

OEA/Ser.L/V/II.157
Doc. 8
April 13, 2016
Original: Spanish

REPORT No. 4/16
CASE 12.690
MERITS

V.R.P AND V.P.C
NICARAGUA

Approved by the Commission at its session No. 2060 held on April 13, 2016
157 Regular Period of Sessions

Cite as: IACHR, Report No. 4/16, Case 12.690, Merits, V.R.P and V.P.C, Nicaragua, April 13,
2016.

REPORT No. 4/16

CASE 12.690

MERITS

V.R.P. AND V.P.C.

NICARAGUA

APRIL 13, 2016

INDEX

I. SUMMARY.....	2
II. PROCESSING BY THE COMMISSION.....	2
III. POSITION OF THE PARTIES	3
A. Position of the petitioner.....	3
B. Position of the State.....	4
IV. ANALYSIS OF MERITS.....	5
A. Proven facts.....	5
1. On Mrs. V.P.C. and her daughter V.R.P.	5
2. On the events that occurred in the year 2000.....	5
3. On the criminal process.....	6
4. On the accusations against Mrs. V.P.C. and her exit from Nicaragua.....	14
B. Analysis of Rights	15
1. Rights to personal integrity, protection of honor and dignity, rights of the child, equality before the law, judicial guarantees and judicial protection (articles 5.1, 11.2, 19, 24, 8 y 25 of the American Convention in connection with Article 1.1 of the same instrument and Article 7 of the Convention of Belém do Pará)	15
2. Right to personal integrity for V.R.P. and V.P.C. (Article 5 of the American Convention in connection with Article 1.1 of the same instrument)	27
V. CONCLUSIONS.....	29
VI. RECOMMENDATIONS	29

REPORT No. 4/15
CASE 12.690
MERITS
V.R.P AND V.P.C.
NICARAGUA
APRIL 13, 2016

I. SUMMARY

1. On October 28, 2002, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) received a petition lodged by Mrs. V.P.C. (hereinafter the “petitioner” or “V.P.C.”). The petition alleges the international responsibility of the Republic of Nicaragua (hereinafter the “State,” “Nicaraguan State,” or “Nicaragua”) for irregularities and impunity in the criminal proceedings for the crime of rape perpetrated against her daughter, the child V.R.P.

2. The petitioner alleges that her daughter V.R.P. was raped by her father on two occasions when she was aged nine. The petitioner alleges numerous irregularities throughout the criminal process that resulted in its unreasonably long length and impunity. Furthermore, she alleges that the medical examinations of her daughter by the State did not comply with minimum international standards and re-victimized her. She maintains that her daughter was not provided with comprehensive medical attention. The petitioner also alleges that she and her daughter were discriminated against by various State officials during the proceedings because it was a case regarding sexual violence.

3. The State denies the petitioner’s allegations. It argues that the criminal process complied with the legal requirements established by the Nicaraguan legal system. It maintains that after receiving the complaint for rape it carried out multiple procedures in order to clarify the facts. It notes that the decisions adopted by domestic courts adequately assessed the evidence submitted. It maintains that the medical examinations conducted on V.R.P. complied with domestic procedures, and that the best interest of the child was taken into account at all times.

4. After analyzing the available information, the Commission concludes that the Nicaraguan State is responsible for violating the rights to personal integrity, judicial guarantees, the protection of private life, the rights of children, equality before the law and non-discrimination, and judicial protection established in Articles 5, 8, 11, 19, 24 and 25 of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”) in connection with Articles 1.1 and 2 of the same instrument, to the detriment of V.R.P. Furthermore, the IACHR concludes that the State is responsible for violating the rights to personal integrity, judicial guarantees and judicial protection established in Articles 5, 8 and 25 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of V.P.C. Additionally, the Commission considers that the State violated Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter the “Convention of Belém do Pará), to the detriment of V.R.P. and V.P.C. The IACHR formulated its recommendations to the State of Nicaragua upon the basis of these conclusions.

II. PROCESSING BEFORE THE COMMISSION

5. Mrs. V.P.C. submitted her initial petition on October 28, 2002. The process from the petition’s submittal to the decision on its admissibility is detailed in Admissibility Report 3/09 from February 11, 2009.¹ The IACHR concluded in said report that the petition was admissible with respect to the rights enshrined in Articles 5, 8, 11, 24 and 25 of the American Convention in connection with Article 1.1 of the same instrument.

¹ See, IACHR, Report No. 3/09, Petition 4408-02, Admissibility, V.R.P and V.P.C, Nicaragua, February 11, 2009. Available at: <https://www.cidh.oas.org/annualrep/2009eng/Nicaragua4408.02eng.htm>.

6. On February 19, 2009, the Commission notified the parties of the admissibility report and made itself available to them for the purpose of reaching a friendly settlement. The petitioner filed her merits brief on April 16, 2009. The State informed the IACHR of its willingness to reach a friendly settlement by means of a communication submitted on April 27, 2009. The State filed its merits brief on September 11, 2009.

7. The Commission continued to receive briefs from the petitioner and the State, which have been duly forwarded to the parties. On September 13, 2010, the petitioner informed the Commission that she was developing a proposal for a friendly settlement to submit to the State. On October 27, 2010, the IACHR held a working meeting with the parties during the 140th Period of Sessions.

8. On October 22, 2013, the petitioner requested that the IACHR release the Merits Report because of the “Nicaraguan State’s resistance to mediation.” The Commission requested that the parties indicate whether they would continue with the friendly settlement by means of a communication on September 5, 2014. The IACHR noted that if it did not receive a response, it would continue with the proceedings on the merits. The Commission received a response from the petitioner on September 9, 2014, who reiterated his request that the Commission pass judgment on the merits. The State submitted a response on March 23, 2015, indicating that it was still willing to reach a friendly settlement, but that the petitioner’s initial proposal was unacceptable as it imposed conditions that were materially impossible to meet. By virtue of the aforementioned, the Commission decided to end the friendly settlement and continue with the proceedings on the merits.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

9. The petitioner alleges that the Nicaraguan State is internationally responsible for irregularities and impunity in the criminal proceedings for the crime of rape perpetrated against her daughter, V.R.P. The petitioner states that her daughter was raped by her father, Heberto Rodríguez, on two occasions in the year 2000. She maintains that once she learned of what happened to her daughter, she reported the events in November 2001. She states that in April 2002, the court carrying out the proceeding declared Mr. Rodríguez innocent, and that this decision was confirmed in August 2005. The petitioner claimed that the denial of justice and discrimination suffered by her and by V.R.P. has had devastating effects on their lives. A detailed description of the facts and the proceedings can be found in the chapter on Proven Facts found in this report.

10. With respect to the **rights to judicial guarantees and judicial protection**, the petitioner alleges that there were numerous irregularities throughout the criminal process. Among them, she noted: i) the lack of due diligence in the handling of the investigation; ii) that no official from the Attorney General’s Office was present at the reconstruction of the facts; iii) that no medical examination was conducted on the child’s father to determine how she contracted a sexually transmitted disease; iv) the irregular composition of the jury, which absolved Mr. Rodríguez in the first instance; and v) that the jury received a suspicious envelope from the defense prior to issuing the decision to absolve in the first instance.

11. The petitioner maintains that following the decision to absolve Mr. Rodríguez in the first instance, she filed multiple appeals against said decision. She indicates that, in spite of this, neither her allegations nor the documentation submitted were taken into account. Furthermore, the petitioner alleges that the process has been unreasonably long, as it has been nearly fifteen years since she filed the petition. She reports that there have been long periods of inactivity and unjustified requests by judges to recuse themselves from the case. The petitioner concludes that there is a situation of impunity that has been aided by the actions and omissions of the different State institutions involved. She maintains that this has been corroborated by reports from the Office of the Human Rights Ombudsman.

12. With respect to the **rights to personal integrity and private life**, the petitioner alleges that the medical examination conducted on her daughter by forensic physician Andrés Altamirano was denigrating and re-victimizing. She maintains that the physician made hostile and aggressive comments toward V.R.P. and her family. She states that he attempted to conduct the examination without informing her or her daughter about the procedure, and that he intended to do so without providing V.R.P. with any sedatives. The petitioner adds that there were many people present during the medical examination, including persons unrelated to the medical procedure, such as a judge and a prosecutor. She explains that this situation was re-victimizing for her daughter, as she felt highly uncomfortable and frightened.

13. Additionally, she maintains that during the reconstruction of the facts, the judge obliged V.R.P. to show where she had been abused, as well as the position in which the accused had placed her, while being photographed. The petitioner states that this was re-victimizing and denigrating. She indicates that she lodged a complaint against the manner in which the reconstruction of the facts was carried out, but that this was never clarified by the Nicaraguan legal system and that none of the officials were held responsible.

14. The petitioner also alleges that the State did not provide V.R.P. with comprehensive medical treatment as a victim of rape, which should have included psychological treatment. She explains that to date V.R.P. is traumatized not only from the rape, but also from the mistreatment she received from the authorities. She maintains that as V.R.P.'s mother, she has suffered intense anguish and helplessness due to the process' irregularities and the denigrating and discriminatory treatment of her daughter.

15. She indicates that the identity of V.R.P. was not protected during the proceedings, as her testimony was not made in private with the judge. She maintains that, due to so many people having participated in the proceedings, "the entire city knew about the case (...) about everything that happened and the disease."

16. With respect to the **rights of children**, the petitioner maintains that during the proceedings, both procedural and substantive aspects, the State did not respect the principle of the best interest of the child established in the Convention on the Rights of the Child.

17. Finally, with respect to the **principle of equality before the law and non-discrimination**, the petitioner expresses that, from the outset of the investigation, multiple officials involved in the process had discriminatory attitudes toward her and her daughter, beginning with the declarations and conduct of forensic physician Andrés Altamirano when he attempted to conduct the medical examination on V.R.P..

B. Position of the State

18. The state denies the allegations made by the petitioner. It maintains that after Mrs. V.P.C. reported the alleged rape committed against V.R.P. it employed various measures in order to clarify the facts, such as gathering witness testimony, medical examinations, visual examinations and the reconstruction of the facts.

19. Nicaragua also states that the presiding judge issued an arrest warrant for V.R.P.'s father, which was carried out expeditiously. It adds that the father of V.R.P. was held in preventive detention for the duration of the proceedings, demonstrating the seriousness with which the State acted in this manner.

20. The State alleges that the proceedings were in accordance with the law. It states that the decision was duly motivated and took into consideration the facts and evidence submitted by the parties. It adds that the petitioner has not submitted evidence to demonstrate the partiality of the judge and the prosecutor that initially took up the case. It maintains that the State is not responsible for the jury's decision in the first instance, as the jurors "reached the decision based on their personal convictions."

21. With respect to the alleged irregularities and omissions committed by the prosecutor during the proceedings, the State declares that "ideally another prosecutor would have taken up the case in order to avoid these suspicions, but one must take into account the Public Ministry's lack of personnel."

22. With respect to the length of the proceedings, the State maintains that it was of a reasonable time. It explains that the proceedings were carried out within the framework of the Criminal Code of Procedure that was in force at that time, which was “excessively formal, rigorous, and not public.” It indicates that “the administration of justice was much slower, such that the Court’s delay in issuing its decision is, in principle, attributable to the system itself.”

23. It adds that after the decision to absolve in the first instance, the case was heard “on countless occasions due to implications, recusals and nullities alleged by the parties.” The State informs that the legal system has since been modernized, which has streamlined processes.

24. The State alleges that there was no violation of the right of V.R.P. to personal integrity by the authorities. As such, there was no type of mistreatment during the medical examinations. It informs that the examinations were conducted in accordance with domestic standards. With respect to the alleged lack of comprehensive medical attention for V.R.P. as a child victim of rape, the State affirms that “they are correct in that sense (...) because we are a poor country that must prioritize primary needs in our distribution of resources, which results in a regrettable lack of resources.”

25. The State claims that there was no violation of Article 11 of the American Convention, and that, as such, the State did not abusively interfere on the private life of Mrs. V.P.C. or her family. It states that the complaints filed against Mrs. V.P.C. cannot be attributable to the State, as every person has the “right to exercise legal action.”

26. Finally, it maintains that it did not violate the principle of equality before the law, as no discriminatory action occurred that could have affected the interests of V.R.P.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Proven facts

1. On Mrs. V.P.C. and her daughter V.R.P.

27. At the time of the facts, Mrs. V.P.C. was married to Heberto Rodríguez Arauz and they had four children: H.R.P., B.R.P., N.R.P., and V.R.P., who was born on April 15, 1992.² According to a report from the Ministry of Family, during their marriage, the relationship between V.R.P. and Mr. Rodríguez was unstable, as “he had an extramarital relationship and suffered from alcoholism.”³ On January 31, 2002, the Jinoteca District Civil Court issued a sentence ending the marriage between Mrs. V.P.C. and Mr. Rodríguez⁴ as a result of a divorce suit filed by V.P.C. in November 2001.⁵

2. On the events that occurred in the year 2000

28. According to different reports, V.R.P. stated that during the year 2000 her father took her to a place called Las Flores on two occasions. She indicated that her father gave her coffee, and she felt dizzy and

² Annex 1. Ministry of Family Report, Jinoteca Delegation, July 11, 2002. Annex I to the communication received March 16, 2005. Birth certificate, page 10, criminal case file.

³ Annex 1. Ministry of Family Report, Jinoteca Delegation, July 11, 2002. Annex I to the communication received March 16, 2005.

⁴ Annex 3. Jury Verdict, Jinoteca District Civil Court, January 31, 2002. Annex to petitioner’s communication received on August 27, 2007.

⁵ Annex 3. Jury Verdict, Jinoteca District Civil Court, January 31, 2002. Annex to petitioner’s communication received on August 27, 2007.

fell asleep.⁶ She stated that “she did not know what he had done to her.”⁷ She indicated that when she awoke she “noticed that her father was fastening his belt, straightening the front of his pants and zipping up his zipper.” She also stated that “her father was cleaning her rectal area.”⁸ Mrs. V.P.C. stated that she did not know of these facts at the time as her daughter had not told her because she was afraid.⁹

29. On October 16, 2001, Mrs. V.P.C. took V.R.P. to a physician because of the discomfort her daughter had difficulty defecating and suffered from pain in her anal region.¹⁰ An examination of her anal-genital region was conducted while under anesthetic.¹¹ The report indicates that her “hymen had been previously ruptured (...) and that there were cervical and anal lesions present.”¹² V.R.P. was also “diagnosed with human papilloma virus,” an exclusively sexually transmitted disease.¹³ The report concludes that “all of the findings (...) indicate that she is a victim of sexual aggression.”¹⁴

3. On the criminal process

30. On November 20, 2001, Mrs. V.P.C. filed a complaint with the Jinoteca District Criminal Court against Mr. Heberto Rodríguez Arauz for the crime of rape perpetrated against her daughter, V.R.P.¹⁵

31. On November 21, 2001 V.R.P., in the company of her mother, told the Court that on one occasion her father “took [her] to the house he had built and gave [her] a coffee; [she] went to sleep and when [she] woke up,” he was pulling on his pants [and] touching himself.”¹⁶ V.R.P. added that “[she] felt as if [her] buttocks had been opened and they had a burning sensation.”¹⁷ That same day, the Court issued a warrant for Mr. Rodríguez’s arrest, and he was taken into custody that afternoon.¹⁸

⁶ Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005. External Psychiatric Report, November 26, 2001. Annex F to the petitioner’s communication received on February 22, 2006. Forensic Medical Report, November 27, 2001. Annex F to the petitioner’s communication received on February 22, 2006.

⁷ Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005. External Psychiatric Report, November 26, 2001. Annex F to the petitioner’s communication received on February 22, 2006. Annex 6. Forensic Medical Report, November 27, 2001. Annex F to the petitioner’s communication received on February 22, 2006.

⁸ Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005. External Psychiatric Report, November 26, 2001. Annex F to the petitioner’s communication received on February 22, 2006. Annex 6. Forensic Medical Report, November 27, 2001. Annex F to the petitioner’s communication received on February 22, 2006.

⁹ Annex 7. Initial petition received on October 28, 2002.

¹⁰ Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005.

¹¹ Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005.

¹² Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005.

¹³ Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005.

¹⁴ Annex 4. Report from the Institute of Forensic Medicine, November 27, 2001. Annex B to the communication received on March 16, 2005.

¹⁵ Annex 8. Sentence No. 89 of the Northern District Appellate Court Criminal Chamber, July 10, 2002. Annexed to the petitioner’s communication received on October 28, 2002.

¹⁶ Annex 2. Statement given to the inquiry by V.R.P., p. 39, criminal case file.

¹⁷ Annex 2. Statement given to the inquiry by V.R.P., p. 39, criminal case file.

¹⁸ Annex 2. Deed of November 21, 2001, p. 32, criminal case file. National Police deed, p. 41, criminal case file.

32. Mr. Rodríguez gave a statement to the inquiry and said that Mrs. V.P.C. belonged to a “sinister, satanic, and sectarian organization called Mormon (...) who were the ones behind all these accusations.”¹⁹

33. On November 22, 2001, the presiding judge scheduled a medical examination for V.R.P.²⁰ In a communication submitted to the Director of the Jinoteca Department Local Comprehensive Healthcare System (SILAIS), Mrs. V.P.C. indicated that forensic physician Andrés Altamirano had “behaved in an unethical, grotesque and vulgar manner” while examining her daughter.²¹

34. She alleges that Dr. Altamirano said that V.R.P. “had to submit to his vulgar treatment and that he could not provide her with sedatives.”²² She maintains that the physician said “do not cry anymore, when girls from the countryside come to me (...) I tell them to open their legs and they do it, they do not get scandalized like you.”²³ She argues that the physician stated that “if you will not let me examine you vaginally, I wonder what you will do when I have to examine your anus.”²⁴ Mrs. V.P.C. indicated that as a result, her daughter began to scream and cry and refused to be examined.²⁵ Consequently, the medical examination was not performed. For its part, doctor Altamirano submitted a stated to the Court indicating that V.R.P. “did not cooperate, despite persuasion exerted by (...) the mother of the child”.²⁶

35. Mrs. V.P.C. states that another medical examination was scheduled for November 24, 2001, at the Women’s Center with a different medical examiner.²⁷ She maintains that the girl “stated that (...) she did not want anyone to touch her (...) due to the treatment she was subjected to the first time.”²⁸ Therefore, the medical examination was not performed.

36. On November 26, 2001, an external psychiatric evaluation was conducted at the Victoria Motta Hospital in Jinoteca.²⁹ The report concludes that V.R.P. “clearly identified the person responsible as her father and specified that her father also has the same disease she is currently suffering from.”³⁰ The report adds that “her account is trustworthy, very clear and authentic.”³¹

37. On the same day, Mrs. V.P.C. submitted a communication to the District Criminal Judge in Jinoteca stating that the two medical examinations that had been attempted were not performed, as V.R.P. had refused because she was afraid and psychologically traumatized.³²

¹⁹ Annex 2. Statement given to the inquiry by Heberto Rodríguez, p. 46, criminal case file.

²⁰ Annex 9. Brief from Mrs. V.P.C. of November 22, 2001. Annex A to the communication received on March 16, 2005.

²¹ Annex 9. Brief from Mrs. V.P.C. of November 22, 2001. Annex A to the communication received on March 16, 2005.

²² Annex 9. Brief from Mrs. V.P.C. of November 22, 2001. Annex A to the communication received on March 16, 2005.

²³ Annex 10. Communication from the petitioner received on March 16, 2005.

²⁴ Annex 10. Communication from the petitioner received on March 16, 2005.

²⁵ Annex 11. Brief from Mrs. V.P.C. of November 23, 2001. Annexed to the communication from the State from July 25, 2014.

²⁶ Annex 2. Communication of November 23, 2011, page 66, criminal case file.

²⁷ Annex 12. Communication from the petitioner of February 22, 2006.

²⁸ Annex 13. Communication from the petitioner received on April 7, 2003.

²⁹ Annex 5. External psychiatrist’s report of November 26, 2001. Annex F to the communication from the petitioner received on February 22, 2006.

³⁰ Annex 5. External psychiatrist’s report of November 26, 2001. Annex F to the communication from the petitioner received on February 22, 2006.

³¹ Annex 5. External psychiatrist’s report of November 26, 2001. Annex F to the communication from the petitioner received on February 22, 2006.

³² Annex 14. Brief filed by V.P.C. with the Jinoteca District Criminal Judge of November 26, 2001. Annexed to the communication from the State of July 25, 2014.

38. On November 27, 2001, forensic physician Sara Mora from the Institute of Forensic Medicine issued a forensic opinion at the request of the Jinoteca District Judge.³³ The opinion concludes the following: “partial tear at the edge of the hymen (...); anus: presence of polyyps.”³⁴ Furthermore, the opinion includes the results from a laboratory test conducted on October 22, 2001, indicating that “she is infected with the human papilloma virus and a biopsy of the perianal lesion reveals the presence of condylomatosis acuminata.”³⁵

39. On November 29, 2001, a judicial visual examination and a reconstruction of the facts were carried out.³⁶ Mrs. V.P.C. claims that judge Adriana Molina asked V.R.P. to indicate where she had been raped and the position in which the perpetrator had placed her.³⁷ The IACHR notes that the case file includes photographs of V.R.P. lying down in the place where the facts occurred.³⁸ Mrs. V.P.C. alleges that the psychiatrist from the Victoria Motta Hospital, who was present at the proceeding, told the judge that she could not continue to re-victimize the girl.³⁹ Mrs. V.P.C. maintains that there was no official from the Attorney General’s Office present at the proceeding.⁴⁰

40. On November 30, 2001, the Jinoteca District Criminal Court issued an order for the secure and formal arrest of Mr. Rodríguez “as the perpetrator of the crime of rape.”⁴¹ The Court said that “the crime of rape [with respect to V.R.P.] has been fully established by the medical report issued by the Institute of Forensic Medicine (...)”. It also maintained that “the statements given by [the physicians who attended to V.R.P. before her mother lodged the complaint] agree with the diagnosis reached by the Forensic Medicine Institute as regards the tearing found on the child, together with the human papillomavirus, conditions transmitted exclusively through sexual contact.”⁴²

41. On December 3, 2001, Mr. Rodríguez’s defense team appealed against the judgment of the Jinoteca District Criminal Court.⁴³ Three days later, the Court referred the proceedings to the plenary.⁴⁴

42. On February 21, 2002, the Victoria Motta Hospital submitted requested by the Deputy Judge of the Jinoteca District Criminal Court.⁴⁵ The report states that the girl “will almost certainly require psychotherapeutic services until she reaches biological and emotional maturity due to the physical and mental damage she has suffered and the lasting injuries she has sustained, and her prognosis is guarded.”⁴⁶ The report also maintains that “in order to prevent anymore damage from being done to her person, the re-

³³ Annex 6. Forensic medical opinion of November 27, 2001. Annex F to the communication from the petitioner of February 22, 2006.

³⁴ Annex 6. Forensic medical opinion of November 27, 2001. Annex F to the communication from the petitioner of February 22, 2006.

³⁵ Annex 6. Forensic medical opinion of November 27, 2001. Annex F to the communication from the petitioner of February 22, 2006.

³⁶ Annex 15. Minutes of the judicial visual examination and reconstruction of the facts of November 29, 2001. Annex to the communication from the petitioner received on October 28, 2002.

³⁷ Annex 12. Communication from the petitioner of February 22, 2006.

³⁸ Annex 15. Minutes of the judicial visual examination and reconstruction of the facts of November 29, 2001. Annex to the communication from the petitioner received on October 28, 2002.

³⁹ Annex 12. Communication from the petitioner of February 22, 2006.

⁴⁰ Annex 12. Communication from the petitioner of February 22, 2006.

⁴¹ Annex 2. Judgment, Jinoteca District Criminal Court, November 30, 2001, p. 305, criminal case file.

⁴² Annex 2. Judgment, Jinoteca District Criminal Court, November 30, 2001, p. 305, criminal case file.

⁴³ Annex 2. Appeal filing, p. 323, criminal case file.

⁴⁴ Annex 2. Deed of the Jinoteca District Criminal Court, p. 346, criminal case file.

⁴⁵ Annex 16. Follow-up report of February 21, 2002. Annex B to the communication received on March 16, 2006.

⁴⁶ Annex 16. Follow-up report of February 21, 2002. Annex B to the communication received on March 16, 2006.

victimization of the patient must be avoided and she must not be present during the reconstruction of the facts occurred.”⁴⁷

43. On April 10, 2002, the Jinoteca Criminal Court scheduled the hearing at which the jury would determine Mr. Rodríguez’s responsibility.⁴⁸ According to the petitioner, the Court suspended the hearing scheduled for the morning because a protest was taking place outside the courthouse.⁴⁹ The Court was forced to select a new jury for duty that afternoon.⁵⁰ However, the hearing was suspended for a second occasion when Mr. Rodríguez’s defense attorney stated that he had health problems.⁵¹

44. On April 12, 2002, the jury was reconvened.⁵² The petitioner states that on that day, Mr. Rodríguez’s lawyer requested that two lawyers be added to the defense, which was granted. She asserts that, notwithstanding, the prosecution’s request to add two lawyers was rejected.⁵³ The petitioner also alleges that before the jury left to deliberate, one of the defense lawyers handed a silver package to the presiding judge, along with a pink paper.⁵⁴

45. On April 13, 2002, Verdict No. 33 was issued, signed by Judge Reyna Gutiérrez and three members of the jury. That verdict merely stated that Mr. Rodríguez “was innocent of the crime of raping the child.”⁵⁵ Mrs. V.R.P. reported that the jury deliberated the matter for fifteen minutes.⁵⁶ The Commission notes that this verdict provides no grounds on which the decision is based and that no other element in the case file indicates the reasoning whereby the jury reached that conclusion. That same date, the Court ordered Mr. Rodríguez’s release.⁵⁷

46. The following day, the legal representatives of Mrs. V.P.C. filed for the annulment of that judgment.⁵⁸ Judge Gutiérrez was asked to recuse herself from continuing to hear the case “in the interests of judicial transparency.” In addition, situations characterized as irregularities in the proceedings were alleged, such as: i) allowing eight people to attend the medical examination that ultimately Mr. Altamirano was unable to perform; ii) allowing Mr. Rodríguez’s defense team to use language that discredited Mrs. V.P.C.; iii) canceling the hearing scheduled for the morning of April 10, 2002, arguing legal reasons only because there was a group of children outside the courthouse demanding justice in the case at hand; and iv) not allowing the attendance of all the parties involved at the dissolution and selection of the jury.

47. On April 25, 2002, the Office of the Prosecutor for the Defense of Human Rights, that participated as an observer in the process, issued a resolution concluding that the verdict handed down by the Jinoteca jury declaring Mr. Rodríguez innocent is “unjust any way you look at it (...) and violates the child’s human rights regarding the respect for her physical, mental and sexual integrity, protection before the

⁴⁷ Annex 16. Follow-up report of February 21, 2002. Annex B to the communication received on March 16, 2006.

⁴⁸ Annex 2. Deed of the Jinoteca Criminal Court, p. 566, criminal case file.

⁴⁹ Annex 13. Communication from the petitioner, received on April 7, 2003.

⁵⁰ Annex 2. Deed of the Jinoteca District Criminal Court, p. 569, criminal case file.

⁵¹ Annex 2. Document presented by Cecil Tercero, p. 564, criminal case file.

⁵² Annex 2. Communication of the Jinoteca District Criminal Judge, page 587, criminal case file.

⁵³ Annex 13. Communication from the petitioner received on April 7, 2003.

⁵⁴ Annex 13. Communication from the petitioner received on April 7, 2003.

⁵⁵ Annex 2. Verdict No. 33, p. 589, criminal case file.

⁵⁶ Annex 17. Communication from the State of December 15, 2005.

⁵⁷ Annex 2. Release order, April 13, 2002, p. 599, criminal case file.

⁵⁸ Annex 2. Appeal for annulment, p. 600, criminal case file.

law, and special protection.”⁵⁹ The Office of the Prosecutor for the Defense of Human Rights requested that the presiding judge quickly issue a decision regarding the appeal.⁶⁰

48. On April 30, 2002, the Executive Secretary of the National Council for the Attention and Comprehensive Protection of Children and Adolescents sent a communication to the Attorney General of the Republic,⁶¹ reporting that the appeal for annulment filed by Mrs. V.P.C.’s legal representatives had not yet been resolved. Accordingly, it requested that the Attorney General “bring his good offices to bear so that the departmental prosecution service issues the corresponding judgment as regards the appeal for the annulment of the jury’s verdict.” In addition, the Executive Secretary asked the Court to process that remedy “in accordance with the law.”⁶²

49. On May 8, 2002, Ana Sequeira, the prosecutor in Jinoteca, wrote to the Court,⁶³ stating that she believed it was necessary to open the evidentiary phase of the annulment appeal and for the members of the jury who adopted the verdict ruling Mr. Rodríguez innocent to be called to appear.⁶⁴

50. On May 13, 2002, the District Criminal Court issued a decision granting the appeal filed by Mrs. V.P.C. and it declared the nullity of the Verdict No. 33⁶⁵ It states that the “petitioner has doubts”⁶⁶ regarding Clause 8 of Article 444 of the Criminal Code,⁶⁷ which refers to the bribery of jury members. The Court requested the selection of a new jury and a new trial to be held on the matter.⁶⁸ Furthermore, it issued an arrest warrant for Mr. Rodríguez.⁶⁹

51. That same day, Mr. Rodríguez was again detained by the National Police.⁷⁰ In addition, Mr. Rodríguez’s defense team lodged an appeal against that decision, which was admitted by the Court.⁷¹

52. As indicated by the District Criminal Court, Prosecutor Ana Sequiera did not sign the notification of the Court’s resolution and stated that “whatever is most convenient should be decided.”⁷²

⁵⁹ Annex 18. Pronouncement by the Prosecutor for the Defense of Human Rights, April 25, 2002.

⁶⁰ Annex 18. Pronouncement by the Prosecutor for the Defense of Human Rights, April 25, 2002.

⁶¹ Annex 2. Communication of the Executive Secretary of the National Council for the Attention and Comprehensive Protection of Children and Adolescents, p. 672, criminal case file.

⁶² Annex 2. Communication of the Executive Secretary of the National Council for the Attention and Comprehensive Protection of Children and Adolescents, p. 673, criminal case file.

⁶³ Annex 2. Communication from the prosecutor in Jinoteca, Ana Sequeira, p. 103, criminal case file.

⁶⁴ Annex 2. Communication from the prosecutor in Jinoteca, Ana Sequeira, p. 103, criminal case file.

⁶⁵ Annex 2. Communication of the Jinoteca District Criminal Judge, page 708, criminal case file.

⁶⁶ Annex 2. Official note of the District Criminal Court, May 13, 2002. Annexed to the communication from the petitioner received on October 28, 2002.

⁶⁷ Article 444. 8. There are substantial nullities with respect to the jury’s verdict or declaration: (...) 8. If the jurors have been bribed. Available at: <http://www.sergiocuarezma.com/wp-content/uploads/2013/12/06-Codigo-de-instruccion-criminal.pdf>

⁶⁸ Annex 2. Official note of the District Criminal Court, May 13, 2002. Annexed to the communication from the petitioner received on October 28, 2002.

⁶⁹ Annex 2. Official note of the District Criminal Court, May 13, 2002. Annexed to the communication from the petitioner received on October 28, 2002.

⁷⁰ Annex 2. National Police deed, p. 711, criminal case file.

⁷¹ Annex 19. Judicial resolution of the Criminal Chamber of the Northern District Appellate Court, January 13, 2003. Annex H to the communication received on March 16, 2005.

⁷² Annex 20. Official note of the District Criminal Court, May 13, 2002. Annexed to the communication from the petitioner received on October 28, 2002.

Furthermore, the Northern District Appellate Court Criminal Chamber issued a certification indicating that Prosecutor Sequiera “did not appear at the proceedings.”⁷³

53. On October 21, 2002, Mrs. V.P.C. lodged a complaint with the Attorney General’s Office alleging that the prosecutor who had taken up the case, Ana Sequeira, did not appear at the proceedings in the second instance.⁷⁴ She maintained that the prosecutor did not guarantee her daughter’s rights.⁷⁵ She also alleged that during her daughter’s forensic medical examination, the judge allowed people unrelated to the examination to be present.⁷⁶ She maintained that the judge allowed Mr. Rodríguez’s defense to refer to her and her daughter “in immoral terms.”⁷⁷ She maintained that the defense delivered a suspicious package to the judge, as well as to members of the jury.⁷⁸

54. On November 8, 2002, Mrs. V.P.C. lodged a complaint with the Disciplinary Committee of the Supreme Court of Justice regarding the irregularities mentioned in the above paragraph allegedly committed by the presiding judge, Adriana Molina.⁷⁹

55. The Commission has no information on any steps taken in connection with the two complaints referred to in the preceding paragraphs.

56. On January 13, 2003, the Criminal Chamber of the Northern District Appellate Court issued a judgment upholding the appeal remedy filed by Mr. Rodríguez’s defense team.⁸⁰ The Chamber’s ruling stated that:

(...) the judge (...) in issuing this judgment (...) on May 13, 2002, exceeded her authority by basing her ruling on the doubt of the accusers. (...) and doubt must always be interpreted in the way that best favors the accused (...).⁸¹

57. Consequently, the Chamber found that since the judge in question acted “in a notoriously anomalous way,” it had to establish “the substantial and absolute annulment of the proceedings as of [that] ruling.” The Chamber also ordered the release of Mr. Rodríguez.⁸² Finally, it requested that the corresponding court open the evidentiary phase of the annulment appeal.⁸³

58. On March 10, 2003, the Office of the Prosecutor for the Defense of Human Rights issued a communication identifying the different irregularities during the proceedings.⁸⁴ These include, among others:

⁷³ Annex 21. Certification of the Northern District Appellate Court of September 26, 2002. Annexed to the communication from the petitioner received on February 12, 2003

⁷⁴ Annex 22. Official note from V.P.C of October 21, 2002. Annex H to the Communication received on March 16, 2005.

⁷⁵ Annex 22. Official note from V.P.C of October 21, 2002. Annex H to the Communication received on March 16, 2005.

⁷⁶ Annex 22. Official note from V.P.C of October 21, 2002. Annex H to the Communication received on March 16, 2005.

⁷⁷ Annex 22. Official note from V.P.C of October 21, 2002. Annex H to the Communication received on March 16, 2005.

⁷⁸ Annex 22. Official note from V.P.C of October 21, 2002. Annex H to the Communication received on March 16, 2005.

⁷⁹ Annex 23. Brief from V.P.C. of November 8, 2002. Annex K to the communication received on March 16, 2005.

⁸⁰ Annex 19. Judicial resolution of the Criminal Chamber of the Northern District Appellate Court, January 13, 2003. Annex H to the communication received on March 16, 2005.

⁸¹ Annex 19. Judicial resolution of the Criminal Chamber of the Northern District Appellate Court, January 13, 2003. Annex H to the communication received on March 16, 2005.

⁸² Annex 19. Judicial resolution of the Criminal Chamber of the Northern District Appellate Court, January 13, 2003. Annex H to the communication received on March 16, 2005.

⁸³ Annex 19. Judicial resolution of the Criminal Chamber of the Northern District Appellate Court, January 13, 2003. Annex H to the communication received on March 16, 2005.

⁸⁴ Annex 24. Report from the Office of the Prosecutor for the Defense of Human Rights of March 10, 2003. Annex G to the communication received on March 16, 2005.

i) the defendant had three lawyers while the complainant only had one; some members of the jury received packages from the defense on various occasions; ii) the presiding juror received a sealed envelope from one of the defense lawyers and asked that its contents be read by the jurors in private; and iii) one of the defendant's lawyers questioned the presence of the Special Prosecutor for Children and Adolescents.⁸⁵ The Office of the Prosecutor for the Defense of Human Rights concluded that "the crime committed against V.R.P. (...) has remained practically in impunity despite her having undeniably and irrefutably identified the perpetrator."⁸⁶

59. On June 30, 2003, the lawyer for Mrs. V.P.C. submitted a communication to the Disciplinary Committee of the Supreme Court of Justice alleging the "partiality and lack of professional ethics of the forensic physician, Andrés Altamirano."⁸⁷ It stated that Dr. Altamirano re-victimized V.R.P., as there were several physicians and nurses, a judge and a prosecutor present during the medical examination.⁸⁸ It maintains that V.R.P. refused to be examined due to the presence of these persons⁸⁹ and that Dr. Altamirano stated that "the girl's entire family (...) should be examined."⁹⁰ It indicated that Dr. Altamirano's brother participated in the proceedings as a witness for Mr. Rodríguez's defense⁹¹ and requested that Dr. Altamirano be suspended in his functions.⁹²

60. Mrs. V.P.C. stated that in January 2004, the judges recused themselves from the case due to "being connected by affinity to the defendant."⁹³ The State reported that the District Civil and Criminal Judge "recused himself from the case without explanation."⁹⁴ It added that the case was transferred to the Deputy District Civil Judge, who "also recused himself from the case and transferred it to the Jinoteca District Criminal Court."⁹⁵

61. On September 23, 2004, Mrs. V.P.C. submitted a petition to the President of the Supreme Court of Justice questioning the delay of the proceedings and requesting that the case move forward.⁹⁶ The State recognized that the District Criminal Judge took up the case on January 13, 2005.⁹⁷

62. On February 7, 2005, the Office of the Prosecutor for the Defense of Human Rights issued a resolution reiterating that the case has "practically remained in impunity despite her having undeniably and irrefutably identified the perpetrator."⁹⁸ It maintained that there was documentation to support this conclusion.⁹⁹

⁸⁵ Annex 24. Report from the Office of the Prosecutor for the Defense of Human Rights of March 10, 2003. Annex G to the communication received on March 16, 2005.

⁸⁶ Annex 24. Report from the Office of the Prosecutor for the Defense of Human Rights of March 10, 2003. Annex G to the communication received on March 16, 2005.

⁸⁷ Annex 25. Official note from Margarita Palacios of June 30, 2003. Annex A to the communication received on March 16, 2005.

⁸⁸ Annex 25. Official note from Margarita Palacios of June 30, 2003. Annex A to the communication received on March 16, 2005.

⁸⁹ Annex 25. Official note from Margarita Palacios of June 30, 2003. Annex A to the communication received on March 16, 2005.

⁹⁰ Annex 25. Official note from Margarita Palacios of June 30, 2003. Annex A to the communication received on March 16, 2005.

⁹¹ Annex 25. Official note from Margarita Palacios of June 30, 2003. Annex A to the communication received on March 16, 2005.

⁹² Annex 25. Official note from Margarita Palacios of June 30, 2003. Annex A to the communication received on March 16, 2005.

⁹³ Anexo 12. Communication from the petitioner received on February 22, 2006.

⁹⁴ Anexo 17. Communication from the State received on December 15, 2005.

⁹⁵ Anexo 17. Communication from the State received on December 15, 2005.

⁹⁶ Anexo 26. Official note from V.P.C. of September 23, 2004. Annex C to the communication from the petitioner received on February 22, 2006.

⁹⁷ Anexo 17. Communication from the State received on December 15, 2005.

⁹⁸ Anexo 27. Report from the Office of the Prosecutor for the Defense of Human Rights of February 7, 2005. Annexed.

⁹⁹ Anexo 27. Report from the Office of the Prosecutor for the Defense of Human Rights of February 7, 2005. Annexed.

63. On April 25, 2005, Mrs. V.P.C. requested that the Jinoteca District Criminal Judge speed up the process due to its extremely prolonged duration.¹⁰⁰

64. On August 9, 2005, the Jinoteca District Criminal Court issued a sentence denying the appeal, rejecting the allegations made by the lawyers for Mrs. V.P.C.¹⁰¹ As such, the absolution of Mr. Rodríguez was upheld.¹⁰²

65. With respect to the allegations of juror bribery, the District Criminal Court referred to the January 13, 2003, decision that rejected said allegation, claiming that it was not lodged in a timely manner nor was it explicitly confirmed.¹⁰³ It added that the jury selection and the sentence in the first instance were both in compliance with the law.¹⁰⁴ It maintained that “there was no action or omission whatsoever that should result in the annulation of the verdict.” Furthermore, the District Criminal Court took into account the April 25, 2000, report by the Special Prosecutor for Children and Adolescents, which indicated that there were no irregularities during the proceedings.¹⁰⁵

66. On August 25, 2005, Deputy Prosecutor Francisco Cifuentes filed an appeal against the sentence issued by the court on August 9 of that year.¹⁰⁶ The lawyer for Mrs. V.P.C. also filed an appeal against the August 9, 2005, sentence.¹⁰⁷

67. Mrs. V.P.C. stated that on September 9, 2005, she lodged a complaint with the Office of the Prosecutor for the Defense of Human Rights regarding the situation of impunity resulting from this case.¹⁰⁸

68. On January 17, 2007, the lawyer for Mrs. V.P.C. requested that the Northern District Appellate Court Criminal Chamber inform them of the status of the appeal filed against the August 9, 2005, sentence.¹⁰⁹

69. On October 24, 2007, the Matagalpa Appellate Court Criminal Chamber issued a sentence denying the appeals submitted by the prosecutor, Francisco Cifuentes, and the lawyer for Mrs. V.P.C. against the August 9, 2005, decision.¹¹⁰ It indicated that the evidence submitted did not demonstrate that the case

¹⁰⁰ Anexo 28. Official note from V.P.C. of April 25, 2005. Annex C to the communication from the petitioner received on February 22, 2006. Annexed to the communication from the State received on December 15, 2005.

¹⁰¹ Anexo 29. Sentence No. 176 of August 9, 2005. Annex E to the communication from the petitioner received on February 22, 2006.

¹⁰² Anexo 29. Sentence No. 176 of August 9, 2005. Annex E to the communication from the petitioner received on February 22, 2006.

¹⁰³ Anexo 29. Sentence No. 176 of August 9, 2005. Annex E to the communication from the petitioner received on February 22, 2006.

¹⁰⁴ Anexo 29. Sentence No. 176 of August 9, 2005. Annex E to the communication from the petitioner received on February 22, 2006.

¹⁰⁵ Anexo 29. Sentence No. 176 of August 9, 2005. Annex E to the communication from the petitioner received on February 22, 2006.

¹⁰⁶ Anexo 30. Official note from Francisco Cifuentes of August 25, 2005. Annexed to the communication from the petitioner received on March 7, 2006.

¹⁰⁷ Anexo 31. Sentence of the Northern District Appellate Court Criminal Chamber of October 24, 2007. Annexed to the communication from the petitioner received on September 2, 2008.

¹⁰⁸ Anexo 32. Communication from the petitioner received on August 27, 2007.

¹⁰⁹ Anexo 33. Official note to the Northern District Appellate Court Criminal Chamber of January 17, 2007. Annexed to the communication received by the petitioner on April 9, 2007.

¹¹⁰ Anexo 31. Sentence of the Northern District Appellate Court Criminal Chamber of October 24, 2007. Annexed to the communication from the petitioner received on September 2, 2008.

should be annulled due to bribery.¹¹¹ It added that there was no evidence that the judge had dissolved the jury on more than one occasion due to fraud.¹¹² The Chamber explained that the prosecution and the defense were both present when this occurred, and that there were no irregularities.¹¹³

70. The Chamber ruled that the April 13, 2002, decision to absolve and all of its legal effects be upheld.¹¹⁴ It added that “there is no further recourse against this decision.”¹¹⁵

4. On the complaints filed against Mrs. V.P.C. and her exit from Nicaragua

71. On May 7, 2002, Mrs. Pastora León and Mrs. Reyna Gutiérrez, both members of the jury, filed a complaint against V.P.C. for libel¹¹⁶ in response to the allegations of bribery made by her.¹¹⁷ On May 21 of the same year Dr. Andrés Altamirano filed a complaint against V.P.C. for slander and libel¹¹⁸ in response to the allegations made by V.P.C. regarding the medical examination performed on V.R.P.¹¹⁹ According to a February 2005 communication from the local Jinoteca Criminal Judge, the slander and libel suits against Mrs. V.P.C. have been closed.¹²⁰

72. Mrs. V.P.C. stated that her daughter stopped attending the La Salle school “because she felt ashamed and feared being rejected by others.”¹²¹ Her lawyer maintained that Mrs. V.P.C. and V.R.P. left Nicaragua because of these complaints.¹²² Mrs. V.P.C. stated that she had to “abandon and flee Nicaragua” with her two daughters on December 6, 2002, because of “ politicized persecution by the judicial branch against her, religious persecution for being Mormon, gender persecution (...)”¹²³

73. According to a March 22, 2005, communication from the Miami Immigration Court in the United States, Mrs. V.P.C. submitted a request for asylum in the United States, which was granted to her and her daughter, V.R.P.¹²⁴ Asylum was also granted to her daughter, N.R.P., on September 23, 2003.¹²⁵

¹¹¹ Anexo 31. Sentence of the Northern District Appellate Court Criminal Chamber of October 24, 2007. Annexed to the communication from the petitioner received on September 2, 2008.

¹¹² Anexo 31. Sentence of the Northern District Appellate Court Criminal Chamber of October 24, 2007. Annexed to the communication from the petitioner received on September 2, 2008.

¹¹³ Anexo 31. Sentence of the Northern District Appellate Court Criminal Chamber of October 24, 2007. Annexed to the communication from the petitioner received on September 2, 2008.

¹¹⁴ Anexo 31. Sentence of the Northern District Appellate Court Criminal Chamber of October 24, 2007. Annexed to the communication from the petitioner received on September 2, 2008.

¹¹⁵ Anexo 31. Sentence of the Northern District Appellate Court Criminal Chamber of October 24, 2007. Annexed to the communication from the petitioner received on September 2, 2008.

¹¹⁶ Anexo 34. Complaint filed by Pastora León and Reyna Gutiérrez. Annex J to the communication received on March 16, 2005.

¹¹⁷ Anexo 34. Complaint filed by Pastora León and Reyna Gutiérrez. Annex J to the communication received on March 16, 2005.

¹¹⁸ Anexo 35. Complaint filed by Andrés Altamirano of May 21, 2002. Annexed to the communication from the petitioner received on October 28, 2002.

¹¹⁹ Anexo 35. Complaint filed by Andrés Altamirano of May 21, 2002. Annexed to the communication from the petitioner received on October 28, 2002.

¹²⁰ Anexo 36. Official note from the local Jinoteca Criminal Judge of February 1, 2005. Annex B to the communication from the petitioner received on February 22, 2006.

¹²¹ Anexo 37. Communication from the petitioner received on April 16, 2009.

¹²² Anexo 25. Official note from Margarita Palacios of June 30, 2003. Annex A to the communication received on March 16, 2005.

¹²³ Anexo 38. Communication from the petitioner received by the IACHR on November 24, 2003.

¹²⁴ Anexo 39. Official note from the Miami Immigration Court in the United States of March 22, 2005. Annex C to the communication from the petitioner received on February 22, 2006.

¹²⁵ Anexo 40. U.S. Department of Justice – Immigration and Naturalization Service. Asylum Approval. Annexed to the communication from the petitioner received by the IACHR on November 24, 2003.

74. According to a January 2005 report by Kristi House – a non-profit organization in Miami, United States – V.P.C. began treatment there in October 2003.¹²⁶ It indicated that V.P.C. was exhibiting depression, anxiety and self-mutilating behavior.¹²⁷

75. Mrs. V.P.C. stated that on April 1, 2008, her daughter was hospitalized in Miami for fifteen days to treat post-traumatic depression.¹²⁸

B. Analysis of Rights

1. Rights to personal integrity, protection of honor and dignity, rights of the child, equality before the law, judicial guarantees and judicial protection (articles 5.1¹²⁹, 11.2¹³⁰, 19¹³¹, 24¹³², 8¹³³ y 25¹³⁴ of the American Convention in connection with Article 1.1 of the same instrument and Article 7 of the Convention of Belém do Pará)

76. Preliminarily, the Commission notes that the parties do not dispute that the alleged perpetrator of rape and sexual abuse against V.R.P. is not an agent of the State nor is it a person that would have acted with the acquiescence of the State. In this sense, the analysis of the responsibility of the State is tied to its obligation to guarantee that which is established in Article 1.1 of the American Convention. This case has no elements that would allow for its analysis within the framework of the State's preventative obligations, as it first learned of the incident by means of the complaint filed by V.R.P.'s mother after the facts had occurred. In this sense, the Commission's analysis is related to the State's obligation to guarantee investigation and punishment, which was activated once the State learned of the case.¹³⁵ Said obligation implies conducting an effective investigation that allows the State to identify, prosecute, and punish the responsible parties.¹³⁶

77. This analysis will have the following structure: i) general considerations on the substantive rights violated in cases of sexual violence or rape; ii) considerations regarding children who are victims of rape or sexual violence; iii) a legal assessment of what happened to V.R.P; iii) general considerations on the obligation to investigate and punish acts of sexual violence or rape; and iv) an analysis of the investigation carried out in this case.

¹²⁶ Anexo 41. Official note from Kristi House of January 3, 2005. Annex B to the communication received on March 16, 2005.

¹²⁷ Anexo 41. Official note from Kristi House of January 3, 2005. Annex B to the communication received on March 16, 2005.

¹²⁸ Anexo 42. Communication from the petitioner of September 2, 2008.

¹²⁹ Article 5.1 of the American Convention: Every person has the right have his physical, mental, and moral integrity respected.

¹³⁰ Article 11.2 of the American Convention: No 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.

¹³¹ Article 19 of the American Convention: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

¹³² Article 24 of the American Convention: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

¹³³ Article 8.1 of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹³⁴ Article 25.1 of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights 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.

¹³⁵ IACHR Report No. 54/01, Case 12.051, Admissibility and Merits, Maria Da Penha Fernandes, Brazil, April 16, 2001.

¹³⁶ Inter-American Court. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2006. Series C No.205, par. 246.

1.1. General considerations on the substantive rights violated in cases of sexual violence or rape

78. The Commission and the Inter-American Court have taken up cases of sexual violence against women. Both bodies have analyzed the manner in which sexual violence, including rape, violates the rights to personal integrity, private life, autonomy and non-discrimination.¹³⁷

79. The Court has maintained that sexual violence involves acts of a sexual nature, committed against a person without their consent, and that in addition to the physical invasion of the human body, they may include acts which do not involve penetration or even any physical contact.¹³⁸ Furthermore, rape is understood as an act of vaginal or anal penetration, without the victim's consent, through the use of other parts of the aggressor's body or objects, as well as oral penetration with the virile member.¹³⁹ The Court added in *J. vs. Peru* that "in order for an act to be considered rape, it is sufficient that penetration, however slight, occurs, as described above."¹⁴⁰

80. The IACHR has stated that rape imposes severe and long-lasting physical and mental suffering, due to its nonconsensual and invasive nature, affecting the victim, her family, and the community.¹⁴¹ The Commission has also maintained that sexual violence against women has physical, emotional, and psychological consequences that are devastating for the victims.¹⁴²

81. The Court has also maintained that rape constitutes a paradigmatic form of violence against women, and its consequences go far beyond the victim herself.¹⁴³ Furthermore, it is an extremely traumatic experience that may have serious consequences and it causes great physical and psychological damage that leaves the victim "physically and emotionally humiliated," situation difficult to overcome with time.¹⁴⁴

82. With respect to Article 11.2 of the American Convention, the Court has stated that even though this provision is entitled "Right to Privacy," it includes the protection of an individual's private life.¹⁴⁵ Moreover, the concept of privacy is a wide-ranging term, which cannot be exhaustively defined but does, however, include sexual life, and the right to take decisions in such sphere.¹⁴⁶

¹³⁷ IACHR, Report 76/11, Case 11.769, Merits, J., Peru, July 20, 2011. Also see: Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215.

¹³⁸ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 109.

¹³⁹ Inter-American Court. *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, par. 310.

¹⁴⁰ Inter-American Court. *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 27, 2013. Series C No. 275, par. 359.

¹⁴¹ IACHR, Report 76/11, Case 11.769, Merits, J., Peru, July 20, 2011, par. 188.

¹⁴² IACHR, Report 76/11, Case 11.769, Merits, J., Peru, July 20, 2011, par. 189.

¹⁴³ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 109.

¹⁴⁴ Inter-American Court. *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, par. 311.

¹⁴⁵ Inter-American Court. *Case of the Ituango Massacres v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 1, 2006. Series C No. 148, par. 193; *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 27, 2009. Series C No. 193, par. 55.

¹⁴⁶ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 119.

83. Finally, the Commission recalls that gender-based violence, as sexual violence against a woman or girl may be, is a form of discrimination against women.¹⁴⁷ In this sense, both the Convention of Belém do Pará (preamble and Article 6) and the Convention for the Elimination of All Forms of Discrimination against Women (preamble) have recognized the connection that exists between violence against women and discrimination.

1.2. Considerations regarding children who are victims of rape or sexual violence

84. Both the Commission and the Court have stressed that sexual violence against minor-aged girls triggers specific obligations on the part of the State as regards its duty of responding to such cases and of taking into account the need to provide the victim with special protection.

85. In particular, the IACHR has emphasized that in the case of girls, sexual violence is more serious since they are objects of protection and not subjects of rights.¹⁴⁸ In addition, the Commission has maintained that girls often do not involve the justice system in such cases out of fear of reprisals, “or simply because they assume that sexual violence is ‘normal’.”¹⁴⁹

86. Similarly, the European Court has ruled that cases of sexual violence against children have an extremely profound impact, particularly when the assailant is in a position of authority or control with respect to the victim.¹⁵⁰ That serves to accentuate the child’s situation of vulnerability by placing him or her in a situation of no protection.¹⁵¹

87. Accordingly, the European Court has underscored the State’s heightened duty of diligence in dealing with the possible rape of a girl.¹⁵² States are required to take the steps necessary to punish the guilty through an appropriate investigation, which must include taking statements from the persons involved and carrying out medical and psychological examinations.¹⁵³

88. Similarly, the Committee on the Rights of the Child has ruled as follows:

Investigation of instances of violence, whether reported by the child, a representative or an external party, must be undertaken by qualified professionals who have received role-specific and comprehensive training, and require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures will help to ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection and criminal proceedings. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation. Towards this end, all parties are obliged to invite and give due weight to the child’s views.¹⁵⁴

89. Likewise, the Committee on the Rights of the Child has held that children who have been the victims of acts of violence, including sexual violence, “should be treated in a child-friendly and sensitive

¹⁴⁷ Inter-American Court. *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, para. 207.

¹⁴⁸ IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, December 28, 2011, para. 13.

¹⁴⁹ IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, December 28, 2011, para. 20.

¹⁵⁰ ECHR, *O’Keeffe v. Ireland*, Judgment of January 28, 2014, para. 153.

¹⁵¹ ECHR, *C.A.S. and C.S. v. Romania*, Judgment of September 24, 2012, para. 71.

¹⁵² ECHR, *I.G. v. Moldova*, Judgment of August 15, 2012, para. 42.

¹⁵³ ECHR, *I.G. v. Moldova*, Judgment of August 15, 2012, paras. 42-45.

¹⁵⁴ UN, Committee on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, April 18, 2011, para. 51.

manner throughout the justice process, taking into account their personal situation, needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.”¹⁵⁵

90. Finally, the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime also sets out a series of principles that States must uphold.¹⁵⁶ Those guidelines stipulate that all information related to the participation of a child in a judicial proceeding, including cases in which the child is a victim of sexual abuse, should be protected.¹⁵⁷ That can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in a justice process.¹⁵⁸ In relation to the testimony of children, the Guidelines indicate that the “testimony should not be presumed invalid or untrustworthy by reason of the child’s age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance”.¹⁵⁹

91. In addition, the State should take measures to protect child victims and witnesses from hardship during the detection, investigation, and prosecution process in order to ensure that their best interests and dignity are respected.¹⁶⁰ Such measures include the following: i) ensuring that child victims are questioned in a child-sensitive manner; ii) limiting the number of interviews; and iii) using child-sensitive procedures, including interview rooms designed for children, interdisciplinary services, modified courtroom environments, recesses during a child’s testimony, hearings scheduled at appropriate times of day, and other measures to facilitate the child’s testimony.¹⁶¹

1.3. Legal analysis of what happened to V.R.P

92. Preliminarily, the Commission notes that the duty to guarantee to properly investigate an alleged rape by a nonstate actor is borned from the criminal complaint. Consequently, in order to activate such obligation it is not necessary to prove in an internationally procedure the existence of the rape.

93. The Commission would like to emphasize that international protection of human rights should not be confused with criminal justice.¹⁶² In this sense, the evidentiary standards or requirements are not those of a criminal court, given that the Commission does not have the competence to determine individual criminal responsibility, nor to evaluate, under such criteria, said evidence. In the same sense, the European Court maintained that it was not concerned with reaching any findings as to guilt or innocence under domestic law.¹⁶³

94. With respect to the evaluation of evidence, the Inter-American Court has stated that rape is a specific form of violence which, in general, occurs in the absence of persons other than the victim and the

¹⁵⁵ UN, Committee on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, April 18, 2011, para. 54.

¹⁵⁶ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, E/2005/INF/2/Add.1. Available at: http://www.un.org/es/events/childrenday/pdf/E2005_20.pdf.

¹⁵⁷ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 27.

¹⁵⁸ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 27.

¹⁵⁹ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 18. In addition, international criminal courts have established the possibility of children to render his/her testimony. See: Statute of the International Criminal Tribunal for the former Yugoslavia. Article 90 (B); and Statute of the International Criminal Tribunal for Rwanda. Article 90 (C).

¹⁶⁰ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 29.

¹⁶¹ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 29.

¹⁶² Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 105; and *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009. Series C No. 200, par. 134.

¹⁶³ ECHR, E. et al. v. United Kingdom. Judgment of November 26, 2002, par. 91.

aggressor or aggressors.¹⁶⁴ Given the nature of this type of violence, one cannot expect graphic or documentary evidence and therefore the victim's testimony constitutes fundamental evidence of the act.¹⁶⁵ In prior cases, in order to deem proven a sexual assault, the Commission has taken the description given by the victim into special consideration.¹⁶⁶ The European Court has taken into account the description given by the victim, as well as the results of medical examinations, to consider whether an act of violence has been committed against a girl.¹⁶⁷

95. The Commission notes that it is not concerned with ruling on the criminal responsibility of the person who raped V.R.P. The Commission's analysis is centered on whether the State's investigation vis-à-vis the complaint lodged by V.R.P.'s mother was carried out in accordance with the State's obligations under the American Convention, and the Convention of Belém do Pará in order to establish whether the State complied with its obligation to guarantee the rights violated by the rape of a girl, as well as its obligation to provide effective resources and judicial protection in such situations.

96. The Commission emphasizes that the analysis in the instant case is based in the evidence presented as well as the fact that the rape itself against the girl V.R.P. has not been objected nor questioned.

97. In first place, the Commission notes the medical reports and examinations indicating that she had difficulty defecating and pain in her anal region. Furthermore, these reports note "the previously ruptured hymen," anal and cervical lesions, and the presence of human papilloma virus, which it is "exclusively sexually transmitted disease". Based on the above, the medical certificate specified that V.R.P. was a victim of "sexual aggression."

98. In second place, according to the proven facts, V.R.P. gave her account of what happened more than once after her mother filed the complaint before the Jinoteca District Criminal Court. The Commission considers that these statements are consistent with one another. In third place, according to a psychiatrist's certificate, V.R.P. "clearly identifies (...) what happened to her body" and that "her statements are trustworthy, very clear and authentic."

99. The Commission considers that all of these facts taken together demonstrate that V.R.P. was raped. Consequently, and in light of the standards described in the previous section, the Commission concludes that this was a violation of the rights to personal integrity, dignity, private life and autonomy, equality and non-discrimination, and special protection for children, to the detriment of V.R.P.

100. Taking into account that this case involves acts committed by a non-state actor, the Commission will determine in the following sections whether these violations are attributable to the Nicaraguan State, specifically whether the State complied with its duty to guarantee these rights by means of an investigation and response in accordance with its obligations under the American Convention and the Convention of Belém do Pará.

1.4. General considerations on the obligation to investigate and punish acts of sexual violence or rape

101. The Court has established that, pursuant to Articles 8.1 and 25.1 of the American Convention, the States Parties are obliged to provide effective legal remedies to the victims of human rights

¹⁶⁴ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 89.

¹⁶⁵ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 89.

¹⁶⁶ IACHR, Report 76/11, Case 11.769, Merits, J., Peru, July 20, 2011 par. 198.

¹⁶⁷ ECHR, M. and M. v. Croatia. Judgment of September 3, 2015, par. 140.

violations.¹⁶⁸ Said remedies must be substantiated in accordance with the rules of due process of law.¹⁶⁹ Similarly, it has stated that the right of access to justice must guarantee, within a reasonable time, the right of alleged victims or their relatives to learn the truth about what happened and ensure that those responsible are investigated, tried and, if applicable, punished.¹⁷⁰

102. Both the Commission and the Court have established in their consistent case law that the obligation to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty, not as a mere formality preordained to be unsuccessful, or as a simple action responding to private interests that depends on the procedural initiative of the victims or their relatives, or on the offer of evidence by private individuals.¹⁷¹ The investigation must be serious, impartial and effective, and must be designed to determine the truth and to pursue, capture, prosecute and eventually punish the perpetrators.¹⁷²

103. The Commission recalls that these obligations also apply in cases where violations may be attributed to private individuals, “because if their acts are not properly investigated, they would, to a certain extent, be supported by the public authorities, which would involve the international responsibility of the State.”¹⁷³ In particular, the Commission considers that, in accordance with Article 1.1 of the American Convention, States have the obligation to investigate possible acts of sexual violence.

104. In cases of violence against women, the general obligations of States Parties, as Nicaragua, established in Articles 8 and 25 of the American Convention are complemented and reinforced with the obligations pursuant to the Convention of Belém do Pará.¹⁷⁴ Article 7.b of said Convention specifically obliges States Parties to apply due diligence to prevent, investigate and impose penalties for violence against women. Said obligation is to be activated from the moment the State becomes aware of an alleged incident such as rape.¹⁷⁵

105. The Commission has emphasized that, according to article 9 of the Convention of Belem do Para, States must pay special attention to the needs and rights of victims who are girls who, as women, belong to a vulnerable group.¹⁷⁶ Likewise, the European Court has maintained that in cases of violence against children, States have the positive obligation to carry out investigations in order to clarify the facts.¹⁷⁷

106. As such, it is particularly important that the authorities in charge of the investigation conduct it in a resolute and effective manner, taking into account society’s obligation to reject violence against women and the State’s obligation to eliminate it and secure the victims’ trust in the State institutions

¹⁶⁸ Inter-American Court. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 199.

¹⁶⁹ Inter-American Court. *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 237.

¹⁷⁰ Inter-American Court. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 199.

¹⁷¹ Inter-American Court. *Case of Chitay Nech et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212, par. 192.

¹⁷² Inter-American Court. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 7, 2003. Series C No. 99, par. 127.

¹⁷³ Inter-American Court. *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 200.

¹⁷⁴ Inter-American Court. *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 239.

¹⁷⁵ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 103.

¹⁷⁶ IACHR, Report 170/11, Case 12.578, Merits, María Isabel Véliz Franco et al., Guatemala, November 3, 2011, par. 82.

¹⁷⁷ ECHR, M. and M. v. Croatia. Judgment of September 3, 2015, par. 136.

for their protection.¹⁷⁸ In the same sense, the United Nations Special Rapporteur for Violence Against Women has highlighted that States are obliged to respond to acts of sexual violence against women with due diligence.¹⁷⁹

107. The Commission has stated that States should have an appropriate legal framework of protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to complaints against sexual violence.¹⁸⁰ The Inter-American Court has emphasized that in cases of rape, insofar as possible, the investigation must try to avoid re-victimization or the re-experiencing of the profoundly traumatic experience each time the victim recalls or testifies about what happened.¹⁸¹ The European Court has maintained that in cases of sexual violence against children it is essential that States implement mechanisms that allow for complaints to be processed quickly.¹⁸²

108. Likewise, the Court has established that in the course of a criminal investigation for rape: i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and trust; ii) the victim's statement should be recorded to avoid or limit the need for repetition; iii) the victim should be provided with medical, health care and psychological treatment, both on an emergency basis, and continuously if required, through an assistance protocol designed to lessen the consequences of rape; iv) a complete and detailed medical and psychological examination should be conducted immediately by suitable trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she may be accompanied by a trusted person if she so wishes; v) the investigative tasks should be coordinated and documented and the evidence handled with care, taking sufficient samples and performing all possible tests to determine the perpetrator of the act, and obtaining other evidence such as the victim's clothing, immediate examination of the crime scene and guaranteeing the proper chain of custody of the evidence, and vi) access to free legal assistance at all stages of the proceedings should be provided for the victim.¹⁸³

109. Also, the criminal investigation should include a gender perspective and be carried out by officials with training in similar cases and in attending to victims of discrimination and gender-based violence.¹⁸⁴ This investigation must be performed in keeping with protocols designed specifically for documenting evidence in cases of gender-based violence.¹⁸⁵

1.5. Analysis of the investigation carried out in this case

1.5.1. Due diligence in the criminal investigation

¹⁷⁸ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 177.

¹⁷⁹ UN, Special Rapporteur on Violence Against Women, Report: The Integration of the Human Rights of Women and a Gender-Based Perspective: Violence Against Women. The Due Diligence Standard as an Instrument for the Elimination of Violence Against Women, 2006, par. 29.

¹⁸⁰ IACHR, Report 170/11, Case 12.578, Merits, María Isabel Véliz Franco et al., Guatemala, November 3, 2011, par. 84.

¹⁸¹ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 180.

¹⁸² ECHR, *O'Keeffe v. Ireland*. Judgment of January 28, 2014, par. 148.

¹⁸³ Inter-American Court. *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 242; and *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 178.

¹⁸⁴ Inter-American Court. *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Series C No. 277, par. 188; and *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2006. Series C No.205, par. 455.

¹⁸⁵ Inter-American Court. *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 252.

110. First, the Commission notes that a medical examination of V.R.P. was attempted two days after the complaint was filed. This examination was not carried out due to the attending physician's aggressive treatment of V.R.P. According to Mrs. V.P.C., the physician said "do not cry anymore, when girls from the countryside come to me (...) I tell them to open their legs and they do it, they do not get scandalized like you." Furthermore, she maintains that the physician also said "if you will not let me examine you vaginally, I wonder what you will do when I have to examine your anus." V.P.C. added that the presence of non-medical personnel in the room frightened her daughter.

111. The IACHR considers that this medical examination was not conducted in compliance with the established standards described in this report. The State did not verify that the physician in question was impartial, suitable and trained to perform this type of examination on a victim of sexual violence, particularly a minor. Additionally, the State also did not demonstrate that they offered V.R.P. and her mother the possibility of explicitly stating their preference vis-à-vis the sex of the attending physicians. Furthermore, the State did not explain the presence of non-medical personnel during the examination. The Commission underscores the fact that Mrs. V.P.C. reported that situation repeatedly, consistently, specifically, and in detail.

112. Given the absence of these basic safeguards, the Commission considers credible V.P.C.'s account of the psychological mistreatment and denigration suffered by her daughter at the hands of this physician. Furthermore, V.R.P.'s refusal to be examined two days later by a different physician also corroborates the first physician's behavior. It is worth noting that Mrs. V.P.C. informed State authorities of what occurred during the examination, and that a serious and diligent investigation was not opened thereon. Nevertheless, the IACHR notes that according to the information presented, the State opened no investigation into the matter. By failing to follow up on this complaint, the State was unable to disprove the evidence indicating that these facts occurred.

113. The Commission also emphasizes that the State did not demonstrate to have verified the suitability, independence and impartiality of the attending physician for the second examination on November 24, 2001.

114. Second, in relation to the opportunity to perform a gynecological examination in accordance with the aforementioned standards, the Commission notes that the alleged facts occurred almost one year before the complaint was filed. Notwithstanding, the Commission considers that the State failed in its duty to perform a medical examination on V.R.P. as quickly as possible after receiving the complaint. As indicated above, the State did not present any arguments to disprove the allegations regarding the lack of guarantees vis-à-vis the physicians that attempted to conduct the first examinations on V.R.P.

115. Third, the Commission notes that the visual examination and the reconstruction of the facts were nearly one week after the complaint was filed. It is worth noting that there is no information regarding special measures adopted to protect V.R.P. in her condition as a child victim of sexual violence during these proceedings. The Commission has not received information on the reasons why her participation in these proceedings was absolutely necessary. The case file does not mention V.R.P. having received special psychological support during these proceedings. To the contrary, the Commission considers it especially grave that the presiding judge required V.R.P. to participate, asking her during the proceedings to place herself in the same position, according to her account, in which she had been placed by the aggressor.

116. The Commission finds no reason why it was absolutely necessary for V.R.P. to physically re-live such a traumatic experience by placing herself in that position. Under the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, special procedures should be followed to secure evidence from children who are victims of the crime of rape, in order to reduce the number of interviews, statements, confrontations, and, specifically, all unnecessary contact with the justice process.¹⁸⁶

¹⁸⁶ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 27.

117. In short, the Commission considers that the manner in which these proceedings were carried out constitutes a form of re-victimization to the detriment of the dignity, integrity and effective access to justice of a child victim of sexual violence. This conclusion is consistent with the Victoria Motta Hospital's psychiatric report, which stated that the judge's instructions resulted in the re-victimization of V.R.P.

118. Fourth, the Commission considers that during criminal proceedings concerning the rape of a child, the State must provide the victim with medical and psychological care. Such care must be both emergency and on-going if necessary, by means of a treatment protocol in order to mitigate the effects of the rape.

119. In this case, the IACHR notes that during the proceedings, according to the information submitted by the parties, the State did not provide V.R.P. with the healthcare services necessary to protect her physical and psychological health, despite the reports indicating that V.R.P. required, at the very least, psychological attention. The IACHR emphasizes that the State itself recognized that it did not provide V.R.P. with medical attention during the proceedings, maintaining that Nicaragua is a poor State, reason which is not in accordance with international legal standards. The Commission continues to note that, according to more recent mental health studies, V.R.P. remains seriously scarred from the rape she suffered as a child. This situation could have been contained by the State had it provided her with the attention she needed at the time.

120. Fifth, the Commission recalls that the Court established that in cases such as this, the investigation should be documented and coordinated, and all necessary measures must be taken to determine the perpetrator of the crime. The Commission observes that, according to the documentation submitted by the parties, V.P.C. and V.R.P. explicitly identified the girl's father as having committed the rape from the very beginning. Notwithstanding, within the few elements of the case file available to the Commission, there is no information demonstrating that due diligence was applied in searching for the perpetrator. For example, medical examinations were not performed on V.R.P.'s father, even though she was diagnosed with an exclusively sexually transmitted disease.

121. Sixth, the IACHR emphasizes that there are complaints regarding irregularities in the jury selection and the issuance of the decision to absolve in April 2002. As such, the Commission notes the petitioner's allegations with respect to: i) the unjustified suspension of the trial on two occasions; ii) the violation of the right to defense due to the rejection of the prosecution's request for the participation of two additional lawyers during the trial; and iii) the suspected delivery of an envelope to the jury by one of the defense lawyers at the end of the trial. In relation with the decision to absolve in April 2002, the IACHR recalls that the obligation to provide the grounds for decisions is a guarantee related to the correct administration of justice. In addition, the justification demonstrates to the parties that they have been heard and, in those cases where the decision can be appealed, allows them to contest the decision and to obtain another examination of the matter before a higher court.¹⁸⁷

122. In spite of the seriousness of some of these irregularities, one of which could constitute a case of possible corruption, the Commission notes that the States failed to adequately investigate the alleged irregularities. The Commission notes that following the decision to absolve in April 2002, V.P.C.'s lawyer filed various appeals questioning these irregularities.

123. Based on the available information, the Commission observes that these appeals were not granted. As such, V.R.P. and her mother were not provided with the possibility of their complaints being adequately analyzed so that the necessary corrective measures could be applied to the investigation. The IACHR emphasizes that, according to the available information, more than one judge recused themselves from taking up the case for being connected to the defendant by affinity, and that the State itself recognized that one judge recused himself "without explanation." The Commission has not received information indicating

¹⁸⁷ I/A Court H.R. *Case of Chocrón - Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2011. Series C No. 227, para. 118.

that the State adopted measures to prevent the recusal mechanism from delaying and giving rise to impunity in this case.

124. The Commission notes that many of the irregularities described in this section were confirmed by the Office of the Prosecutor for the Defense of Human Rights, which issued statements in 2002, 2003 and 2005 identifying these irregularities and concluded that “the crime committed against the girl (...) remains in impunity, even though she has undoubtedly and irrefutably identified the aggressor.” Furthermore, it concluded that “the sentence issued by the court (...) is (...) unjust and violates the girl’s human rights.”

125. Finally, the Commission observes that the process did not include the permanent and effective participation of any specialized institution in order to protect V.R.P.’s rights, with respect to which the Inter-American Court has established the following:

the Court considers that, in order to facilitate access to justice for vulnerable persons, the participation of other State institutions and bodies is essential so that they can assist in the judicial proceedings in order to ensure that the rights of such persons are protected and defended.¹⁸⁸

(...)

Moreover, the Court recalls that while procedural rights and their related guarantees apply to all persons, in the case of children the exercise of those rights requires, due to their special status as minors, that certain specific measures be adopted for them to effectively enjoy those rights and guarantees.¹⁸⁹ The types of specific measures are determined by each State Party and may include direct or joint representation,¹⁹⁰ as the case may be, of the minor in order to reinforce the guarantee of the principle of the best interests of the minor.¹⁹¹

126. The Commission considers that the aforementioned is clearly applicable in this case, as the girl’s vulnerable condition was clearly aggravated as a victim of rape. In spite of this, the State did not guarantee V.R.P.’s rights by including other specialized institutions in the process, which had serious effects vis-à-vis this case remaining in impunity, and the various forms of re-victimization mentioned in this section. It is worth noting that the prosecutor also did not comply with her duties during the process; she committed multiple oversights, including some recognized by the State, such as when she mentioned that “ideally another prosecutor would have taken up the case (...) but the Public Ministry is very understaffed.”

127. For these reasons, the Commission considers that due diligence was not applied in clarifying the facts and punishing the guilty party in this case. Consequently, the IACHR concludes that the State violated the rights to judicial guarantees and judicial protection, established in Articles 8.1 and 25.1 of the American Convention in connection with Article 1.1 of the same instrument, as well as in Article 7.b of the Convention of Belém do Pará, to the detriment of V.R.P. and V.P.C. Furthermore, the Commission concludes that the State violated Article 19 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of V.R.P.

128. In the same sense, and taking into account the aforementioned analysis of the violation of V.R.P.’s substantive rights as a result of the rape, the Commission considers that, due to the omissions and

¹⁸⁸ Inter-American Court. *Case of Furlan and Family Members v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 241.

¹⁸⁹ Inter-American Court. *Case of Furlan and Family Members v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 241. Citing. Consultative Opinion CO-17/02, par. 98

¹⁹⁰ Inter-American Court. *Case of Furlan and Family Members v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 241. Citing. *Mutatis mutandis*, *Case of Atala Riffo and Girls v. Chile*, par. 199

¹⁹¹ Inter-American Court. *Case of Furlan and Family Members v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, par. 242.

irregularities throughout the investigation, the State did not guarantee her rights to personal integrity, private life, dignity and autonomy. To the contrary, due to the manner in which the investigation was carried out and the subsequent impunity in which the case remains, the IACHR finds that there were further violations to V.R.P.'s integrity, as confirmed by various medical and psychological examinations, as well as to her private life, dignity and autonomy.

129. The Commission highlights two facts that seriously affected the integrity and privacy of V.R.P. On one hand, the treatment by the attending physician taking the exam the girl, who uttered disparaging and violent statements against V.R.P. On the other hand, the revictimizing treatment to V.R.P. during the reconstruction of the facts, where she was forced to be placed in the position in which the aggression occurred.

130. This is aggravated by V.R.P.'s status as a minor at the time of the facts and throughout the investigation. As such, the Commission considers that the State did not comply with its obligation to guarantee the aforementioned substantive rights. Furthermore, the Commission considers that the State committed additional violations of these rights as a result of the manner in which the investigation was carried out. Consequently, the Commission concludes that the State is also responsible for violating Articles 5.1, 11.2 and 19 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of V.R.P.

1.5.2. The principle of equality and non-discrimination

131. The Commission recalls that States must abstain from taking measures that, in any way, are directly or indirectly aimed at creating situations of discrimination *de jure* or *de facto*.¹⁹² States are obliged to take affirmative action in order to reverse or change any discriminatory situations in their societies that prejudice a specific group of persons. This involves the special obligation of protection that the State must exercise with regard to the actions and practices of third parties who, with its tolerance or acquiescence, create, maintain or encourage discriminatory situations.¹⁹³

132. The Convention on the Elimination of All Forms of Discrimination Against Women defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁹⁴

133. The Committee for the Elimination of All Forms of Discrimination Against Women has declared that the definition of discrimination against women “includes gender-based violence, that is, violence that is directed against a woman because i) she is a woman or ii) that affects women disproportionately.” It has also established that “gender-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.”¹⁹⁵ Within the Inter-American System, the preamble of the Convention of Belém do Pará establishes that violence against women is a “manifestation of the historically unequal power relations between men and women” and recognizes that every woman’s right to a life free from violence includes the right to be free from all forms of discrimination.

¹⁹² Inter-American Court. *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2014. Series C No. 289, par. 220.

¹⁹³ Inter-American Court. *Case of Norín Catrimán and Others (Leaders, Members, and Activists of the Mapuche Indigenous People v. Chile)*. Merits, Reparations, and Costs. Judgment of May 29, 2014. Series C No. 279, par. 201.

¹⁹⁴ Convention on the Elimination of All Forms of Violence Against Women, December 18, 1979, Article 1.

¹⁹⁵ UN, Committee for the Elimination of All Forms of Discrimination Against Women, General Observation No. 19: Violence Against Women, 1992, par. 1 and 6.

134. In this case, the State was faced with a serious act of sexual violence against a woman and child, which, as indicated, constitutes a manifestation of the socially prevalent discrimination against women. As such, the State was obliged to not only abstain from discriminating against or re-victimizing the victim during the investigation and trial, but also to carry out a serious, diligent and effective investigation in order to clarify the facts and punish the person responsible.

135. The Commission observes that, in addition to the consequences arising from the lack of due diligence established in the previous section, various aspects of the investigation demonstrate the State's failure to comply with its reinforced obligation to take into account V.R.P.'s double vulnerability as a woman and child victim of sexual violence. For example, the IACHR notes the behavior of the attending physician during V.R.P.'s first examination – which was not disputed by the State by means of a serious investigation – and the judge's request that V.R.P. participate directly and place herself in the position in which she had been raped by the aggressor, without any form of psychological support.

136. Likewise, the IACHR recalls that the influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in criminal cases involving violence.¹⁹⁶ The State has not accounted for the manner in which it took into consideration the consistent statements made by V.R.P. at the time of determining the responsibility of the accused, or the manner in which it evaluated the available evidence. The Commission considers that there is enough evidence to conclude that the impunity in which this case remains is precisely due to the lack of due diligence described in the previous section of this report. In this sense, if an act of violence against a woman or girl remains in impunity due to the actions and omissions of the State, the Commission considers it possible that the impunity itself constitutes a perpetuation of the discrimination manifested by the violence, as well as a form of discrimination vis-à-vis access to justice.

137. As indicated by the Court, the impunity of the crimes committed sends the message that violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice.¹⁹⁷

138. In conclusion, the Commission considers that there is enough evidence in this case to conclude that the State is also responsible for violating the principle of equality and non-discrimination established in Article 24 of the American Declaration in connection with Article 1.1 of the same instrument, to the detriment of V.R.P, as a result of the manner in which the investigation was conducted and the subsequent impunity of an act of violence committed against her as a woman and child.

1.5.3. Right to a hearing within a reasonable time

139. Article 8.1 of the American Convention establishes the right to a hearing within a reasonable time as an element of due process. In this sense, a long delay may, in itself, constitute a violation of the principle of due process,¹⁹⁸ and it is for the State to explain and prove why it has required more time than would be reasonable, in principle, to deliver final judgment in a specific case.¹⁹⁹

¹⁹⁶ IACHR, Access to Justice for Women Victims of Violence in the Americas, January 20, 2007, par. 155.

¹⁹⁷ Inter-American Court. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 16, 2006. Series C No. 205, par. 400.

¹⁹⁸ Inter-American Court. *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166; *Case of Gómez Palomino v. Peru*. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 136, par. 85; and *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 125, par. 160.

¹⁹⁹ Inter-American Court. *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, par. 142.

140. In this sense, the reasonable time should be valued in relation to the duration of the entire criminal process.²⁰⁰ As established in Article 8.1 of the American Convention, and in light of the concrete circumstances of the case, the Commission shall consider four elements that the Court has in its recent case law: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of the judicial authorities; and (iv) the general effects on the legal situation of the person involved in the proceeding.²⁰¹

141. With respect to complexity, the Commission observes that the States did not justify the delays in the criminal process. With respect to the activity of the interested party, the Commission observes that Mrs. V.P.C. actively contributed to the process, monitoring and driving the investigation, and complaining on repeated occasions about the delays in the proceedings and the long periods of procedural inactivity.

142. With respect to the conduct of the judicial authorities, the Commission has identified various procedural omissions, as indicated earlier in this report. Furthermore, the IACHR observes that nearly six years passed between the decision to absolve in April 2002, and the end of the process. The IACHR emphasizes that, during that timeframe and based on the evidence submitted, no measures were taken to clarify the facts that could justify the delay in the process' completion.

143. With respect to the fourth element, the Court has established that in order to establish reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account.²⁰² The European Court has maintained that in cases of violence against a girl, the investigation must be carried out as soon as possible.²⁰³

144. The Commission considers that in this case, due to V.R.P.'s situation as a girl and a victim of rape, the State had a reinforced obligation to respect and guarantee her rights, which was not reflected in the manner in which the investigation and criminal process were carried out.

145. Finally, the Commission emphasizes that the State itself recognized the delay in the process without providing any justification. To the contrary, the State limited itself to indicating that the delay was a consequence of the Criminal Code of Procedure that was in place at the time, which was "excessively formal, rigorous and non-public." Furthermore, the State recognized that "the administration of justice was much slower, such that the Court's delay in issuing its decision is, in principle, attributable to the system itself."

146. By virtue of the aforementioned, the Commission considers that the criminal process' duration of seven years was not justified by the State pursuant to the relevant elements, and that, therefore, it was unreasonable and constitutes a violation of the guarantee to a hearing within a reasonable time established in Article 8.1 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of V.R.P. and V.P.C.

2. Right to personal integrity for V.R.P. and V.P.C. (Article 5 of the American Convention in connection with Article 1.1 of the same instrument)

²⁰⁰ Inter-American Court. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, par. 129; *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, par. 104; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2014. Series C No. 114, par. 168. Also see: IACHR, Report No. 77/02, Case 11.506, Merits, Waldemar Gerónimo Pinheiro and José Víctor dos Santos, Paragua, December 27, 2002, par. 76.

²⁰¹ Inter-American Court. *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of November 30, 2012. Series C No. 259, par. 164.

²⁰² Inter-American Court. *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, par. 138; *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, par. 155; and *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, par. 115.

²⁰³ ECHR, M. and M. v. Croatia. Judgment of September 3, 2015, par. 148.

147. The Court has maintained that rape is an extremely traumatic experience that may have serious consequences and it causes great physical and psychological damage that leaves the victim “physically and emotionally humiliated,” situation difficult to overcome with time.²⁰⁴ This reveals that severe suffering of the victim is inherent to rape, even when there is no evidence of physical injuries or disease. Indeed, the after-effects of rape do not always involve physical injuries or disease. Women victims of rape also experience severe trauma and psychological and social consequences.²⁰⁵

148. The Commission notes that the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime provide that States should offer assistance and support services, such as health, social, and educational services, physical and psychological recovery services, and such other services as may be necessary for the child’s rehabilitation.²⁰⁶

149. As analyzed earlier when looking at the manner in which the investigation was carried out, it was not demonstrated that V.R.P. received medical and psychological attention once the authorities learned of the facts. The Commission reiterates that the State itself recognized this situation.

150. The Commission considers that the lack of medical attention, added to the situation of impunity, aggravated V.R.P.’s mental health. According to a medical report from 2005, V.R.P. “exhibits depression, anxiety and self-mutilating behavior.” In 2008, V.R.P. was hospitalized in order to receive treatment for post-traumatic depression. That lack of comprehensive attention was combined with the different forms of revictimization and the situation of impunity already established in this report and, as a result, the repercussions of both the rape and the inadequate response given by the State’s authorities were exacerbated. Thus, the Commission notes that instead of providing the urgent and appropriate response that was required by the nature of the case, the State pursued a criminal trial that was plagued with shortcomings and instances of revictimization, to which V.R.P. was subjected during a significant portion of her childhood. In addition, V.R.P. has had to witness the serious impact of these facts on her mother and on her family in general.

151. The IACHR also notes that the petitioners claim that V.R.P. had to abandon school because she “felt ashamed and feared being rejected by others.” The Commission further notes that the State did not challenge those claims. Neither did the State present any information on the steps taken for the reincorporation of V.R.P. into the school system.

152. Consequently, the Commission concludes that by failing provide the timely and comprehensive attention she required as a child victim of rape, the State allowed for the adverse effects on V.R.P.’s personal integrity to worsen, in violation of Article 5.1 of the American Convention in connection with Article 1.1 of the same instrument, to her detriment.

153. With respect to V.P.C, the Commission observes that it can be deduced from her testimony that her personal integrity, and that of her children, was adversely affected. The IACHR emphasizes the many obstacles that Mrs. V.P.C. faced in her pursuit of justice. Furthermore, the Commissions notes that complaints were filed against Mrs. V.P.C. in May 2002 by two members of the jury that found Mr. Rodríguez innocent, and by the physician that participated in the first medical examination.

154. The IACHR emphasizes that, even though these complaints were closed, they seriously and adversely affected V.P.C. and her family. Furthermore, the Commission notes that due to the situation of impunity, Mrs. V.P.C. and two of her daughters, including V.R.P., decided to leave Nicaragua and request asylum in another country, where they currently reside.

²⁰⁴ Inter-American Court. *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, par. 311.

²⁰⁵ Inter-American Court. *Case of Rosendo Cantú and other v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 114.

²⁰⁶ UN, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 20.

155. Based on the aforementioned considerations, the Commission considers that there is sufficient evidence to conclude that the rape suffered by V.R.P., its consequences, and the impunity – attributable to the State – in which the case remains caused emotional suffering for V.P.C. and her children Heberto, Bladimir and Nayade, in violation of the right enshrined in Article 5.1 of the American Convention in connection with Article 1.1 of the same instrument.

V. CONCLUSIONS

156. Based on the aforementioned considerations of fact and law, the Inter-American Commission concludes that the State of Nicaragua is responsible for violating the rights established in Articles 5, 8, 11, 19, 24 and 25 of the American Convention in connection with Article 1.1 of the same instrument; and in Article 7.b) of the Convention of Belém do Pará, to the detriment of the persons indicated in this report.

VI. RECOMENDATIONS

157. By virtue of the aforementioned conclusions,

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION RECOMMENDS THAT THE STATE OF NICARAGUA,

1. Carry out the corresponding investigations and criminal processes, applying due diligence and within a reasonable time, in order to identify, prosecute and, in this case, punish the person responsible for the rape of V.R.P.

The Commission notes that the criminal process against Heberto Rodríguez concluded on October 24, 2007, by means of a sentence issued by the Matagalpa Appellate Court Criminal Chamber. This sentence upheld the decision to absolve Mr. Rodríguez.

Taking into account that the decision to absolve the only person identified by the victim as the aggressor remains in force domestically, the Commission recalls the concept of “fraudulent *res judicata*” and its connection to the principle of *ne bis in idem*. As the Court established in *Gutiérrez and Family Vs. Argentina*, presuming that the provisions of Article 8.4 of the Convention would be applicable under any circumstance would imply that the decision of a domestic judge would have preeminence over a decision taken by an Inter-American body pursuant to the Convention.²⁰⁷ It would also mean, consequently, that the application, in any circumstance, of the aforementioned Article 8.4 of this treaty, could lead to impunity and to the non-applicability of the corresponding international norms, which would not accord with the object and purpose of the Convention.²⁰⁸

The Commission reiterates that the criminal process in this case was not conducted in accordance with the State of Nicaragua’s international obligations under the American Convention and the Convention of Belém do Pará. As such, the IACHR considers that, in this case, the judicial proceedings were not adjusted to the guarantees to “due process” established in Article 8 of the American Convention. Furthermore, there was no “non-appealable judgment,” as alluded to in Article 8.4 of the American Convention.²⁰⁹ The Commission emphasizes that this situation is aggravated, taking into account the nature of

²⁰⁷ Inter-American Court. *Case of Gutiérrez and Family v. Argentina*. Merits, Reparations, and Costs. Judgment of November 25, 2013. Series C No. 271, par. 130.

²⁰⁸ Inter-American Court. *Case of Gutiérrez and Family v. Argentina*. Merits, Reparations, and Costs. Judgment of November 25, 2013. Series C No. 271, par. 130.

²⁰⁹ Article 8.4 of the American Convention: An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.

the crime and V.R.P's situation of double vulnerability as a woman and child. In light of this, the IACHR considers that in this case, the guarantee of *ne bis in idem* is not opposable by the State vis-à-vis the instant recommendation to investigate.

2. Provide full compensation for the human rights violations declared in this report, both materially and morally.
3. Provide free and immediate medical and psychological or psychiatric care, as appropriate, to the victims in this case upon request. Taking into account that the victims reside outside the country, this recommendation can be fulfilled by providing an amount of money that would reasonably cover the cost of healthcare required by the victims.
4. Carry out the corresponding administrative, disciplinary or criminal measures vis-à-vis the actions or omissions of State officials that contributed to the denial of justice and impunity of this case.
5. Develop investigative protocols so that cases of rape and other forms of sexual violence against women and girls are duly investigated and prosecuted pursuant to the standards established in this report.
6. Strengthen institutional capacity to combat impunity in cases of rape and other forms of sexual violence against women and girls by means of effective criminal investigations with a gender-based perspective, thus ensuring the appropriate punishment and compensation.
7. Design and implement permanent training programs for civil servants belonging to the Judiciary, Public Ministry, and National Police, on international standards for investigation of rape and other forms of sexual violence against women, including girls. Also, it must be trained health personnel, both medical and psychological, that are related to such investigation, on international standards on treatment of child victims of sexual violence.
8. Adopt public policies and integrated institutional programs geared toward combatting violence against women and girls as a form of discrimination, and promoting the elimination of discriminatory sociocultural patterns that prevent their full access to justice.