actions taken to achieve this, and with regard to teacher training to ensure effective implementation.

*C.3.e) Publication of official data on cases of violence against women*

346. The **representatives** asked the Court to order Venezuela to publish disaggregated data on violence against women in that country and on the actions taken by the state organs to address this phenomenon, so that Venezuelans could appreciate the magnitude of the problem and, therefore, assess the State's efforts to combat it. In this regard, they underscored the importance that the system for the collection of data and preparation of statistics be reliable and accessible.

347. Neither the **Commission** nor the **State** submitted arguments on this measure.

348. The Court notes that, since the time the facts of this case occurred, concerns have repeatedly been expressed regarding the scarcity of reliable official statistics that reflect the phenomenon of violence against women in Venezuela precisely<sup>416</sup> (*supra* para. 160). The Court notes that, nowadays, a Subcommittee on Gender Statistics exists within the Ministry of the People's Power for Women and Gender Equality.<sup>417</sup> Nevertheless, no reports or figures produced by this entity have been provided; therefore, the Court has no information on its operations. The Court also notes that the Public Prosecution Service prepares annual reports in which it disseminates statistical data on its work throughout national territory. Although the 2015 report provided by the State includes the figure for the femicides that occurred that year, as well as the number of denunciations, charges brought and measures of protection ordered, it did not include essential data such as the number

<sup>415</sup> Cf. *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 248.

<sup>416</sup> Cf. United Nations Development Programme, National reports on the situation of gender-based violence against women. *Informe Nacional Venezuela*, May 1999 (evidence file, volume VI, annex to the representatives' brief on merits before the IACHR, folio 2870); UN, Committee on the Elimination of Discrimination against Women, *Concluding comments on the Bolivarian Republic of Venezuela*, CEDAW/C/VEN/CO/6, January 31, 2006, para. 25 *in fine* (evidence file, volume XVI, annex 4C to the pleadings and motions brief, folio 10740); Inter-American Commission of Women – Follow-up Mechanism to the Convention of Belém Do Pará (MESECVI). *Country report adopted by the Committee of Experts on Violence*, OEA/Ser.L/II.7.10, June 25, 2008 (evidence file, volume XVI, annex 4K to the pleadings and motions brief, folio 3732); Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc. 54, of December 30, 2009, paras. 945 to 948 (evidence file, volume VII, annexes to the representatives' brief on merits before the IACHR, folios 4508 and 4509); Observatorio Venezolano de los Derechos de las Mujeres. *Report on the Bolivarian Republic of Venezuela – Twelfth session of the Universal Periodic Review* – October 2011, 2011 (evidence file, volume XII, annex 108 to the Merits Report, folios 7988 to 7990); UN, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela*, CEDAW/C/VEN/CO/7-8, November 14, 2014, para. 18 (evidence file, volume XVI, annex 4b to the pleadings and motions brief, folio 10727), and AVESA, Asociación Civil Mujeres en Línea, Centro de Justicia and Paz and FREYA: *Mujeres al límite. El peso de la emergencia humanitaria: vulneración de derechos humanos de las mujeres en Venezuela*, November 2017 (evidence file, volume XLV, annexes to the final arguments, folio 31305).

<sup>417</sup> Cf. National report presented by the Bolivarian Republic of Venezuela to the United Nations Human Rights Council, A/HRC/WG.6/26/VEN/1, of August 22, 2016 (evidence file, volume XVI, annex 5B to the pleadings and motions brief, folio 11420).



of reports filed for acts of violence or the number of cases prosecuted that ended with the conviction of the aggressor.<sup>418</sup>

349. Consequently, in the understanding that access to information on the number of cases of violence against women is necessary in order to appreciate the real magnitude of this phenomenon and, on this basis, design strategies to prevent and eradicate this scourge, thus contributing to avoiding the repetition of facts such as those that occurred in this case, the Court orders the State to implement, immediately, through the corresponding state agency, a system for the collection of data and figures on cases of violence against women throughout national territory. This database must include precise and reliable statistics, with data disaggregated as to type of violence, place where the acts took place, number of cases reported and how many of these were prosecuted, also indicating the number of indictments, convictions and acquittals. The State must disseminate this information each year in the corresponding report, ensuring that the whole population has access to it. Furthermore, for three years, the State must present an annual report to the Court indicating the actions taken in this regard

#### *C.4 Other measures requested*

350. The **Commission** asked that the State strengthen its institutional capacity to respond to the structural problems identified in the case of Linda Loaiza as factors of impunity in cases of women victims of violence. It also recommended that the State be obliged to implement multidisciplinary health care services for women victims of sexual violence to address their specific needs in order to achieve their recovery and rehabilitation. Lastly, it asked that the State disseminate the standards developed in the Merits Report by means of generalized awareness-raising campaigns on violence against women.

351. The **representatives** asked that the State be ordered to create, through the Ombudsman's Office, specialized agencies throughout the country to provide support to women victims during judicial proceedings. They also alleged that obstacles raised in the response to women victims of gender-based violence have an added impact on them and therefore asked the Court to urge the State to ensure that all women victims of gender-based or sexual violence can have effective access to free health care services, and legal and social assistance in specialized institutions, independent of the state authorities, in which civil society organizations can participate. These institutions, according to the representatives' request, must have the necessary funds to cover all the costs associated with the rehabilitation of survivors. In addition, they asked that the Court urge the State to ensure, throughout its territory, the implementation of more of the so-called "safe houses" established by the Organic Law on the Right of Women to a Life Free of Violence, which provide places of special protection for women victims and witnesses. They also asked that educational programs be set up in these places to promote the empowerment of women, and also that financial support be provided so that victims can develop their own undertakings or accede to quality employment that allows them to cover their needs and those of their families. In addition, the representatives asked that the State commemorate the National Day for the Prevention of Sexual Violence; to this end, suggesting that the commemoration take place on July 19 each year, to celebrate the date on which Linda Loaiza López Soto was rescued from captivity. They also requested the creation of a "Linda Loaiza" university course for the prevention and acknowledgement of, and response to, sexual crimes and gender-based violence for different public officials. Lastly, they asked the Court to order the State to create a program to support and treat individuals convicted of gender-based violence to contribute to reducing the risks of recidivism in this type of case.

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<sup>418</sup> Cf. Office of the Prosecutor General, 2015 Annual Report (evidence file, volume XIII, annex 2Q to the pleadings and motions brief, folios 9245 to 9249).

352. In addition, the representatives asked the Court to order the State to reinforce the prohibition of any act of torture in any sphere of Venezuelan society – health care centers, educational establishments, prisons and even on the street – based on gender, sexual orientation, or gender identity or expression, by implementing administrative, legislative and judicial measures. They also requested the following measures: (i) creation of a forensic laboratory with the necessary technical capacity, expertise and independence to process the evidence collected in cases of sexual assaults, with the appropriate technology to process semen samples and perform DNA tests, among others; (ii) support for research to document the effects of discrimination and violence against women and girls, in order to overcome stereotyping; (iii) implementation of specific promotion and prevention campaigns on the importance of reports filed concerning women and girls deprived of their liberty, or other vulnerable groups such as sex workers and/or victims of sexual slavery or the trafficking of persons, and (iv) implementation of social media campaigns to prevent violence against women and girls, as well as to promote the filing of reports before the relevant agencies and other institutions for the protection of human rights.

353. The **State** indicated that, the institutions and mechanisms implemented through the Ministry of the People’s Power for Women and Gender Equality included the safe houses – which were described as “discreet and private establishments” for the temporary accommodation of women whose life or physical integrity was at risk – a direct private phone number that provided counselling to women living in violent situations, and the Office for the Defense of Women’s Rights whose purpose was also to provide counseling and assistance to victims of gender-based violence.

354. Regarding the requested measures described above, the Court considers that the delivery of this judgment, together with the other measures ordered, are sufficient and adequate to redress the violations suffered by the victims and does not find it necessary to order additional measures.

355. Moreover, in the case of the measures requested in the representatives’ final written arguments, the Court notes that these are time-barred.

#### ***D. Compensation***

356. The **Commission** asked the Court, in general, to order the State to make full reparation, both pecuniary and non-pecuniary, for the human rights violations declared to the detriment of Linda Loaiza López Soto and the members of her family.

357. The **representatives**, in their final written arguments, included a series of general clarifications on the method for complying with any pecuniary reparations that were eventually determined. They asked that the State make the payment of the corresponding monetary compensation in United States dollars, within no more than one year following notification of the judgment and that, if this time frame was not respected, the corresponding interest and readjustment should be added to the sum owed. They also asked that, if the payments were not made within the said time frame, the victims be permitted to litigate against the assets of Venezuela “that are located in different OAS Member States.”

358. The **State** indicated its “willingness” to comply with the monetary compensation that the Court might eventually order, asking that this should be determined taking into account the standards of reasonableness established in the Court’s case law. However, it included some considerations on the how the amounts of the monetary reparations should be calculated. It explained that, under article 318 of the Constitution of the Bolivarian Republic of Venezuela and article 106 of the Decree with Rank, Significance and Force of Law of the Central Bank of Venezuela published in the country’s Official Gazette No. 6211 on December 30, 2015, the official currency of the State is the Bolívar, while the United States dollar is not legal tender in Venezuela. It also indicated that, currently, the country has a system that administers foreign currency and that

regulates the buying and selling of foreign currency in the country. Consequently, the State asked that, if the amount of the monetary obligation that was eventually imposed on it was determined in foreign currency, its payment in Venezuela currency, as legal tender, be authorized.

#### *D.1 Pecuniary damage*

359. 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>419</sup>

##### *D.1.a) Indirect damage*

360. The **representatives** asked the Court to order the State to pay the victims, for the concept of indirect damage, the medical expenses incurred owing to the physical and mental injuries suffered by Linda Loaiza López Soto during her captivity. To support these expenses, they forwarded various payment vouchers, certifications of medical treatment and invoices. Specifically, the representatives estimated the expenses of surgical procedures in the amount of Bs.128,309.00; pharmaceutical expenses in the amount of Bs.22,258.72, and the disbursements made for medical consultations and tests, Bs. F 14,360.44. This adds up to Bs. F 164,928.16 for medical expenses. The representatives asked the Court to establish, in equity an amount for these concepts and, to determine this, they recommended taking into account the expert medical opinions, and the testimony of Linda Loaiza during the public hearing before this Court.

361. The representatives added that the expenses incurred in the search for justice should be added to the above-mentioned medical expenditure. In this regard, they explained that Linda Loaiza dedicated 16 years of her life to trying to obtain justice in her case and that this had caused a series of expenses that, even though all of them could not be proved with the corresponding invoices, were estimated to add up to Bs. F 118,050.00. This covered her journeys by public transport to the different public agencies (organs of justice, police stations, Ombudsman's Office, Forensic Medicine Institute and hospitals), and by private transport for safety reasons. In the case of Linda Loaiza's family, the representatives indicated that, as a result of the facts that she suffered and the need to move to Caracas from the state of Mérida to help her, the value of the family farm gradually depreciated (loss of animals and crops), and it was this that had constituted the main financial support of the whole family group. To determine the expenses incurred, the representatives considered the costs of the move to Caracas and also transportation within that city to visit health centers and jurisdictional organs to accompany Linda Loaiza, also the disbursements due to renting a house in Caracas from July 2001 to August 2008, and those for feeding the family group from 2001 to 2009, which amounted to a total of Bs. F 148,814.97. Subsequently, the representatives specified that, when determining these expenses, the specific pecuniary losses incurred by Nelson López Meza and Paulina Soto Chaustre should be taken into account, calculating that this amounted to Bs. F 35,115,200.00, together with the loss of crops and animals that amounted to Bs. F 8,707,560,400.00.

362. The **State** did not comment on this aspect.

363. The Court takes note that the tangible harm indicated by the representatives consisted in loss of earnings, transportation expenses, harm to the family's patrimony owing to the attention required by Linda Loaiza López Soto, disbursements for medical and psychological treatments up until today, and the expenses associated with the processing of the domestic proceedings and the

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<sup>419</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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 177.

procedure before the Inter-American Commission.

364. The Court notes that the representatives were able to provide vouchers for the sum of US\$26,851.15 for medical expenses. Regarding the expenses incurred in the search for justice, the representatives did not submit evidence on the disbursements made; nor is there documentary evidence to support the value of the assets lost owing to the lack of attention to the family business during the processing of the criminal proceedings. However, it is natural that both Linda Loaiza López Soto and her family faced expenditures owing to the numerous steps they took to press the case before the domestic courts and the international organs over the course of 17 years.

365. Consequently, the Court finds it pertinent to establish, in equity, compensation of US\$45,000.00 (forty-five thousand United States dollars), for the concept of expenses incurred owing to the indirect damage, which must be delivered directly to Linda Loaiza López Soto, in representation of all the victims in this case.

*D.1.b) Loss of earnings*

366. The **representatives** asked the Court to order the State to pay Linda Loaiza López Soto reparation for "loss of earnings." They argued that, at the time of the facts, she was studying to be able to enter the labor market but, as a result of the medical treatments she had to undergo over the years, she was unable to work or to continue her studies. Therefore, the representatives included a calculation that took into account the following variables: monthly salary, monthly food and annual vacation bonus, which gave a total of Bs. F 253,143.10.

367. The **State** pointed out that it was difficult to establish the amount of pecuniary compensation for loss of earnings in cases such as this one because, in its opinion, there were no real and concrete elements that would allow this to be determined; thus, it indicated that its determination was mainly related to "completely uncorroborated random factors"

368. The Court notes that no evidence was provided on the salaries received by Linda Loaiza López Soto or her family members prior to the events, and the Court has no specific information on the time during which the latter failed to receive an income. Therefore, the Court has insufficient probative elements to determine precisely the loss of earnings caused in this case. However, based on the criteria established in its consistent case law and the circumstances of the case, the Court finds it pertinent to establish, in equity, for loss of earnings the sum of US\$20,000.00 (twenty thousand United States dollars), which must be paid to Linda Loaiza López Soto within the time frame that the Court establishes to this end.

*D.2 Non-pecuniary damage*

369. The **representatives** indicated that, as a result of the facts of which Linda Loaiza López Soto was a victim, she experienced "a permanent state of fear that she would once again be a victim of violence or that a member of her family might suffer an attack by her aggressor or owing to the petition lodged against the Venezuelan State before the inter-American system of human rights," and this had led her to develop "feelings of sadness, guilt and shame." They indicated that, in order to analyze the "non-pecuniary damage" caused to Linda Loaiza, in addition to the characteristics of the acts of which she was a victim, it should not be overlooked that she was 18 years of age at the time and had arrived in Caracas with the expectation of pursuing her university studies. They also emphasized the negative effect that the lack of justice had had on her. In this regard, they explained that, following her rescue, Linda Loaiza had to confront "six intense struggles": the first, to survive owing to her physical condition at the time of her rescue; the second, because of the efforts to ensure that the credibility of her testimony was not challenged; the third, to find justice; the fourth, to ensure the safety of herself and her family during the judicial proceedings; the fifth,

to re-establish her life project, and, the last, because of the submission of her case to the inter-American system. Furthermore, they noted that the incidents experienced by Lina Loaiza had seriously affected her family relationships, because her siblings had been deprived of the care and financial assistance of their parents who had to move to Caracas to assist her.

370. Therefore, they asked that the State be ordered to pay US\$60,000.00 to Linda Loaiza. However, in the understanding that this initial figure did not reflect “the level of pain that [Linda Loaiza] experienced as a result of the violations perpetrated against her,” when submitting their final arguments, at the request of the victim, they increased this sum to US\$5,000,000.00.

371. The **State** indicated that, based on the Court’s case law, reparation for non-pecuniary damage could be made by payment of a sum of money or even by the delivery of goods or services that were equivalent or had a monetary value.

372. The Court has established in its case law that non-pecuniary damage “may include both the suffering and afflictions caused by the violations, and also the impairment of values of great significance to the individual and any alteration, of a non-pecuniary nature, in the living conditions of the victims.” Furthermore, since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purpose of full reparation to the victim, by the payment of a sum of money or the delivery of good or services with a monetary value that the Court determines in reasonable application of sound judicial discretion and in equity.<sup>420</sup>

373. Taking into consideration the circumstances of this case, the violations committed, the suffering caused and experienced to different degrees, the time that has passed, the denial of justice, and also the change in the living conditions of the family members, the proven violations of the personal integrity of the victims and the other consequences of a non-pecuniary nature that they have suffered, the Court will establish the compensation for non-pecuniary damage in favor of the victims based on the principle of equity.

374. Consequently, the Court orders, in equity, payment of the sum of US\$80,000.00 (eighty thousand United States dollars) to Linda Loaiza López Soto for non-pecuniary damage.

375. Moreover, the Court establishes, in equity, payment of the sum of US\$30,000.00 (thirty thousand United States dollars) for non-pecuniary damage to each of the following persons: Nelson López Meza and Paulina Soto Chaustre, parents of Linda Loaiza López Soto, as well as her sister, Ana Cecilia López Soto.

376. Lastly, the Court orders, in equity, payment of the sum of US\$15,000.00 (fifteen thousand United States dollars), for each of Linda Loaiza López Soto’s other siblings: Diana Carolina López Soto, Anyi Karina López Soto, Nelson Enrique López Soto, Elith Johana López Soto, Gerson José López Soto, Yusmely del Valle López Soto, Luz Paulina López Soto, José Isidro López Soto, and Emmanuel Adrián López Soto.

### **E. Costs and expenses**

377. The **representatives** asked the Court to order the State to pay the costs and expenses incurred in the processing of the case, both in the domestic sphere and before the inter-American system. Specifically, they indicated that the lawyer, Juan Bernardo Delgado Linares, the Center for Justice and International Law (CEJIL), and the Comité de Familiares de las Víctimas (COFAVIC),

<sup>420</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra*, para. 84, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 189.

had provided support to Linda Loaiza and her family group throughout the different judicial proceedings. In this regard, they requested payment of the sums of US\$11,803.88 and US\$4,042.34 for COFAVIC and CEJIL, respectively, for the concept of expenses. Also, owing to the expenses incurred due to the public hearing held before this Court, they requested additional sums of US\$5,465.55 and US\$6,459.63, respectively, which results in total amounts of US\$17,269.43 to cover the expenses of COFAVIC, and US\$10,501.97 to cover those of CEJIL.

378. In the case of Juan Bernardo Delgado Linares, they explained that this professional had represented Linda Loaiza in the domestic judicial proceedings and, therefore, determined the amount for his expenses and fees taking into account the legal procedures conducted, the briefs presented and his attendance at the judicial hearings. On this basis, they requested payment of 10,605,000,000.00 Bolivars, to this lawyer, which, according to the calculation made by the representatives was equivalent to US\$15,000.00. However, in their final written arguments, the representatives requested that, when determining the amount in favor of the professional, the Court take his testimony into account, according to which he had assisted Linda Loaiza for approximately 18 years and, despite this, had never received any payment for his services and therefore asked the Court to determine, "in equity, the amount of the procedural costs and expenses" over that time period.<sup>421</sup>

379. The **State** indicated that it was "disproportionate" that the State had to pay the expenses of the legal assistance and travel of the victims to the seat of the Court, arguing that eight persons had attended the hearing held before the Court on February 6, 2018, including executives, coordinators, lawyers and a communications officer and, in the State's opinion, this was "clearly excessive and an unusual practice." Also, when making observations on the annexes to the representatives' final arguments, the State again questioned the attribution of these expenses to the State. In this regard, it specifically contested the details of the travel expenses presented by CEJIL on that occasion, indicating that the travel expenses of two persons did not correspond to the date on which the public hearing before the Court was held. It also questioned the item "transportation expenses" and indicated that the same costs had been placed under different headings. With regard to the travel expenses for the victims to appear at the said hearing, it argued that these costs had been covered by the Court, through the Legal Assistance Fund. Lastly, it also contested the items "communication expenses" and "administrative costs" described by CEJIL, because these were not listed and no explanation was provided on the concepts included in these categories.

380. The **Commission** did not present specific arguments on this point.

381. The Court reiterates that, in keeping with its case law,<sup>422</sup> costs and expenses form part of the concept of reparation because the activity deployed by the victims in order to obtain justice, at both the national and the international level, entails disbursements that should be compensated when the international responsibility of the State is declared in a judgment. Regarding the reimbursement of costs and expenses, it corresponds to this Court to prudently appreciate their scope, which includes the expenses generated before the authorities of the domestic jurisdiction, and also those arising during the procedure before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>423</sup>

<sup>421</sup> Cf. Statement made by Juan Bernardo Delgado Linares (evidence file, volume XLIV, affidavits, folio 31102).

<sup>422</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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 193.

<sup>423</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, para. 82, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 193.

382. The Court has indicated that “the claims of the victims or their representatives for costs and expenses, and the evidence that supports them 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 these claims being updated subsequently, in accordance with the new costs and expenses incurred owing to the proceedings before this Court.”<sup>424</sup> The Court also 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 that it is considered to represent and that, in the case of alleged financial disbursements, the items and their justification is clearly established.<sup>425</sup>

383. The Court notes that the representatives forwarded vouchers for the expenses incurred over the period from 2001 to 2018 relating to various electronic devices, coordination of the litigation, legal assistance, litigation activities, psychological support, stationery, transportation, general expenses, land transportation, plane tickets, coffee, use of telephone and internet.

384. Regarding the vouchers sent by the representatives, the Court notes that: (a) some payment vouchers indicate expenses that are not clearly and precisely linked to this case, and (b) some receipts are illegible and the amount that they are intended to prove or the reason for the expense is unclear. In fairness, such vouchers have been deducted from the calculation made by the Court.

385. Consequently, the Court finds it appropriate to establish a reasonable amount of US\$18,000.00 (eighteen thousand United States dollars) for the lawyer, Juan Bernardo Delgado Linares, as reimbursement of costs and expenses for his work in litigating the case at the national and the international level. It also establishes a reasonable amount of US\$25,000.00 (twenty-five thousand United States dollars) for the Comité de Familiares de las Víctimas de los Success de Febrero-Marzo de 1989 (COFAVIC) as reimbursement of costs and expenses for its work in litigating the case at the national and the international level. In addition, the Court decides to establish a reasonable amount of US\$12,000.00 (twelve thousand United States dollars) for the Center for Justice and International Law (CEJIL) as reimbursement of costs and expenses for its work in litigating the case at the international level. These amounts must be delivered directly to the corresponding person or organization, The Court considers that, in the procedure of monitoring compliance with this judgment, it may establish that the State reimburse the victims or their representatives any reasonable expenses they incur at that procedural stage.

#### **F. Reimbursement of expenses to the Victims’ Legal Assistance Fund of the Inter-American Court**

386. 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>426</sup> In the instant case, an order of the President of December 13, 2017,<sup>427</sup> granted the financial assistance of the Fund to cover the expenses of: (i) travel,

<sup>424</sup> *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, paras. 79 and 82, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 194.

<sup>425</sup> *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 277, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 194.

<sup>426</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>427</sup> *Cf. Order issued by the President of the Inter-American Court of Human Rights on December 13, 2017 (merits file, volume I, folios 664 to 679).*

transfers and accommodation so that Linda Loaiza López Soto, Ana Secilia López Soto and Daniela Kravetz could take part in the public hearing before this Court; (ii) the expenses associated with the support of Linda Loaiza López Soto's personal psychologist, and (iii) the costs of preparing and mailing the affidavits of two deponents proposed by the representatives, as they determine.

387. Owing to the violations acknowledged by the State and those declared in this judgment and that the requirements for access to the Fund were met, the Court orders the State to reimburse the said Fund the sum of US\$7,310.33 (seven thousand three hundred and ten United States dollars and thirty-three cents). This amount must be reimbursed within six months from notification of this judgment.

***G. Reimbursement of expenses to the Victims' Legal Assistance Fund of the Inter-American Commission***

388. The ***Commission*** asked that the Court order the State of Venezuela to reimburse the expenses of the Victims' Legal Assistance Fund of the Inter-American Commission, for the whole amount disbursed during the processing of this case.

389. The Court notes that the Commission has not specified the amount disbursed for this concept, or presented any documentation to substantiate it. Furthermore, despite this having been requested, the Commission has not indicated the legal grounds and the procedure for this Court to undertake to order and, eventually, to monitor reimbursement to the Fund administered by the Commission. Therefore, the Court understands that it is not appropriate for it to order this as one of the measures established in this judgment; rather the Commission must undertake the corresponding procedure within in own terms of reference.

***H. Method of compliance with the payments ordered***

390. The State shall make the payments for compensation of pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons and organizations indicated herein, within one year of notification of the judgment, pursuant to the following paragraphs.

391. If any of the beneficiaries are deceased or die before the respective compensation is delivered to them, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

392. With regard to the currency for the payment of compensation and the reimbursement of costs and expenses, the State shall comply with its monetary obligations by the payment in United States dollars or, if this is not possible, the equivalent in Venezuelan currency, using the rate that is highest and most beneficial to the victims permitted by domestic law at the time of the payment. During the stage of monitoring compliance with judgment, the Court may readjust, prudently, the equivalent of these figures in Venezuelan currency to avoid exchange variations substantially affecting the purchasing power of the respective amounts.

393. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the amounts in their favor in a deposit account or certificate in a solvent Venezuelan 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 within ten years, the amounts shall be returned to the State with the interest accrued.

394. The amounts allocated in this judgment as compensation and to reimburse costs and



expenses shall be delivered to the persons and organisations indicated integrally, as established in this judgment, without any deductions derived from possible taxes or charges.

395. If the State should fall into arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund of the Court, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Bolivarian Republic of Venezuela.

**X**  
**OPERATIVE PARAGRAPHS**

396. Therefore,

**THE COURT**

**DECIDES,**

Unanimously,

1. To accept the partial acknowledgement of responsibility made by the State, pursuant to paragraphs 27 to 36 of this judgment.

**DECLARES:**

Unanimously, that:

2. The State is responsible for the violation of the rights to recognition of juridical personality, personal integrity, prohibition of torture and other cruel, inhuman or degrading treatment, prohibition of slavery, personal liberty, dignity, autonomy and privacy, movement and residence, and equality before the law, in relation to the obligations to respect and to ensure these rights and not to discriminate, pursuant to Articles 3, 5(1), 5(2), 6(1), 7(1), 11(1), 11(2), 22 and 24 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, Article 7(a) and 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Linda Loaiza López Soto, pursuant to paragraphs 124 to 200 of this judgment.

3. The State is responsible for the violation of the rights to personal integrity, prohibition of torture and other cruel, inhuman or degrading treatment, judicial guarantees, dignity, autonomy and privacy, equality before the law and judicial protection, in relation to the obligations to respect and to ensure these rights, not to discriminate, and to adopt domestic legal provisions, pursuant to Articles 5(1), 5(2), 8(1), 11, 24 and 25(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Linda Loaiza López Soto, pursuant to paragraphs 213 to 258 of this judgment.

4. 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 Nelson López Meza, Paulina Soto Chaustre, Ana Secilia López Soto, Diana Carolina López Soto, Anyi Karina López Soto, Nelson Enrique López Soto, Elith Johana López Soto, Gerson José López Soto, Yusmely del Valle López Soto, Luz Paulina López Soto, José Isidro López Soto and Emmanuel Adrián López Soto, pursuant to paragraphs 262 to 267 of this judgment.

**AND ESTABLISHES:**

Unanimously, that:

5. This judgment constitutes, *per se*, a form of reparation.
6. The State shall, within a reasonable time, continue effectively the substantiation of the criminal proceedings underway in the domestic sphere and, as appropriate, punish those responsible for the acts of torture and sexual violence against Linda Loaiza López Soto, pursuant to paragraph 278 of this judgment.
7. The State shall, within a reasonable time, conduct the necessary investigations to identify, prosecute and, eventually, punish those responsible for the harassment, attacks and threats opportunely reported by the victims and the lawyer, Juan Bernardo Delgado Linares, pursuant to paragraph 279 of this judgment.
8. The State shall, immediately, adopt all the necessary measures to ensure that the victims and their legal representatives have all the due guarantees for their safety during the implementation of the investigations and judicial proceedings ordered above, as established in paragraph 280 of this judgment.
9. The State shall, within a reasonable time, determine, through the competent public institutions, the eventual responsibilities of the officials who failed to investigate what happened to Linda Loaiza López Soto immediately, and also those responsible for the irregularities and the unjustified delays during the investigations and the judicial proceedings conducted in the domestic sphere and, as appropriate, apply the legal consequences, pursuant to paragraph 286 of this judgment.
10. The State shall provide, free of cost and immediately, appropriate, adequate and effective medical and psychological and/or psychiatric treatment to Linda Loaiza López Soto and to the members of her family who have been declared beneficiaries of this judgment, to be provided by professionals of their choice in Venezuela, pursuant to paragraph 293 of this judgment.
11. The State shall pay Diana Carolina López Soto the sum established to cover the costs of medical and psychological and/or psychiatric treatment, pursuant to paragraph 294 of this judgment.
12. The State shall, through its specialized institutions, conduct a comprehensive evaluation of Emmanuel Adrián López Soto, in order to provide him with adequate medical and educational treatment, free of charge and immediately, so that he may develop his linguistic, cognitive and motor skills, pursuant to paragraph 296 of this judgment.
13. The State shall make the publications indicated in paragraph 299 of this judgment.
14. The State shall organize a public act to acknowledge international responsibility in Venezuela, as indicated in paragraph 303 of this judgment.
15. The State shall grant Linda Loaiza López Soto a scholarship so that she may conclude her professional training in a local or foreign university to which she is admitted, pursuant to paragraph 310 of this judgment.
16. The State shall grant a scholarship in a Venezuelan public institution of their choice to Ana Secilia, Anyi Karina, Nelson Enrique, Elith Johana, Yusmely del Valle, Luz Paulina and José Isidro, all

with the last name López Soto, so they may pursue technical or university higher education, or professional training, pursuant to paragraphs 311 and 312 of this judgment.

17. The State shall pay Diana Carolina López Soto the sum established to cover the necessary expenses to conclude her professional training in her country of residence, pursuant to paragraph 313 of this judgment.

18. The State shall, within one year, issue the regulations corresponding to the Organic Law on the Right of Women to a Life Free of Violence, pursuant to paragraph 321 of this judgment.

19. The State shall, within a reasonable time, ensure the adequate functioning of the special courts for violence against women in the capital of each state, pursuant to paragraph 324 of this judgment.

20. The State shall, within two years, adopt, implement and monitor protocols for the investigation and comprehensive assistance to women victims of violence, pursuant to paragraphs 332 and 333 of this judgment.

21. The State shall, within two years, adopt and implement the permanent and compulsory training programs and courses ordered in paragraphs 338, 339 and 340 of this judgment, pursuant to its paragraph 341.

22. The State shall, within a reasonable time, incorporate into the national curriculum of the national education system, at all levels and all educational models, a permanent education program bearing the name of "Linda Loaiza," as indicated in paragraph 345 of this judgment.

23. The State shall implement immediately, through the corresponding state institution, a system for the collection and data and figures on the cases of violence against women throughout national territory, as indicated in paragraph 349 of this judgment.

24. The State shall pay the amounts established in paragraphs 365, 368, 374, 375, 376 and 385 of this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to the said paragraphs and paragraphs 390 to 395.

25. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraphs 387 and 395 of this judgment.

26. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, notwithstanding the contents of paragraph 299 of this judgment.

27. 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 close this case when the State has complied fully with all its provisions.

DONE, at San José, Costa Rica, on September 26, 2018, in the Spanish language.

1/A Court HR Case of *López Soto et al. v. Venezuela*. Merits, reparations and costs. Judgment of September 26, 2018.

Eduardo Ferrer Mac-Gregor Poisot  
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri  
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot  
President

Pablo Saavedra Alessandri  
Secretary