

REPORT No. 67/11
CASE 11.157
ADMISSIBILITY AND MERITS
GLADYS CAROL ESPINOZA GONZALES
PERU
March 31, 2011

I. SUMMARY

1. On May 10, 1993, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a complaint lodged by the Association for Human Rights (APRODEH), Mrs. Teodora Gonzales Vda. de Espinoza, and the Center for Justice and International Law (CEJIL)¹ (hereinafter "the petitioners"), representing Gladys Carol Espinoza Gonzales² (hereinafter also "the alleged victim" in the analysis of admissibility and "the victim" in the analysis of the merits), alleging the international responsibility of the Republic of Peru (hereinafter "the Peruvian State," "the State," or "Peru"). The petitioners claimed that Gladys Carol Espinoza was illegally and arbitrarily arrested on April 17, 1993, and was tortured and sexually abused while held at the premises of the Peruvian National Police in the city of Lima. They contended that those facts were never investigated, in spite of complaints filed by the alleged victim's family and civil society organizations in early 1993, and by Gladys Carol Espinoza herself in the year 2003. Finally, they held that the Peruvian State is responsible for violating the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and in Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

2. In turn, the State disputed that the alleged victim had suffered sexual abuse or torture and said that if evidence of such actions had existed, the competent authorities would have begun a criminal investigation. It held that the legal framework under which Gladys Carol Espinoza was detained in April 1993 was substantially amended with the adoption of decree laws on matters of terrorism between January and February 2003, which it claimed were in line with the American Convention and the Constitution of Peru. Finally, it contended that the facts described by the petitioners did not tend to establish violations of the Convention's provisions and it requested that the IACHR declare the complaint inadmissible under Article 47.b thereof.

3. After analyzing the positions of the parties, the Commission concludes that it has competence to hear the petition and that it satisfies the admissibility requirements set out in Articles 46 and 47 of the American Convention. In addition, it concludes that the Peruvian State is responsible for violating the rights enshrined in Articles 5, 7, 11, 8, and 25 of the American Convention, in conjunction with the general obligation of respecting and ensuring rights set forth in Article 1.1 thereof, and the rights contained in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

¹ The Center for Justice and International Law registered as a co-petitioner on November 19, 2008.

² The submissions sent to the IACHR by the petitioners and the State refer to the alleged victim by the names Gladys Carol Espinoza Gonzales, Gladis Carol Espinoza Gonzales, and Gladys Carol Espinoza Gonzáles. Copies of the case files from the criminal proceedings brought against the alleged victim refer to her both by the name Gladys Carol Espinoza Gonzales and by the pseudonym Victoria Romero Salazar.

II. PROCESSING BY THE IACHR

4. The petition was received on May 10, 1993, and assigned the number 11.157; it was conveyed to the State on May 12, 1993, with a deadline of 90 days for a response to be returned, pursuant to the Rules of Procedure of the IACHR in force at the time. The State sent its reply on September 3, 1993, and submitted additional filings on June 14, 1996, and on August 18, 1998.

5. In January 1999, Mrs. Teodora Gonzales sent a communication describing the detention conditions in which Gladys Carol Espinoza was being held. That communication was recorded as a new petition, registered as No. 12.079, and conveyed to the State on January 27, 1999, with a 90-day deadline for it to file its response. On June 1, 1999, the IACHR notified the parties of its decision to combine petitions 11.157 and 12.097 and to identify them jointly by the former number. The State submitted further information on June 28, 1999, and on January 3, February 29, and June 15, 2000. Similarly, the petitioners filed additional information on August 31, 1999, April 13, 2000, and May 20, 2004.

6. On November 13, 2004, the IACHR informed the parties of its decision to apply Article 37.3 of its Rules of Procedure in force at the time,³ and asked them for their comments on the merits of the case. The petitioners submitted further communications on December 30, 2004, and June 14, 2006. The State sent filings on January 25, February 18, March 16, April 28, and May 12, 2005, and on November 29 and December 6, 2006.

7. On October 23, 2008, during its 133rd regular session, the IACHR held a private hearing on the merits of the case. On that occasion, the expert witness put forward by the petitioners, Dr. Carmen Wurst de Landázuri, presented her psychological and psychiatric evaluation of Gladys Carol Espinoza. Dr. Carmen Wurst took an oath and presented the IACHR with her personal details and her accreditation as a registered professional with the College of Psychologists of Peru.

8. The petitioners submitted additional information on November 20, 2008, and on January 15 and September 14, 2010. Similarly, the State lodged filings on December 9, 2009, and on October 15, 2010. In a note received on October 28, 2010, the petitioners reported that they had no further comments.

III. POSITIONS OF THE PARTIES

A. Petitioners

9. The petitioners report that Gladys Carol Espinoza Gonzales was detained, for the first time, on March 28, 1987, and was taken, with violence, to the Antiterrorism Directorate (DIRCOTE) in the city of Lima. They claim she was held at that police facility for 15 days, during which time she was forcibly stripped, stretched, and attacked in other ways. According to their claims, the alleged victim was accused of involvement in attacks on commercial establishments as a member of the Túpac Amaru Revolutionary Movement (MRTA). They report that on April 28, 1987, she was transferred to the Miguel Castro Castro Maximum Security Penitentiary and, on April 13, 1988, she was released after her acquittal from the prosecution brought against her for the crime of

³ That article, the text of which was maintained as Article 36.3 of the current Rules of Procedure, read as follows: "in exceptional circumstances, and after having requested information from the parties in keeping with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits."

terrorism. The petitioners state that “Gladys Carol never lodged any formal complaints for the treatment she received during her first arrest in 1987.”⁴

10. They report that on April 17, 1993, Gladys Carol Espinoza was intercepted on the street in the province of Lima, while in the company of her companion Rafael Salgado Castilla. They claim that dozens of members of the Abduction Investigation Division (DIVISE),⁵ in civilian clothing, forced the couple into a police vehicle amidst blows, threats, and gunshots into the air. They claim that after being taken to the aforesaid police division, the alleged victim was subjected to torture, insults, and abuse. They further report that Rafael Salgado Castilla died on April 18, 1993, as a result of the beatings and mistreatment he received at DIVISE headquarters.⁶

11. The petitioners report that on April 17, 1993, decree laws were in force that authorized persons under investigation for terrorism or treason against the fatherland to be held incommunicado and prohibited the filing of habeas corpus suits in proceedings brought for those offenses. They state that the alleged victim was held without a court order and was not given timely notification of the reasons for her arrest or the specific charges against her. Consequently, they contend that the State is responsible for violating the rights enshrined in Articles 7.2, 7.3, 7.4, 7.5, and 7.6 of the American Convention, in conjunction with Article 25 thereof.

12. According to their claims, the alleged victim was subjected to interrogations during which she received blows to her head, face, arms, and lower back, her breasts were pinched, her feet were stabbed with needles, she was forcibly stripped, and objects were inserted into her vagina and anus. They state that she was submerged into a tank containing fecal matter, hung by her feet and hands, and that on several occasions she suffered convulsions, hallucinations, fainting, and a loss of feeling. The petitioners claim that the police officers who participated in the interrogation had to bring Gladys Carol Espinoza back round by throwing cold water on her face and taking her to an outpatient facility. They state that the DIVISE agents threatened to harm her family and to inject her with HIV, invariably using insults and humiliation. They maintain that the alleged rape, torture, and humiliations continued after Gladys Carol Espinoza was transferred to the cells of the National Antiterrorism Directorate (DINCOTE) on April 19, 1993.

13. The petitioners claim that during her first days at the DINCOTE, Gladys Carol Espinoza was held incommunicado and that, later, she was placed with other inmates. They state that at the time, the National Police of Peru used to dress individuals suspected of belonging to insurgent organizations – such as the MRTA and the Communist Party of Peru / Shining Path – in striped prison garb and display them to the press. However, upon seeing the bruises and other signs of torture on Gladys Carol Espinoza’s body, the DINCOTE agents decided not to put her on public display.

14. The petitioners state that Gladys Carol Espinoza’s physical and mental injuries were recorded by examinations conducted by the Legal Medicine Institute and the National Police, dated

⁴ In a communication received on September 14, 2010, the petitioners stated that Gladys Carol Espinoza’s March 1987 arrest and the alleged acts of torture she suffered during her 15 days’ detention at DIRCOTE “are not being litigated in this case, but their inclusion is important, for the Commission to be aware of the background to the victim’s situation prior to her second arrest in 1993.”

⁵ According to the information presented, in the early 1990s the National Police’s Abduction Investigation Division (DIVISE) was renamed the Division for Investigating Crimes against Individual Freedom (DIDCOL). The copies of the judicial case files, press reports, and submissions sent by the parties to the IACHR refer to this division of the police by the two names indistinctly.

⁶ In a communication received on September 14, 2010, the petitioners stated that the arrest, alleged torture, and extrajudicial killing of Rafael Salgado Castilla “are not subject to litigation in the case at hand, [but] they are believed to be of relevance in casting light on the allegations made by Gladys Carol Espinoza.”

April and May 1993. Those reports, they say, describe the presence of bruises on Ms. Espinoza Gonzales's arms, the back of her hands, and face, hematoma in the parietal region, traumatic brain injury, and "a recent unnatural act."

15. The petitioners report that between April 26 and 28, 1993, the Association for Human Rights and relatives of the alleged victim filed complaints with the offices of the Attorney General, the Special Attorney for Human Rights, and the General Inspector of the National Police. They state that the alleged victim's mother, Mrs. Teodora Gonzales Vda. de Espinoza, went to the DINCOTE's premises on countless occasions but was never given any information about her daughter's whereabouts. They note that in spite of the existence of medical reports indicating post-traumatic disorders and multiple injuries to the alleged victim's body, the State never took any steps to investigate the facts. They therefore hold that the Peruvian State is responsible for violating the rights protected by Articles 8 and 25 of the American Convention, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.

16. The petitioners report that it was not until 20 days after her arrest and only thanks to the intervention of Gen. Antonio Ketin Vidal Herrera, Director of the DINCOTE at the time, that Gladys Carol Espinoza was allowed to receive a visit from her mother and a brother. They report that upon seeing the her daughter's condition, Mrs. Teodora Gonzales Vda. de Espinoza broke down.

17. According to their claims, the alleged victim was accused of belonging to the MRTA insurgent organization and prosecuted for the crime of treason against the fatherland, in proceedings held before military judges whose identities were kept secret. The petitioners report that on June 25, 1993, the Special Military Court of the Peruvian Air Force Judicial District sentenced her to life imprisonment and other accessory penalties, and that on February 24, 1994, her conviction was upheld by the Special Court of the Supreme Military Council for Treason against the Fatherland.

18. The petitioners indicate that Gladys Carol Espinoza remained at the DINCOTE until she was transferred to Chorrillos Women's Maximum Security Prison on June 24, 1993. They state that on January 17, 1996, she was moved to Yanamayo Prison in the department of Puno, and that on April 17, 2001, she was admitted to Aucayama Prison, to the north of Lima. They claim that while the alleged victim was held at Yanamayo, she was mistreated and not provided with appropriate medical attention or food. She was held in continuous solitary confinement in a single-person cell for 23 hours and 45 minutes a day.

19. The petitioners indicate that Yanamayo Prison is located 3,800 meters above sea level, in an area that is extremely cold and inaccessible for the alleged victim's relatives, particularly her mother. They add that while held there, Ms. Espinoza Gonzales contracted bronchopneumonia and that in spite of recommendations from INPE physicians and several requests by the alleged victim, she was denied tomography testing to investigate her constant dizziness, headaches, and other health problems. They state that in August 1999, Gladys Carol Espinoza and other inmates from Yanamayo's Block 1D were beaten and mistreated by police officers. They state that in a report dated August 25, 1999, the People's Defender at the time, Jorge Santistevan de Noriega, denounced those acts of violence, but that competent authorities failed to investigate them or punish the guilty.

20. The petitioners report that Gladys Carol Espinoza's military prosecution was voided under the new legislative framework for terrorism offenses enacted between January and February 2003 and a new investigation was opened against her for the crime of terrorism before the regular courts. On March 1, 2004, the National Terrorism Chamber sentenced her to 15 years in prison,

and on November 24 of that same year, the Supreme Court of Justice increased her sentence to 25 years.

21. Although the petitioners speak of the outcome of the criminal prosecutions brought against Gladys Carol Espinoza, they offer no specific arguments regarding a possible violation of the right to a fair trial or to judicial protection, or regarding any possible incompatibility between the legal framework within which those trials took place and the American Convention. Thus, the petitioners' contentions regarding Articles 8 and 25 of the Convention are limited to the failure to investigate the violence Gladys Carol Espinoza suffered while held at police facilities and in prison.

22. According to the information submitted, during the oral proceedings before the National Terrorism Chamber, Gladys Carol Espinoza stated that she had been tortured at police facilities in April and May 1993. After fresh psychological reports were prepared at the request of the National Terrorism Chamber, no criminal investigation was ordered. In addition, in the deed of execution of November 24, 2004, the Supreme Court of Justice stated that "the medical experts have said that the injuries shown by Gladys Carol Espinoza Gonzales are not compatible with torture." The petitioners argue that the Supreme Court of Justice gave a distorted reading of the forensic and psychological reports prepared by the Legal Medicine Institute and ignored the alleged victim's statements and the signs of torture on her body.

23. According to the petitioners, the alleged incommunicado detention, torture, and inhuman detention conditions suffered by Gladys Carol Espinoza affected the physical integrity of her mother, Teodora Gonzales Vda. de Espinoza, who died in 2004, and of her siblings Marlene, Mirian, and Manuel Espinoza Gonzales.

24. Consequently, they hold that the Peruvian State is responsible for violating the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention on the Prevention, Punishment, and Eradication of Violence against Women.

B. State

25. Peru states that the alleged victim was initially detained in 1987 and was prosecuted for terrorism, for falsifying public documents, and for crimes against property and human life. It reports that on April 11, 1988, the Eleventh Correctional Court acquitted her of those charges and ordered the proceedings sent to the archive and her immediate release. On a remedy filed by the Public Prosecution Service, the Supreme Court of Justice ruled, on May 26, 1989, to annul the acquittal and for new oral proceedings to begin. Peru explains that since Ms. Espinoza Gonzales could not be located, the Superior Corporate National Chamber for Terrorism Cases ordered her arrest and issued the corresponding instructions to the police.

26. The State claims that after being taken into custody on April 17, 1993, Ms. Gladys Carol Espinoza was prosecuted for the crime of treason against the fatherland, of which she was convicted on June 25, 1993, by the Special Military Court of the Peruvian Air Force Judicial District and sentenced to life imprisonment and to the payment of five million sols as civil redress. It reports that on September 28, 1993, the Special Military Court upheld the sentence, and that on February 24, 1994, the Special Court of the Supreme Military Council for Treason against the Fatherland ruled there were no grounds for annulment.

27. Peru contends that in the legal proceedings before the military courts, the membership of the alleged victim in the MRTA was established, along with her involvement in attacks on private property and extortion against business owners and their families, with the intent of collecting funds for that insurgent organization. It claims that the National Police seized from her

a grenade, a voice distorter, a beeper, and a notebook containing business owners' names and telephone numbers.

28. In its initial submissions the State attested that the petition was lodged with the IACHR in May 1993, when the military courts had not yet handed down their final ruling in the charges brought against Ms. Gladys Carol Espinoza. Peru therefore contended that the complaint did not satisfy the requirement set by Article 46.1.a of the Convention. In its later submissions, Peru notes that on February 17, 2003, the National Terrorism Chamber voided the entire proceedings brought against Ms. Espinoza Gonzales before the military courts. It reports that on November 10, 2003, the First Senior Terrorism Prosecutor formulated new charges for crimes against public order in the form of terrorism.

29. The State notes that on March 1, 2004, the National Terrorism Chamber handed down a conviction and a 15-year prison term, along with other accessory penalties. It adds that in the deed of execution of November 24, 2004, the Supreme Court of Justice amended that ruling, increasing the prison term to 25 years. It reports that on March 16, 2005, the alleged victim filed a habeas corpus action with the Twenty-fourth Criminal Court of Lima, seeking the nonenforcement of the deed of execution of November 24, 2004. On February 19, 2007, Peru notes, that application was ruled groundless at the final instance by the Constitutional Court.

30. The State maintains that the arrest of Gladys Carol Espinoza absent a warrant, her holding in incommunicado detention, and her inability to file for habeas corpus relief were due to a legislative framework that was "rectified by the Peruvian State itself by means of the constitutional judgment of January 3, 2003."⁷ It notes that under this judgment, several provisions of the terrorism decree laws enacted during the government of Alberto Fujimori were ruled unconstitutional.

31. The State emphasizes that this judgment by the Constitutional Court repealed the provisions of the antiterrorist legislation that prevented magistrates from being challenged, officers named in the police arrest report from being summoned to appear as witnesses, and trials of civilians from being conducted before the civilian courts. It further notes that detention in absolute incommunicado conditions and solitary confinement during the first year of a prison term were ruled unconstitutional.

32. The State stresses that the alleged violations of the Convention arising from the antiterrorist legislation in force during the 1990s were rectified with the adoption of new legislative decrees on terrorism offenses in early 2003, as a result of which the matter of the instant petition is now moot.

33. Regarding the alleged attacks and other acts of violence against the alleged victim, the State notes that the reports prepared in early 1993 by the National Police and the Legal Medicine Institute concluded that although the alleged victim showed hematomas, bruises, and indications of a "recent unnatural act," they could not be identified as the result of torture. It maintains that "Gladys Carol Espinoza Gonzales's claim that she was the victim of torture and inhumane treatment was an argument whereby she sought to escape criminal responsibility, and it was disproved as evidence with the corresponding medical certificates contained in the case file of the criminal trial."

⁷ Resolution of the Constitutional Court of January 3, 2003, Case No. 010-2002-AI/TC, unconstitutionality suit brought by Marcelino Tineo Silva and other citizens.

34. The State reports that an expert psychological assessment performed in April 1993 concluded that “the subject appears to be a person given to manipulation in order to secure an advantage.” It notes that the professionals who conducted that assessment ratified their opinion at Gladys Carol Espinoza’s trial before the regular courts in 2003. The State adds that as a part of those proceedings, the National Terrorism Chamber ordered fresh medical examinations, which revealed no signs of torture. It notes that in the deed of execution of November 24, 2004, the Temporary Criminal Chamber of the Supreme Court of Justice said that:

during the oral proceedings, the medical experts have stated that Gladys Carol Espinoza González’s injuries are not compatible with torture, and the expert psychological examination concluded that the subject was a person given to manipulation in order to secure advantage.

35. The State contends that the elements that, in the petitioners’ view, are grounds for an investigation into the alleged crime of torture were extensively debated and studied in the criminal proceedings that concluded with the supreme deed of execution of November 24, 2004. It adds that “had there been any indications of possible violations of Article 5 of the Pact of San José, the corresponding investigations would have been initiated and the guilty would have been punished.”

36. Regarding the alleged mistreatment and lack of adequate medical treatment while Ms. Gladys Carol Espinoza was held at Yanamayo Prison, Peru presents a medical certificate dated December 17, 1999, which reports her as “in an apparently good general state of health.”

37. The State indicates that the alleged rape of Gladys Carol Espinoza on police premises reportedly took place between April and May 1993, while Peru deposited its instrument of ratification of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women on June 4, 1996. Peru therefore contends that the IACHR lacks competence *ratione temporis* to issue rulings under that instrument. Finally, it holds that the petitioners’ contentions do not tend to establish a violation of rights protected by the Convention and asks the IACHR to rule the complaint inadmissible under Article 47.b thereof.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione temporis*, *ratione personae*, *ratione materiae*, and *ratione loci*

38. The petitioners are entitled, under Article 44 of the Convention, to file complaints. The alleged victim is an individual who was under the jurisdiction of the Peruvian State on the date of the alleged incidents: Peru ratified the American Convention on July 28, 1978. Consequently, the Commission has competence *ratione personae* to examine the petition.

39. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto.

40. Similarly, the Commission has competence *ratione materiae*, because the petition alleges the violation of rights protected by the American Convention, by the Inter-American Convention to Prevent and Punish Torture (hereinafter also “the IACPPT”), ratified by the State on February 27, 1990, and by Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter also “the Convention of Belém do Pará”), ratified by Peru on April 2, 1996.

41. The Commission has competence *ratione temporis* in that the obligations under the American Convention and the IACPPT were already in force for the State on the date the facts reportedly took place. The State contends that since it deposited its instrument of ratification of the Convention of Belém do Pará on June 4, 1996, the IACHR lacks the competence to rule on the provisions of that instrument in connection with the violent acts that allegedly occurred in 1993.

42. The IACHR's doctrine holds that the obligation of investigating violence against women established by Article 7.b of the Convention of Belém do Pará remains in force until the facts are duly clarified and, if applicable, the guilty are punished. In light of its ongoing nature, that obligation applies even when the facts alleged in a petition took place prior to the date on which the State in question deposited its instrument of ratification.⁸ Since the acts of violence against Gladys Carol Espinoza that allegedly took place in April and May 1993 have not been addressed by a criminal investigation, the IACHR holds that the possible obligation set out in the Convention of Belém do Pará remains in effect up to the present. The IACHR therefore dismisses Peru's objection regarding a claimed lack of competence *ratione temporis*.

B. Exhaustion of domestic remedies

43. Article 46.1.a of the American Convention states that for a complaint lodged with the Inter-American Commission in compliance with Article 44 of the Convention to be admissible, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. That requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to enable them to resolve it before it is brought before an international venue.

44. In its initial submissions, the State held that the petition was lodged with the IACHR when the final ruling by the judicial authorities in the proceedings against Ms. Espinoza Gonzales before the military courts was still pending. It therefore held that the complaint did not satisfy the prior exhaustion of domestic remedies requirement. On this point, the IACHR reiterates its doctrine whereby the analysis of the requirements set in Articles 46 and 47 of the Convention must be performed in light of the situation prevailing at the time it rules on the admissibility or inadmissibility of a claim.⁹

45. The instant complaint alleges acts of torture, mistreatment, and rape purportedly committed by state agents against Gladys Carol Espinoza and an alleged failure of the duty to investigate the facts and punish the guilty. The information available indicates that in April 1993, those incidents were reported to the Attorney General, to the Special Attorney for Human Rights, and to the General Inspector of the National Police. In addition, the judicial authorities involved in the terrorism trial that began in 2003 heard claims regarding the torture and rape reportedly suffered by the alleged victim.

46. The Commission's established precedents indicate that whenever a publicly actionable offense is committed, the State has the obligation of bringing and pursuing criminal proceedings and that, in such cases, this is the best way to clear up incidents, prosecute the guilty, and impose the applicable punishments, in addition to enabling other applicable forms of redress.

⁸ IACHR, Report No. 54/01, Case 12.051, Admissibility and Merits, Maria da Penha Maia Fernandes, Brazil, April 16, 2001, para. 27; and Report No. 73/01, Case 12.350, Admissibility, MZ, Bolivia, October 10, 2001, para. 24.

⁹ IACHR, Report No. 108/10, Petition 744-98 and others, Admissibility, Orestes Auberto Urriola González and others, Peru, August 26, 2010, para. 54; Report No. 2/08, Petition 506-05, Inadmissibility, José Rodríguez Dañín, Bolivia, March 6, 2008, para. 56; and Report No. 20/05, Petition 716-00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, para. 32.

The claims of torture and other violations of personal integrity made by the petitioners represent, under domestic law, criminal acts that must be investigated and prosecuted on an ex officio basis by judicial authorities, and consequently such proceedings are the ideal remedy in this petition.¹⁰

47. In spite of the existence of reports and medical files indicating a series of bodily injuries while the alleged victim was being held by the National Police, the Peruvian authorities pursued no investigations into those facts. Consequently, and for the purposes of the requirement set in Article 46.1.a of the Convention, the IACHR concludes that the alleged victim was not afforded an effective remedy for resolving the alleged violations of her right to humane treatment.

48. In light of the ban on habeas corpus filings at the time of the incident, the IACHR further believes that the alleged victim was not afforded an effective remedy for resolving the alleged violations of Article 7 of the Convention.

49. Based on the foregoing considerations, the IACHR concludes that the petition satisfies the requirement set by Article 46.1.a of the American Convention.

C. Timeliness of the petition

50. Under the terms of Article 46.1.b of the Convention, for a petition to be admitted it must be lodged before the established deadline of six months following the date on which the party alleging a rights violation was notified of the final judgment at the domestic level. This rule does not apply when the Commission finds any of the exceptions to the rule requiring the exhaustion of domestic remedies. In such cases, the Commission must determine whether the petition was lodged within a reasonable time, in compliance with Article 32 of its Rules of Procedure.

51. As established in paragraph 45 above, the alleged violations of Gladys Carol Espinoza's physical integrity were reported to the domestic authorities on various occasions: in late April 1993, and throughout her trial before the regular courts that began in 2003. Since the domestic agencies did not initiate an investigation into those claims and since the petition was received in May 1993, the IACHR believes that it was lodged within a reasonable time.

52. Regarding the alleged illegal and arbitrary arrest of Gladys Carol Espinoza, the petition was received a few weeks after she was taken into custody by the police on April 17, 1993. Consequently, those elements of the complaint also satisfy the requirement set by Article 32 of the IACHR's Rules of Procedure.

D. Duplication of proceedings

53. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it has already been ruled on by the Inter-American Commission. Consequently, the Commission finds that the requirements set in Articles 46.1.c and 47.d of the Convention have been met.

E. Characterization of the alleged facts

54. At the admissibility stage, the Commission must decide whether the stated facts could tend to establish a rights violation, as stipulated in Article 47.b of the American Convention,

¹⁰ IACHR, Report No. 155/10, Petition 755-04 and others, Admissibility, Jaime Humberto Díaz Alva and others, Peru, November 1, 2010, para. 83; and Report No. 99/09, Petition 12.335, Admissibility, Gustavo Giraldo Villamizar Durán, Colombia, October 29, 2009, para. 33.

and whether the petition is “manifestly groundless” or “obviously out of order,” as stated in Article 47.c. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The Commission must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation.

55. In consideration of the parties’ contentions, the IACHR believes that there may have been a violation of the rights enshrined in Articles 5, 7, 8, and 25 of the Convention, in conjunction with Article 1.1 thereof, of Articles 1, 6, and 8 of the IACPPT, and of Article 7 of the Convention of Belém do Pará, all with respect to Gladys Carol Espinoza. Under the principle of *iura novit curia*, the IACHR further believes that the alleged rape of Gladys Carol Espinoza could also constitute a violation of the right protected by Article 11 of the Convention, in conjunction with Article 1.1 thereof. Similarly, the alleged torture, incommunicado detention, and visiting restrictions suffered by the alleged victim could entail a violation of the right enshrined in Article 5.1 with respect to her family.

56. The Commission notes that the State has presented claims regarding the criminal proceedings brought against Gladys Carol Espinoza and has argued that any irregularities committed by the military courts were rectified by the new terrorism laws enacted between January and February 2003. In turn, the petitioners’ contentions regarding Articles 8 and 25 of the Convention address the failure to investigate the alleged acts of violence suffered by Ms. Espinoza Gonzales. In light of the absence of any specific claims from the petitioners regarding the criminal proceedings brought against her, the IACHR shall refrain from ruling on any possible violation of the Convention arising therefrom. Accordingly, the IACHR notes that the case at hand addresses the alleged illegal and arbitrary arrest of Gladys Carol Espinoza, the alleged torture and inhuman detention conditions she suffered, and the alleged failure to conduct investigations into those matters.

57. Finally, in that the petition is not obviously groundless or out of order, the Commission concludes that it satisfies the requirement set in Articles 47.b and 47.c of the American Convention.

V. ANALYSIS OF FACTS

A. Appraisal of the evidence

58. In accordance with Article 43.1 of its Rules of Procedure,¹¹ the Commission will examine the facts alleged by the parties and the evidence submitted during the processing of the case at hand. In addition, it will take into account knowledge in the public domain, including resolutions by the committees of the universal human rights system, its own reports on petitions and cases and on the general human rights situation in Peru, publications from nongovernmental organizations, and laws, decrees, and other regulations in force at the time of the facts alleged by the parties.

59. The IACHR will include, in the evidence for this case, the Final Report of the Truth and Reconciliation Commission (hereinafter “the CVR”), published on August 27, 2003, in the city

¹¹ Article 43.1 of the IACHR’s Rules of Procedure provides as follows:

The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

of Lima.¹² This document was placed before the three branches of government of the Peruvian State, the Attorney General's office, and other agencies of the public administration, in compliance with the mandate given by the President of the Republic in Supreme Decrees 065-2001-PCM and 101-2001-PCM.¹³

60. In the following paragraphs, the IACHR will address the general context surrounding the incidents in the case at hand, the facts already established, and the consequent responsibility of the Peruvian State. Prior to that analysis, the IACHR will speak of the historical background to several of the parties' contentions and the actions of the main players in the armed conflict that took place in Peru during the 1980s and 1990s.

B. Preliminary considerations – The indiscriminate violence of the insurgent groups and the illegal actions of the security forces

61. The chapter on "Armed Groups" in the CVR's Final Report states that in May 1980 the leadership of the group that styled itself the Communist Party of Peru – Shining Path embarked on a plan to overthrow the system of democratic and representative government and to impose its own form of political and social organization in Peru.¹⁴ Some of the tactics chosen by Shining Path in the construction of its "new state" were: the annihilation of community leaders and local authorities; the personality cult surrounding its founder, Abimael Guzmán Reinoso; the extermination of rural communities that did not support it; and the deliberate use of terror and other actions in violation of international humanitarian law.¹⁵ According to the CVR, the acts of violence claimed by or attributed to this group caused more than 31,000 deaths (54% of the total fatalities of the armed conflict), tens of thousands of displaced persons, vast economic losses, and a lasting dejection among Peru's population.¹⁶

62. By unleashing its "people's revolutionary war" in 1984, the Túpac Amaru Revolutionary Movement (MRTA) contributed to the insecurity that prevailed in Peru for several years and to the violations of the basic rights of the Peruvian people. The criminal actions claimed by or attributed to this group included attacks on commercial premises, police stations, and the homes of members of the government; targeted killings of ranking public officials; abductions of

¹² The CVR's Final Report has been used by the Commission in a series of cases, as well as by the Inter-American Court of Human Rights in ruling on facts and the international responsibility of the Peruvian State in the following matters: *Case of Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167; *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162; *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160; *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136; and *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115.

¹³ According to Supreme Decrees 065-2001-PCM and 101-2001-PCM, the CVR's purpose was to establish the facts and responsibilities of the terrorist violence and human rights violations that were carried out between May 1980 and November 2000 by both the terrorist organizations and the agencies of the State, and to propose initiatives intended to ensure peace and harmony among the people of Peru.

¹⁴ Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 29 and 30, available at: www.cverdad.org.pe/ifinal/index.php.

¹⁵ Final Report of the CVR, 2003, Vol. I, Chapter 1, *The Periods of the Violence*, p. 54; Chapter 3, *The Faces and Profiles of the Violence*, pp. 168 and 169; Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 127 to 130; and Vol. VI, 1.1 *Killings and Massacres*, p. 16, available at: www.cverdad.org.pe/ifinal/index.php.

¹⁶ Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, p. 13, available at: www.cverdad.org.pe/ifinal/index.php.

business owners and diplomats; executions of indigenous leaders; and some deaths on account of the victims' sexual orientation or gender identity.¹⁷

63. In its Second Report on the Situation of Human Rights in Peru, the IACHR noted that the acts of violence carried out by Shining Path and the MRTA "led to the loss of life and property... in addition to the pain and suffering caused by the permanent state of anxiety to which Peruvian society, in general, was subjected."¹⁸

64. In its reports on individual cases and on the general human rights situation in Peru, the IACHR noted that during the struggle against Shining Path and the MRTA, the police and the military committed illegal acts that involved serious human rights violations.¹⁹ In addition, it indicated that the security forces carried out arbitrary arrests, torture, rapes, extrajudicial killings, and disappearances, in many cases against people who had no ties to the irregular armed groups.²⁰

65. The Inter-American Court of Human Rights has established that for several years, governmental policy in Peru favored the commission of targeted killings, forced disappearances, and torture of people suspected of belonging to the insurgent groups.²¹ Finally, the Inter-American Court²² and the CVR²³ have spoken of the excessive and lethal use of force at detention centers holding people facing trial for terrorism or treason against the fatherland.

C. General considerations regarding the context

1. The institutionalization of torture in the counterinsurgency effort

66. In the reports from its on-site visits and its monitoring of the human rights situation in Peru, the IACHR has stated that during the internal armed conflict, the police and the military used torture against individuals suspected of belonging to or collaborating with the insurgent groups.²⁴ The IACHR has said that at this time, a number of criminal proceedings for terrorism and

¹⁷ Final Report of the CVR, 2003, Vol. II, 1.4 *The Túpac Amaru Revolutionary Movement*, pp. 387, 389, 392, and 431 to 433; Vol. VII, 2.30 *The Disappearance of the Ashaninka Chief Alejandro Calderón (1989)*, 2.39 *Killing of Nine Inhabitants of Yumbatos, San Martín (1989)*, 2.54 *Abduction and Murder of David Ballón Vera (1992)*, available at: www.cverdad.org.pe/ifinal/index.php.

¹⁸ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Frame of Reference, para. 7, available at: www.cidh.oas.org/countryrep/Peru2000sp/indice.htm.

¹⁹ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Reference Framework, para. 9, available at: www.cidh.oas.org/countryrep/Peru2000sp/indice.htm.

²⁰ IACHR, Report No. 101/01, Case 10.247 and others, *Extrajudicial Executions and Forced Disappearances, Peru*, October 11, 2001, paras. 163 to 179; Report No. 57/99, Case 10.827, *Romer Morales Zegarra and others*; Case 10.984, *Carlos Vega Pizango, Peru*, April 13, 1999, paras. 28 to 44; Report No. 1/96, Case 10.559, *Julio Apfata Tañire Otavire and others, Peru*, March 1, 1996, section I, Background; and Report No. 37/93, Case 10.563, *Guadalupe Ccalloccunto Olano, Peru*, October 7, 1993, section I, Background.

²¹ I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paras. 83 and 84; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, para. 54.1; and *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C No. 21, para. 60.9.

²² I/A Court H. R., *Case of Neira Alegría et al. v. Peru*, Judgment of January 19, 1995, Series C No. 20, para. 69; *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, paras. 59.i and 59.j; and *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 197, Nos. 18 to 40.

²³ Final Report of the CVR, 2003, Vol. VII, 2.67 *The Extrajudicial Killings at El Frontón and Lurigancho Prisons (1986)* and 2.68 *The Extrajudicial Killings at Canto Grande Prison (1992)*, available at: www.cverdad.org.pe/ifinal/index.php.

²⁴ IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section I, Background, C. Human Rights Problems Identified by the Commission, paras. 18 and 19, available at: www.cidh.oas.org/countryrep/Peru93sp/indice.htm.

treason against the fatherland were brought on the basis of police statements obtained through torture and coercion.²⁵ Similarly, the Inter-American Court has established that in 1993, it was common in Peru for police investigations into the crimes of treason against the fatherland and terrorism to be carried out using torture and cruel, inhuman, and degrading treatment.²⁶

67. In July 1995, the United Nations Committee against Torture (hereinafter also “the CAT”) publicly noted its concern at “the large number of complaints from both non-governmental organizations and international agencies or commissions indicating that torture is being used extensively in connection with the investigation of acts of terrorism and that those responsible are going unpunished.”²⁷ In September 1998, the CAT reiterated its concern at the frequent reports of torture in Peru and stated that the eradication of the practice was hampered by the involvement of military and civilian judicial officials whose identities were kept secret in proceedings for the crimes of terrorism and treason against the fatherland.²⁸

68. In June 2000, the CAT again expressed its concern at the use of incommunicado detention for terrorism suspects, “the automatic penalty of at least one year of solitary confinement [...] for anyone convicted of a terrorism offence,” and “the apparent lack of effective investigation and prosecution of those who are accused of having committed acts of torture.”²⁹

69. According to the CVR’s Final Report, 75% of the 6,443 cases of torture and cruel, inhuman, or degrading treatment reported between 1980 and 2000 were attributed to officials of the State or to individuals acting with its acquiescence.³⁰ The report indicates that between 1983 and 1997, state agents engaged in the systematic and generalized use of torture, which thus became a crime against humanity.³¹

While the use of torture in interrogations or undue arrests had been frequent in combating common crime, the practice grew to massive levels as part of the counterinsurgency effort. Against a backdrop of widespread violence and permanent tension, police officers resorted to torture as one of the most effective tools for obtaining information and evidence in interrogations.³²

²⁵ IACHR, *Annual Report of the Inter-American Commission on Human Rights 1996*, Chapter V, Human Rights Developments in the Region, Peru, Section II, The State of Emergency, para. 7, and Section VIII, Recommendations, para. 1.b, available at: www.cidh.oas.org/annualrep/96span/IA1996CapV4.htm.

²⁶ I/A Court H. R., *Loayza Tamayo Case*, Judgment of September 17, 1997, Series C No. 33, para. 46; and *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, para. 63.

²⁷ Office of the United Nations High Commissioner for Human Rights, Compilation of Concluding Comments of the Committee against Torture on countries of Latin America and the Caribbean (1988-2005), Chapter 14, Peru, *Report on the 40th Session, Supplement No. 44 (A/50/44)*, July 26, 1995, para. 67, available at: www2.ohchr.org/english/bodies/cat/docs/CATLibro.pdf.

²⁸ Office of the United Nations High Commissioner for Human Rights, Compilation of Concluding Comments of the Committee against Torture on countries of Latin America and the Caribbean (1988-2005), Chapter 14, Peru, *Report on the 53rd Session, Supplement No. 44 (A/53/44)*, September 16, 1998, paras. 202 (a), (b), (c), and (e). Available at www2.ohchr.org/english/bodies/cat/docs/CATLibro.pdf.

²⁹ Office of the United Nations High Commissioner for Human Rights, Compilation of Concluding Comments of the Committee against Torture on countries of Latin America and the Caribbean (1988-2005), Chapter 14, Peru, *Report on the 55th Session, Supplement No. 44 (A/55/44)*, June 20, 2000, paras. 59 (c), (e), and (f). Available at www2.ohchr.org/english/bodies/cat/docs/CATLibro.pdf.

³⁰ Final Report of the CVR, 2003, Vol. VI, *1.4 Torture and Cruel, Inhuman, or Degrading Treatment*, p. 183, available at: www.cverdad.org.pe/ifinal/index.php.

³¹ Final Report of the CVR, 2003, Vol. VI, *1.4 Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 212 and 258, available at: www.cverdad.org.pe/ifinal/index.php.

³² Final Report of the CVR, 2003, Vol. II, *1.2 The Police Forces*, p. 234, available at www.cverdad.org.pe/ifinal/index.php.

70. Based on testimony from victims of torture at police facilities during the period in question, the CVR identified the following *modus operandi*: (i) violent arrest, followed by a raid on the detainee's home, (ii) transfer of the detainee to a detention center, with violence during the journey, (iii) either the detainee or was blindfolded, or his assailants would keep their faces covered and use assumed names to avoid identification, (iv) division of roles among the assailants, with some carrying out the arrest and others in charge of the interrogation and torture, and (v) the assailants were frequently under the influence of alcohol or drugs.³³

71. The CVR reported that police torture followed a pattern consisting of: (i) physically weakening the victims, forcing them to remain standing or in uncomfortable positions for several hours; (ii) covering their sight, making them lose their sense of place and time; (iii) insults and threats against the victims, their families, or other people close to them, and (iv) forced nakedness.³⁴ According to the CVR, the most common forms of physical torture at the police facilities were punching and blows with blunt instruments to the abdomen, face, and genitals; plunging the victim into a tank filled with a mixture of water, chemicals, excrement, and urine; making victims hang with their arms above their heads or behind their backs for lengthy periods; and electric shocks to sensitive parts of the body.³⁵

72. The CVR explained that one of the main objectives of the torture and cruel, inhuman, and degrading treatment used in the counterinsurgency effort was to "extract information from people detained on suspicion of belonging to a subversive organization, either to plan operations against the organization or to secure information for criminal proceedings in the form of self-incriminatory statements or accusations against others."³⁶ Several of the CVR's informants claimed they had been tortured by police officers and forced to sign blank sheets of paper or self-incriminatory statements in the presence of representatives of the Public Prosecution Service, who did nothing to intervene.³⁷

73. The CVR noted that during the Fujimori administration, the Public Prosecution Service deferred completely to the executive branch, and that public prosecutors refrained from making charges against members of the police and military, conducting forensic examinations, or investigating state agents involved in human rights violations.³⁸

74. The organization Human Rights Watch said that this situation of impunity was due to a range of factors, including: (i) obstruction by officials of the military justice system in complaints against police officers, (ii) the fragility of judicial independence after April 1992, with increased numbers of temporary judges and prosecutors subject to pressure from the executive branch, and

³³ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 239 to 241, available at: www.cverdad.org.pe/ifinal/index.php.

³⁴ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 242 and 243, available at: www.cverdad.org.pe/ifinal/index.php.

³⁵ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 244 and 245, available at: www.cverdad.org.pe/ifinal/index.php. Similarly, see: Human Rights Watch, *Peru: The Two Faces of Justice*, July 1, 1995, Prosecution of Terrorism and Treason Cases, Interrogation and Torture, available at: www.unhcr.org/refworld/docid/3ae6a7ed4.html.

³⁶ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 214, available at: www.cverdad.org.pe/ifinal/index.php.

³⁷ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, pp. 224, 251, and 252, available at: www.cverdad.org.pe/ifinal/index.php.

³⁸ Final Report of the CVR, 2003, Vol. III, 2.6 *The Judiciary*, p. 283, available at www.cverdad.org.pe/ifinal/index.php.

(iii) the enactment of the amnesty laws (Nos. 26479 and 26492), which voided all investigations and criminal prosecutions against members of the police or armed forces for actions between May 1980 and June 1995.³⁹

2. The antiterrorist legislation adopted in 1992 and thereafter, and its impact on the institutionalization of torture and cruel, inhuman, and degrading treatment

75. On April 5, 1992, President of the Republic Alberto Fujimori Fujimori announced a series of measures intended to “streamline the process of [...] national reconstruction,” “modernize the public administration,” “reorganize the judiciary as a whole,” and “bring peace to the country, within a legal framework that severely punishes terrorists.”⁴⁰ One of the elements used to justify the breakdown in legality was the alleged over-indulgent attitude of the judiciary in terrorism trials which, in the words of the President, caused “the mass release of convicted and confessed terrorists, through the misuse of the so-called conscience criterion.”⁴¹

76. By means of Decree Law No. 25418 of April 6, 1992, Alberto Fujimori established the “Emergency and National Reconstruction Government,” temporarily dissolved Congress, and intervened in the judiciary, the Public Prosecution Service, and the office of the Comptroller General of the Republic. The intervention in those state agencies was carried out by sending the armed forces to occupy their installations and by placing opposition members of Congress and ranking officials opposed to the breakdown in the constitutional order under house arrest.⁴²

77. In this context, the Emergency and National Reconstruction Government enacted a series of decree laws that established, within the Peruvian legal system, special procedures for investigating, bringing charges against, and prosecuting people accused of terrorism or treason against the fatherland. On May 5, 1992, Decree Law No. 25475 was enacted, which defined the different forms the crime of terrorism could take.⁴³ On August 7 of that year, Decree Law No. 25659 was enacted, defining the offense of treason against the fatherland and awarding competence over crimes of that type to the military justice system.⁴⁴ These decrees, along with Nos. 25708, 25744, 25880, and other additional provisions, made up what was known as the antiterrorist legislation.

78. Among other aspects, those decrees established conditions of total incommunicado detention for arrestees, prohibited them from receiving the assistance of counsel prior to giving their first statements to a representative of the Public Prosecution Service, allowed judges and prosecutors to keep their identities secret (“faceless judges”),⁴⁵ and prevented the summoning of officers named in the police arrest report to appear as witnesses. These laws placed great weight on

³⁹ Human Rights Watch, *Torture and Political Persecution in Peru*, December 1997, Section III, The Institutional Context: Weakened Safeguards against Torture – Military Justice, and Section V, Court Cases, available at: www.hrw.org/legacy/spanish/informes/1997/peru.html.

⁴⁰ Museum of the Congress of the Republic of Peru, *Message to the Nation by the President of Peru, H.E. Alberto Fujimori Fujimori, April 5, 1992*, available at: www.congreso.gob.pe/museo/mensajes/Mensaje-1992-1.pdf.

⁴¹ Museum of the Congress of the Republic of Peru, *Message to the Nation by the President of Peru, H.E. Alberto Fujimori Fujimori, April 5, 1992*, available at: www.congreso.gob.pe/museo/mensajes/Mensaje-1992-1.pdf.

⁴² IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III, The Situation Since April 5, 1992, para. 54, available at: www.cidh.oas.org/countryrep/Peru93sp/indice.htm.

⁴³ Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/lmagenes/Leyes/25475.pdf.

⁴⁴ Decree Law No. 25659 of August 7, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/lmagenes/Leyes/25659.pdf.

⁴⁵ With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

statements made by detainees during the pretrial phase and prevented the filing of habeas corpus suits on behalf of those facing charges of terrorism or treason against the fatherland.

79. Regarding the role of the National Police in those investigations, the conditions of incommunicado detention, and the denial of consultations with counsel, Decree Law No. 25475 provided as follows:

Article 12. In investigating terrorism crimes, the National Police of Peru shall strictly abide by the applicable legal provisions and, specifically, the following:

- a. To take charge of investigations of terrorism crimes at the national level, deploying its personnel without any restriction set out in its institutional regulations. [...]
- c. To hold suspects for no more than fifteen calendar days, giving notice in writing thereof to the Public Prosecution Service and to the corresponding criminal judge.
- d. When the circumstances and the complexity of the investigations so require, in order to cast additional light on the facts under investigation, the detainee may be ordered to be placed in incommunicado detention for up to the maximum period allowed by law, with the knowledge of the Public Prosecution Service and of the corresponding judicial authority. [...]
- f. Accused persons shall be entitled to select defense counsel, who may only intervene after the detainee has given his statement to the representative of the Public Prosecution Service. If the detainee does not select defense counsel, the police authority shall assign a public defender, to be provided by the Ministry of Justice.⁴⁶

80. Similarly, Article 2.a of Decree Law No. 25744 stipulated that:

The Peruvian National Police may take suspects into preventive custody for a period not to exceed fifteen (15) days, reporting the measure to the court authority on duty in the military jurisdiction. To obtain better results in the investigation, that time period may be extended for another 15 days upon a properly justified request from the Peruvian National Police.⁴⁷

81. Regarding the prohibition of habeas corpus filings, Article 6 of Decree Law No. 25659 provided that “at no stage in the criminal proceedings shall guarantee actions be admissible for persons arrested for, involved in, or charged with terrorism crimes as described in Decree Law No. 25475, nor against the provisions of this Decree Law.”⁴⁸ Although the right to file for habeas corpus relief was reinstated with the adoption of Law 26248 on November 25, 1993, Article 4 thereof stipulated the inadmissibility of such guarantee actions “based on the same facts or grounds for proceedings underway or already resolved.”⁴⁹

82. The outright banning and later restriction of habeas corpus relief, the legal authorization to keep a person incommunicado, and preventing access by counsel until the detainee had given his first statement contributed significantly to the widespread use of torture at police

⁴⁶ Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/25475.pdf.

⁴⁷ Decree Law No. 25744 of September 21, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/25744.pdf.

⁴⁸ Decree Law No. 25659 of August 7, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/25659.pdf.

⁴⁹ Law 26428 of November 12, 1993, which came into force on November 25 of that year. Available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/26248.pdf.

facilities.⁵⁰ According to the CVR's Final Report, massive use was made of confessions and other kinds of self-incrimination to substantiate charges and secure convictions for terrorism and treason against the fatherland.⁵¹ In addition to the absence of control over the actions of the police during pretrial investigations, the CVR noted a number of administrative practices that encouraged the institutionalization of torture as of 1992, such as awarding promotions to police officers who obtained a given number of adherences to the Repentance Law by detainees,⁵² self-incriminations, and accusations against third parties.⁵³

83. After conducting investigations in Peru between April 1995 and May 1999, the CAT noted the systematic practice of torture as a police investigative method and said that the existence of laws that treated such abuses permissively "leads the Committee members to conclude that torture has been occurring with the authorities' acquiescence."⁵⁴

84. At the same time that the antiterrorist legislation encouraged the institutionalization of torture, the penal regime it established was also extremely severe. Article 20 of Decree Law No. 25475, the text of which was included in Article 3 of Decree Law No. 25744, provided as follows:

The prison sentences established in this Decree Law shall be served, obligatorily, in maximum security detention centers, in continuous solitary confinement for the first year of the sentence and then with obligatory labor for the length of the incarceration. In no circumstances, and under the responsibility of the establishment's director, may convicts share their single-person cells. This disciplinary regime shall remain in force until they are released.⁵⁵

85. That law remained in force until the enactment of Supreme Decree No. 005-97-JUS on June 24, 1997, which established the "Regulations for the Living and Treatment Regime for Inmates Charged with or Convicted of the Crimes of Terrorism and/or Treason against the Fatherland."⁵⁶

⁵⁰ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 221, available at: www.cverdad.org.pe/ifinal/index.php. Similarly, see: Human Rights Watch, *Peru: The Two Faces of Justice*, July 1, 1995, Prosecution of Terrorism and Treason Cases, Interrogation and Torture, available at: www.unhcr.org/refworld/docid/3ae6a7ed4.html. See also: Amnesty International, *Human rights in a Time of Impunity*, May 1996, Section 2, *The Anti-terrorism Laws: A Violation of International Standards – Widespread Torture*, available at: <http://asiapacific.amnesty.org/library/Index/ESLAMR460011996?open&of=ESL-325>.

⁵¹ Final Report of the CVR, 2003, Vol. VI, 1.4 *Torture and Cruel, Inhuman, or Degrading Treatment*, p. 215, available at: www.cverdad.org.pe/ifinal/index.php.

⁵² On May 12, 1992, the Emergency and National Reconstruction Government enacted Decree Law No. 25499, also known as the Repentance Law, which regulated the reduction, exemption, or remission of sentences for terrorism suspects or convicts who provided information intended to help capture the leaders, heads or main members of terrorist organizations.

⁵³ Final Report of the CVR, 2003, Vol. II, 1.2 *The Police Forces*, p. 232, available at www.cverdad.org.pe/ifinal/index.php.

⁵⁴ United Nations Committee against Torture, *Inquiry Under Article 20: Peru, 05/2001.A/56/44*, para. 164, available at: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44.paras.144-193.Sp?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.56.44.paras.144-193.Sp?OpenDocument).

⁵⁵ Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/imagenes/Leyes/25475.pdf.

⁵⁶ Annex 1: Official Journal *El Peruano*, June 25, 1997, pp. 150278 to 150281, Supreme Decree No. 005-97-JUS.

3. Widespread use of sexual violence in the counterinsurgency effort, including in interrogations of people suspected of belonging to insurgent groups

86. According to the CVR, the use of sexual violence in Peru's counterinsurgency effort was part of "a broader context of discrimination against women, who are considered vulnerable and whose bodies are used by the perpetrators with no apparent motive or any strict connection to the internal armed conflict."⁵⁷

87. A considerable proportion of the testimonies involving sexual violence given to the CVR were from women who reported having been attacked, raped, and humiliated at police facilities, particularly at the DINCOTE's headquarters in the city of Lima:

The premises in Lima of the National Antiterrorism Directorate (DINCOTE) are worthy of particular note. It has been identified by a large number of the CVR's informants as a place where repeated sexual violence took place. The mistreatment began when the detainees were taken into custody, with the perpetrators identifying themselves as members of the DINCOTE, according to the testimony. Mistreatment continued as they were taken to that facility.⁵⁸

88. The CVR reported that several women interrogated at DINCOTE premises were stripped naked, insulted, groped, subjected to penile penetration, and, in some cases, to vaginal or anal penetration with inanimate objects.⁵⁹ It also said that those practices were common during arbitrary arrests by police officers, who generally bound their victims' eyes or wore hoods during the attacks to prevent identification.⁶⁰

89. According to testimony documented by the CVR, several medical examiners who attended to victims of sexual violence at the DINCOTE acted in complicity with the assailants, performing superficial examinations and, in many cases, submitting the victims to humiliations and degrading procedures.⁶¹

The professional misconduct of medical examiners has particularly serious consequences in rape cases, in that they ensure the crime's impunity. In one obvious case of rape, the examiner's report merely stated that "The person of María Magdalena Monteza Benavides shows signs of recent bruising in the region of the left knee."⁶²

90. The cases recorded by the CVR include some in which women claim to have suffered sexual violence at the hands of the medical examiners who attended to them after they had been tortured and raped by DINCOTE agents.⁶³

⁵⁷ Final Report of the CVR, 2003, Vol. VI, *1.5 Sexual Violence against Women*, p. 337, available at: www.cverdad.org.pe/ifinal/index.php.

⁵⁸ Final Report of the CVR, 2003, Vol. VI, *1.5 Sexual Violence against Women*, p. 322, available at: www.cverdad.org.pe/ifinal/index.php.

⁵⁹ Final Report of the CVR, 2003, Vol. VI, *1.5 Sexual Violence against Women*, pp. 308, 309, 328, 329, and 330, available at: www.cverdad.org.pe/ifinal/index.php.

⁶⁰ Final Report of the CVR, 2003, Vol. VI, *1.5 Sexual Violence against Women*, pp. 348 and 349, available at: www.cverdad.org.pe/ifinal/index.php.

⁶¹ Final Report of the CVR, 2003, Vol. VI, *1.5 Sexual Violence against Women*, pp. 372 to 374, available at: www.cverdad.org.pe/ifinal/index.php.

⁶² Final Report of the CVR, 2003, Vol. VI, *1.4 Torture and Cruel, Inhuman, or Degrading Treatment*, p. 224, available at: www.cverdad.org.pe/ifinal/index.php.

⁶³ Final Report of the CVR, 2003, Vol. VI, *1.5 Sexual Violence against Women*, p. 373, available at: www.cverdad.org.pe/ifinal/index.php.

91. In its reports on individual cases, the IACHR has said that during the internal armed conflict in Peru, numerous acts of sexual violence were carried out by the security forces, particularly in the emergency zones.⁶⁴ The IACHR notes that the vast majority of these incidents were never punished, either because of the shame felt by the victims or their fear of lodging a complaint, or because of the obstacles and deceptions put in place by the authorities of the military justice system in investigations into serious human rights violations.⁶⁵

92. In a March 1997 publication, Amnesty International said that in the context of the Peruvian internal armed conflict, "rape and sexual abuse of women [were] used by members of the security forces as an instrument of torture."⁶⁶ Similarly, Human Rights Watch noted that in spite of the widespread use of sexual violence in the counterinsurgency effort, only a very small number of members of the National Police and the armed forces were prosecuted.⁶⁷

D. Specific facts deemed proven by the Commission

1. The violent arrest and failure to record Gladys Carol Espinoza's admission to the premises of the DIVISE

93. Gladys Carol Espinoza Gonzales was born in the city of Lima on June 3, 1953. She was the oldest of the seven children of Teodora Gonzales Vda. de Espinoza and Fausto Espinoza León.⁶⁸ Upon finishing high school, she secured a scholarship from the Cultural Association of the Union of Soviet Socialist Republics and, between 1976 and 1982, concluded a degree in international law in Kiev, Ukraine.⁶⁹ Upon returning to Peru, she attempted to revalidate her law degree, but was unable to do so.⁷⁰

94. On April 17, 1993, Ms. Espinoza Gonzales was detained by agents of the Abduction Investigation Division (DIVISE) while traveling on a motorcycle in the company of Rafael Salgado Castilla. The arrest took place at the junction of Av. Olavo Brazil and Av. San Felipe, Jesús María

⁶⁴ IACHR, Report No. 5/96, Case 10.970, Raquel Martín de Mejía, Peru, March 1, 1996, Section B, Considerations on the Substance of the Case.

⁶⁵ IACHR, Report No. 5/96, Case 10.970, Raquel Martín de Mejía, Peru, March 1, 1996, Section B, Considerations on the Substance of the Case.

⁶⁶ Amnesty International, *Women's Human Rights: In Memory of María Elena Moyano*, March 1997, available at: www.amnesty.org/es/library/asset/AMR46/003/1997/es/847cc62c-eab6-11dd-9f63-e5716d3a1485/amr460031997es.html.

⁶⁷ Human Rights Watch, *The Human Rights Watch Global Report on Women's Human Rights*, p. 72, available at: www.hrw.org/au/hrwglobalrept1.pdf.

⁶⁸ Annex 2: Psychological Examination Report No. 003737-2004-PSC, produced by the Legal Medicine Institute after interviewing Gladys Carol Espinoza, February 9 and 10, 2004, narrative section; enclosed with the State's communication of December 5, 2006, and received by the IACHR on December 6 of that year.

⁶⁹ Annex 3: Statement given by Gladys Carol Espinoza to members of APRODEH and CEJIL at Chorrillos Women's Prison, September 22, 2009, pp. 1 and 2; enclosed with the petitioners' communication of September 14, 2010, and received by the IACHR on that same date. The Commission notes that the statement in question does not contain the signature of Ms. Gladys Carol Espinoza Gonzales or of the representatives of APRODEH and CEJIL who interviewed her. Since the Peruvian State filed no objections, the IACHR will consider the information contained therein in conjunction with the other evidence submitted during the processing of the case. Annex 4: Degree in law and certificate of higher studies in international law issued by Kiev State University, June 22, 1982; enclosed with the initial petition of May 6, 1993, and received by the IACHR on May 10 of that year.

⁷⁰ Annex 3: Statement given by Gladys Carol Espinoza to members of APRODEH and CEJIL at Chorrillos Women's Prison, September 22, 2009, p. 2.

district, in the province and department of Lima.⁷¹ According to statements made by the victim, her arrest occurred as described below:

[...] we were on a motorcycle and all I remember was hearing a sound; that was the bullets, and then I remember lots of cars surrounding us. They were beating me and I couldn't see Rafael or the bike, only men, more and more of them. Then they put me in a car and there was Rafael, covered in blood [...] They beat me brutally, they put us both face-down on the floor, they covered our heads, and they beat us, they threatened us, they told me they were going to inject me with AIDS [and] were going to kill my family; that was when I lost all notion of time [...].⁷²

95. During the processing of this case, the parties submitted copies of different reports from the Peruvian National Police referring to the arrest of Gladys Carol Espinoza and Rafael Salgado Castilla.⁷³ According to the version of events set out therein, as they attempted to escape, the detainees crashed the motorcycle they were traveling on and were violently thrown to the ground, which caused them a series of bodily injuries. Those reports suggest that Rafael Salgado Castilla died of his injuries a few hours later. The official version, as maintained by the National Police, is transcribed below:

[...] Gladys Carol ESPINOZA GONZALEZ and Rafael Edwin SALGADO CASTILLO were arrested on April 17, 1993, by police officers from the DIVISE, while on a motorcycle on one of the avenues in Jesús María district, Lima. The police vehicle that was following them and the motorcycle collided and the occupants displayed fierce resistance, gunfire was exchanged which led to the aforesaid collision. The two were injured; SALGADO CASTILLO, Rafael, who later died, more seriously.⁷⁴

96. The same version of events was recorded in the sentence handed down against Ms. Espinoza Gonzales on June 25, 1993, by the Special Military Investigating Judge of the Peruvian Air Force Judicial District.⁷⁵ The representatives of the Peruvian State before this international agency have also maintained that the bodily injuries seen on Gladys Carol Espinoza were caused by the

⁷¹ Annex 5: Report No. 259-DINTO-DINCOTE, June 3, 1993, signed by National Police Colonel Oscar E. Chávez Ferreyros, para. 2.b; enclosed with the State's communication of September 2, 1993, and received by the IACHR on September 3 of that year. Annex 6: Newspaper article from *La Nación*, edition of April 28, 1993, headlined *Woman arrested along with murdered Rafael Salgado agonizes in the DINCOTE*; enclosed with the initial petition of May 6, 1993, and received by the IACHR on May 10 of that year.

⁷² Annex 2: Psychological Examination Report No. 003737-2004-PSC, produced by the Legal Medicine Institute after interviewing Gladys Carol Espinoza, February 9 and 10, 2004, narrative section; the same version of events was reported in Gladys Carol Espinoza's testimony to the CVR. See, in this regard: Annex 7: Extracts from the statement of Gladys Carol Espinoza Gonzales to the CVR, Testimony No. 700748, October 14, 2002, pp. 5 and 6; enclosed with the petitioners' communication of September 14, 2010, and received by the IACHR on that same date.

⁷³ Annex 8 (a): Document No. 8197 SGMD-M of November 16, 1993, signed by the General Secretary of the Ministry of Defense; (b) Document No. 3303 EMFFA/DDHH of November 11, 1993, signed by the Chief of the Armed Forces General Staff; (c) Report No. 22593-EMG/DIPANDH of September 23, 1993, signed by National Police Colonel Hernán Gamboa Fernández Baca; documents enclosed with the petitioners' communication of September 14, 2010, and received by the IACHR on that same date. Annex 5: Report No. 259-DINTO-DINCOTE, June 3, 1993, signed by National Police Colonel Oscar E. Chávez Ferreyros.

⁷⁴ Annex 8 (c): Report No. 22593-EMG/DIPANDH of September 23, 1993, signed by National Police Colonel Hernán Gamboa Fernández Baca.

⁷⁵ Annex 9: Judgment of June 25, 1993, File No. 037-93-TP, issued by the Special Military Investigating Judge of the Peruvian Air Force Judicial District, whose identity was recorded by means of the code NLO 1215; enclosed with the petitioners' communication of September 14, 2010, and received by the IACHR on that same date. That sentence reads: "On April 17, police officers detained RAFAEL EDWING SALGADO CASTILLA and GLADYS CAROL ESPINOZA GONZALES or VICTORIA ROMERO SALAZAR. As they attempted to escape, their motorcycle crashed against the police vehicle and the two detainees were injured."

alleged crash of the motorcycle on which she was traveling,⁷⁶ and by the struggling and resistance she put up during her arrest.⁷⁷

97. The cases investigated and published in the CVR's Final Report include the torture and murder of Rafael Salgado Castilla. Although that incident is not at issue in the instant case, the IACHR will take into consideration the CVR's conclusions regarding the way in which Gladys Carol Espinoza was detained and transferred to the DIVISE's premises. According to the CVR, the arrest was part of an operation known as "Oriente,"⁷⁸ the aim of which was to locate businessman Antonio Furukawa Obara, who had been abducted on February 1, 1993, allegedly by members of the MRTA.⁷⁹

98. The CVR concluded that a crash such as the one described in the official National Police narrative would have seriously injured Gladys Carol Espinoza and Rafael Salgado Castilla and very probably have caused them to lose consciousness, particularly since they were not wearing crash helmets.⁸⁰ In addition, it disputed the possibility that after being abruptly thrown against the road surface, Rafael Salgado Castilla could have immediately got up, struggled with a DIVISE agent, and tried to relieve him of his firearm, as stated in the National Police reports.⁸¹ It added that "the narrative given by the police officers in charge of controlling traffic at the site of the incident indicates no collision involving the detainees' vehicle."⁸²

99. On April 17, 1993, 2nd Lt. Sandro Abel Yauli Tello and NCO José Luis Torres Arias were on duty at the DIVISE at the "15 de Septiembre" building on Av. España in Lima. They gave statements to the CVR, indicating that "the detainees entered the DIVISE on foot and unaided, [and] Maj. Enciso Alvarado gave orders for no one to hinder his work and for all entrances to the DIVISE to be closed."⁸³ In addition, they stated that Maj. Filomeno Héctor Enciso Alvarado did not allow the arrest to be recorded.⁸⁴

100. Although the State has submitted copies of reports and documents from different agencies of the National Police that describe an alleged collision, those documents are dated much later than April 17, 1993, and they were not produced to record an arrest but to provide information in connection with claims that Gladys Carol Espinoza was being tortured and raped at the DINCOTE

⁷⁶ Communication of the Peruvian State, dated September 2, 1993, received by the IACHR on September 3 of that year.

⁷⁷ Annex 10: Audio of the hearing on Case 11.157, held on October 23, 2008, during the IACHR's 133rd regular session; address by the Peruvian State, at 39'33'' to 39'52'' in the recording.

⁷⁸ Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, p. 838, available at: www.cverdad.org.pe/ifinal/index.php.

⁷⁹ Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, pp. 837 and 838, available at: www.cverdad.org.pe/ifinal/index.php.

⁸⁰ Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, p. 839, available at: www.cverdad.org.pe/ifinal/index.php.

⁸¹ Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, p. 839, available at: www.cverdad.org.pe/ifinal/index.php.

⁸² Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, p. 838, available at: www.cverdad.org.pe/ifinal/index.php.

⁸³ Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, p. 839, available at: www.cverdad.org.pe/ifinal/index.php.

⁸⁴ Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, p. 839, available at: www.cverdad.org.pe/ifinal/index.php.

facility.⁸⁵ As will be described below, the State has provided no documents produced by DIVISE agents recording the arrest and subsequent admission of the victim to that police complex.

101. Given the failure to record the victim's arrest, the various sources cited by the CVR that contradict the official National Police version, and the fact that Gladys Carol Espinoza's statements are consistent with each other and with the CVR's conclusions, the IACHR believes that there was no violent collision involving the motorcycle on which Ms. Espinoza Gonzales was traveling on April 17, 1993. The IACHR takes it as established that on that date, the victim was detained by a number of DIVISE agents in civilian clothing and was beaten, threatened, and insulted, including when she was immobilized inside their vehicle. The IACHR also takes it as proven that DIVISE agents acting under the orders of Filomeno Héctor Enciso Alvarado failed to record the victim's admission to that police division's facility.

2. Absence of a warrant for the arrest of Gladys Carol Espinoza, and absence of elements indicating the commission of an *in flagrante* crime

102. The petitioners allege that the detention of Gladys Carol Espinoza was carried out without the DIVISE agents being in possession of an arrest warrant. In turn, the State contends that "there were reasonable indications that the accused [...] was involved in the crime of terrorism, and so the arrest was not inappropriate."⁸⁶

103. The police reports available to the Commission refer to incident reports 033-IC-DIVISE and 002-IC-DIVISE and to document 015-IC-DIDCOL,⁸⁷ which were supposedly prepared by DIVISE agents and which record the circumstances of the victim's arrest. In spite of this, the State has provided no copies of documents prepared by the DIVISE recording Ms. Espinoza Gonzales' arrest.

104. In the conviction handed down on June 25, 1993, the Special Military Investigating Judge of the Peruvian Air Force Judicial District said that:

Police Report No. One Zero Eight Hyphen DINCOTE indicates that the items found in the possession of the accused at the time of her arrest, – consisting of a pineapple grenade, voice distorter, a beeper, a notebook [...] prove she was an outlaw.⁸⁸

105. In this judgment and others issued by the military courts, there are no references to any other police reports indicating the items in Gladys Carol Espinoza's possession at the time of her arrest.⁸⁹ According to the information in the case file, police report 108-DINCOTE is dated May 15, 1993⁹⁰ – in other words, almost one month after the victim's arrest.

⁸⁵ Annex 11: Report No. 140-93EMG/DIPANDH, June 14, 1993, signed by National Police Major Carlos Rey Cachay Gómez, para. 2.a; enclosed with the State's communication of September 2, 1993, and received by the IACHR on September 3 of that year. Annex 5: Report No. 259-DINTO-DINCOTE, June 3, 1993, signed by National Police Colonel Oscar E. Chávez Ferreyros.

⁸⁶ Annex 10: Audio of the hearing on Case 11.157, held on October 23, 2008, during the IACHR's 133rd regular session; address by the representative of the Peruvian State, at 39'05'' a 39'17'' in the recording.

⁸⁷ Annex 12: Report No. 2074-DR-DINCOTE, May 27, 1993, signed by National Police Major Alberto Sarmiento Gutiérrez, paras. II (a) and (b); enclosed with the State's communication of September 2, 1993, and received by the IACHR on September 3 of that year.

⁸⁸ Annex 9: Judgment of June 25, 1993, File No. 037-93-TP, issued by the Special Military Investigating Judge of the Peruvian Air Force Judicial District, whose identity was recorded by means of the code NLO 1215, first whereas clause (emphasis added).

⁸⁹ Annex 13 (a): Judgment of September 28, 1993, issued by the Special Military Court of the Peruvian Air Force Judicial District; (b): Judgment of February 24, 1994, File No. 037-93-TP-ZJFAP, issued by the Special Court of the Supreme Military Council for Treason against the Fatherland; documents enclosed with the petitioners' communication of September

106. The IACHR notes that the State has not presented copies of any arrest warrant in force as of April 17, 1993, and that none of the criminal judgments handed down against Gladys Carol Espinoza, by either the military or civilian courts, refer to any such warrant. At the same time, the Peruvian State has acknowledged that Gladys Carol Espinoza was detained while “emergency legislation against terrorism, which allowed for the warrantless arrest of those suspected of treason against the fatherland,” was in force.⁹¹

107. The conviction handed down by the National Terrorism Chamber on March 1, 2004, refers to a personal search report but does not indicate the police section that carried it out. A reading of the judgment indicates that the document in question does not contain the signature of the detainees Gladys Carol Espinoza and Rafael Salgado Castilla.⁹² The IACHR notes that the Peruvian State did not provide it with a copy of the personal search report referred to in the judgment of March 1, 2004.

108. In light of the above considerations, the IACHR has no evidence to indicate that Gladys Carol Espinoza was arrested *in flagrante delicto* and it takes as established that the detention was carried out in the absence of an arrest warrant.

3. The incommunicado detention of Gladys Carol Espinoza and her presentation to a judicial authority eighty days after her arrest

109. After being taken into custody on April 17, 1993, Gladys Carol Espinoza remained at the premises of the DIVISE until April 19, 1993, when she was taken to the National Antiterrorism Directorate (DINCOTE) in Lima.⁹³ On April 22, 1993, members of the DINCOTE and a prosecutor from the 14th Provincial Criminal Prosecutor’s Office of Lima conducted a search of the home of the victim’s mother, Mrs. Teodora Gonzales Vda. de Espinoza. On April 23 of that year, a police officer appeared on his own initiative at Mrs. Teodora Gonzales’s home and informed her that her daughter was at the DINCOTE police station, in a poor state of health.⁹⁴

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14, 2010, and received by the IACHR on that same date. Annex 9: Judgment of June 25, 1993, File No. 037-93-TP, issued by the Special Military Investigating Judge of the Peruvian Air Force Judicial District, whose identity was recorded by means of the code NLO 1215.

⁹⁰ Annex 12: Report No. 2074-DR-DINCOTE, May 27, 1993, signed by National Police Major Alberto Sarmiento Gutiérrez, para. II.C.6.

⁹¹ Communication from the Peruvian State, dated October 15, 2010, received by the IACHR on that same date, Report No. 295-2010-JUS/PPES, p. 2, para. 3.

⁹² Annex 14: Judgment of the National Terrorism Chamber of March 1, 2004, File No. 509-03, p. 8, which states that the report of personal inspection and seizure indicated that “a bag containing a voice distorter, a grenade, a beeper communication device, and a notebook (...) with various entries, with the report unsigned by the detainees” (emphasis added) was found in the possession of Rafael Salgado Castilla and Gladys Carol Espinoza Gonzales or Victoria Romero Salazar; enclosed with the petitioners’ communication of September 14, 2010, and received by the IACHR on that same date.

⁹³ Annex 5: Report No. 259-DINTO-DINCOTE, June 3, 1993, signed by National Police Colonel Oscar E. Chávez Ferreyros, para. 2.a.

⁹⁴ Annex 15. Newspaper article from *La Nación*, edition of April 30, 1993, headlined *APRODEH confirms: Detainee died in DINCOTE cell*; enclosed with the initial petition of May 6, 1993, and received by the IACHR on May 10 of that year. See also: undated communication from the petitioners, received by the IACHR in January 1999, p. 3. That document is signed by Mrs. Teodora Gonzales Vda. de Espinoza and it indicates that

At 8 p.m. on Friday April 23, a scared but human police officer, affected by my daughter’s suffering, came to my home and told me, hurriedly, that my daughter had been arrested on April 17, that she was in a serious state of health, that she had catheters attached to her, and that was when we learned about her arrest and the

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110. Mrs. Teodora Gonzales went to the DINCOTE offices, where she was initially informed that her daughter had not been arrested. Later, a major from the National Police called Sarmiento confirmed that Gladys Carol Espinoza was at the DINCOTE but said that she was to remain under medical observation for 15 days, during which time she would not be able to receive visits.⁹⁵

111. Although the laws then in force allowed for preventive custody at police facilities for a maximum period of thirty days during investigations into treason against the fatherland,⁹⁶ Ms. Espinoza Gonzales was detained as such for eighty days, from April 17 to June 24, 1993, when she was transferred to Chorrillos Women's Maximum Security Prison. During the first days of her arrest, the victim was kept completely incommunicado, before being transferred to cells shared with other inmates some days after her admission to the DINCOTE.⁹⁷

112. On April 27, 1993, the DINCOTE asked the Special Military Judge of the Peruvian Air Force Judicial District to extend the victim's custodial period.⁹⁸ In document No. 108-D3-DINCOTE of May 15, 1993, that police division concluded that Gladys Carol Espinoza was responsible for the crime of treason against the fatherland and brought her before the Military Prosecutor of the Permanent Court-Martial of the Peruvian Air Force.⁹⁹ On June 1, 1993, an investigation commencement deed with arrest warrant was issued against Gladys Carol Espinoza, with instructions for her to remain in custody at the National Antiterrorism Directorate.

113. According to the victim's statements, her first appearance before a judge took place on June 24, 1993, when she was brought before the Special Military Court of the Peruvian Air Force Judicial District. Prior to that date, Gladys Carol Espinoza had not been able to talk with counsel of her choosing and she had been allowed only one visit by her mother and brother, following the intervention of the APRODEH organization and an express order from Gen. Antonio Ketin Vidal Herrera, the Director of the DINCOTE at that time.¹⁰⁰

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seriousness of her physical condition. When we went to the local police station on Av. Spain, they first denied my daughter had been arrested (...).

⁹⁵ Annex 16 (a): Complaint filed by Mrs. Teodora Gonzales Vda. de Espinoza with the 14th Special Prosecutor's Office for Terrorism, stamped received on April 26, 1993; (b) Complaint filed by the APRODEH organization with the Supreme Criminal Prosecutor in charge of the special prosecutions unit of the Office of the People's Defender, stamped received on April 28 1993; (c) Complaint filed by the APRODEH organization with the Attorney General, stamped received on April 28 1993; documents enclosed with the initial petition of May 6, 1993, and received by the IACHR on May 10 of that year, and petitioners' communication of September 14, 2010, received by the IACHR on that same date.

⁹⁶ Decree Law No. 25744 of September 21, 1992, Article 2.a, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/25744.pdf.

⁹⁷ Annex 3: Statement given by Gladys Carol Espinoza to members of APRODEH and CEJIL at Chorrillos Women's Prison, September 22, 2009, pp. 3 and 4.

⁹⁸ Annex 12: Report No. 2074-DR-DINCOTE, May 27, 1993, signed by National Police Major Alberto Sarmiento Gutiérrez, para. II.C.3.

⁹⁹ Annex 12: Report No. 2074-DR-DINCOTE, May 27, 1993, signed by National Police Major Alberto Sarmiento Gutiérrez, para. II.E.

¹⁰⁰ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, p. 5; enclosed with the petitioners' communication of September 14, 2010, and received by the IACHR on that same date. See also: undated communication from the petitioners, received by the IACHR in January 1999, p. 3. That document is signed by Mrs. Teodora Gonzales Vda. de Espinoza and it reads: "Thanks to the assistance of individuals and charitable organizations like APRODEH, we were able to arrange a hearing with PNP Inspector Gen. Ketin Vidal, who gave orders for me to be allowed to see my daughter."

114. From the facts established in the previous paragraphs, the Commission believes it has been proven that the victim was held at police facilities from April 17 to June 24, 1993, and that during the first days of her custody she was held totally incommunicado. Finally, the IACHR take it as established that the victim was taken before a judicial authority of the military justice system on June 24, 1993, eighty days after her arrest.

4. The acts of violence carried out against Gladys Carol Espinoza by members of the Peruvian National Police

115. The petitioners allege that between April and May 1993, Gladys Carol Espinoza suffered torture and various forms of sexual violence at the facilities of the DIVISE and the DINCOTE in Lima and that those facts are established in reports prepared by professionals belonging to the National Police of Peru and the Legal Medicine Institute. In addition, they contend that although there are psychological evaluations that cast doubt on the torture claims, the expert report provided by Dr. Carmen Wurst concluded that those evaluations contained a series of inconsistencies.

116. The State maintains that Gladys Carol Espinoza's bodily injuries were caused by the collision of the motorcycle she was riding on April 17, 1993, and by the resistance she put up during her arrest. It notes that during Ms. Espinoza Gonzales's second criminal trial, the National Terrorism Chamber ordered that fresh medical evaluations be performed, which revealed no signs of torture. It adds that although the medical examinations carried out between April and May 1993 reported hematomas and bruising, some of the physicians who conducted the testing stated, during the proceedings before the National Terrorism Chamber, that "it was not possible to determine that the injuries found were the result of torture."¹⁰¹ The State adds that, "Gladys Carol Espinoza González's claim that she suffered torture and other forms of cruel and inhuman treatment was an argument whereby she sought to escape criminal responsibility."¹⁰²

117. Before ruling on the dispute between the parties, the IACHR reiterates that contrary to the official version given by the National Police and maintained by the Peruvian State during the processing of this case, it has been established that Gladys Carol Espinoza was not involved in a violent collision at the time of her arrest on April 17, 1993. That conclusion is supported not only by the determinations set out in section D.1 above, but also by the evidence outlined in the following paragraphs.

118. The IACHR will now rule on the elements whereby it can reasonably conclude that Gladys Carol Espinoza was subjected to continuous acts of violence while in the custody of agents of the DIVISE and the DINCOTE in Lima. For this, it will take into account the following evidence: (a) the victim's statements, (b) the context behind the victim's narrative of the events, (c) medical examinations performed by the National Police and by the Legal Medicine Institute, and (d) psychological evaluations carried out by the National Police and the Legal Medicine Institute, and the expert report of Dr. Carmen Wurst de Landázuri.

¹⁰¹ Communication from the State dated October 15, 2010, received by the IACHR on October 18 of that year, para. 19.

¹⁰² Communication from the State dated October 15, 2010, received by the IACHR on October 18 of that year, para. 21.

(a) Victim's statements

119. In October 2002, Gladys Carol Espinoza gave testimony to the Truth and Reconciliation Commission and described the violent acts she suffered upon her admission to the DIVISE facility in Lima on April 17, 1993. That testimony was recorded as follows:

She says they [Gladys Carol Espinoza and Rafael Salgado Castilla] were taken to a kind of large garage that was ventilated: "I felt everything cold, icy. And, it seemed, they had Rafael down somewhere else... I heard doors banging, cars, the footsteps of a lot of large men; it seemed there was someone waiting there, and they were talking among themselves. [...]"

The informant was blindfolded, and a man lifted her onto his shoulder and carried her to the elevator, but before that: "They had already removed my trousers and felt my buttocks, all over, and they took advantage to remove all my clothes and strip me again (on his shoulder), and he took me onto the elevator and threw me to the floor, and it seemed that they did the same to the other boy [Rafael Salgado Castilla]. And they began shouting, long live the destroyers, or the dynamos, I'm not sure. They jumped on us, saying, here they are, here they are, we've won..."

They went into a kind of office and informed someone of the arrest: "They began to speak, shouting victory phrases, and they began to jump on our naked bodies; they jumped, shouted, laughed, cursed, voices, they jumped on top of me; I suppose they jumped on Rafael's body, which was there, saying nothing, too; I also said nothing."

They said they were going to begin with her; again, the large man picked her up onto his shoulder and took her to what seemed like a roof: "The air hit you there, cool air. He threw me to the ground and said, get ready, you're going to start talking. They carried on insulting me, shouting; I think there were about twenty men around me, I was totally naked, and they threw water on me, all my body, my hair."¹⁰³

120. In interviews with psychologists from the Legal Medicine Institute conducted in January and February 2004, Gladys Carol Espinoza gave the following narrative of the treatment she received upon arriving at the DIVISE building:

A large, athletic man picked me up and carried me into an elevator, then it was like we were being showed to someone; shouting, shouting all the time, and they pushed me to the floor [...] and began jumping on our bodies, and I could smell people who had been drinking. [...]

They stripped me, leaving my head covered. I felt a bucket of water thrown over me, then another bucketful. They began to tie my body from the feet up to the neck, I don't know with what. I was terrified, I was begging, "Leave me alone. What do you want?"

They carried on hitting me in the kidneys (lumbar region); it was like a game of table-tennis. They hit my head and body at the same time, with clubs or iron bars. The rest of my body was tied up like a baby's, immobilized like a baby, I couldn't even talk.

Blows and groping: On my hips, my vulva, they pulled on my pubic hair, they put their hands in my vagina. I was just a thing [...] they treated me just like a thing. [...]

I felt a hand pushing my head toward something: A tub or a pool, and they pushed it in. I could smell sewage, and my mouth swallowed (endless minutes). I fainted. That was the first time I lost consciousness [...]

¹⁰³ Annex 7: Extracts from Gladys Carol Espinoza Gonzales's statement to the CVR, Testimony No. 700748, October 14, 2002, p. 6.

The second time I couldn't talk. The third time they put me in the sewage water; the fourth time I couldn't take any more: "Kill me, kill me." I don't know how many times it was. I just remember being tied out up; this thing comes off my head. On the floor I see men's things, feet, trousers, I look behind and I see a man and I see a whip, and he's whipping the soles of my feet and I can't feel it; I realized I had gone further than the pain limit. "Kill me." [...].

I was totally naked; it seemed to be a man and I could feel pubic hair as if someone was putting meat in my mouth and then I realized it was a penis. They wanted me to put the human penis in my mouth. They grabbed my hair and pulled me. I struggled: "Kill me, kill me." [...] The man let go of me and let me fall, and I heard a scream. I didn't realize the scream was mine: heartrending, horrible, a death scream.

Terrible, indescribable pain; I felt I was falling, and bang, everything went black; I don't know what happened.

Then I felt water again; I was on the floor, bent over. "Wake up." I realized they are trying to wake me up. They looked at me silently; when I moved, I came back to my senses. [...]

Then they took me out and I felt by body go into convulsions. I felt a terrible cold, or a trembling; they all began to run around in fright: "What should we do with her?" Damn her, she's pretending." "We've got to take her." They picked me up and, in desperation, put me in a car. I realized I was being admitted to a hospital [...]

It was a hospital, they put me in a room, on a kind of gurney, and they followed me. They put me in a room, and left me alone.

A man came in and removed my blindfold; I saw the ceiling. I felt him put his hand inside my vagina and push close to my gurney, and he seemed to be masturbating [...] "I can't take any more." He paid no attention to me. He took my hand [...].

I found out my that family and the Red Cross were looking for me; they denied I was there, they went to Human Rights. Kevin (*sic*) gave an order for me to be shown to my family; when my mother saw me she fainted; what must she have felt?¹⁰⁴

121. At the hearing held during the IACHR's 133rd regular session, the psychologist Carmen Wurst de Landázuri gave her expert psychological assessment of the health conditions of Gladys Carol Espinoza and on the acts of violence she claimed to have suffered at the police facility. That assessment was prepared following four interview sessions during 2006, conducted at the Chorrillos Women's Maximum Security Prison where the victim was being held. The following paragraphs contain extracts from Dr. Wurst's assessment, which is based on the victim's narrative:

When she arrived she was wearing a hood, and that was the last time she saw Rafael. They took her to a basement and pushed her to the floor [...] They insulted her and began to grope her; then she was carried away on the shoulders of a large, strong man, whose collarbone she could feel. Then she began to hear noises and smell cigarettes and alcohol. They pushed her to the ground; she didn't know if Rafael was there. She could hear shouts, and an order: "We're going to start with you." They took her to the stairs, then they pushed her to ground and began to strip her; she was still blindfolded. "I was afraid to look at them; they insulted me, pulled on my breasts, put their hands in my vagina, in my anus. Dozens of hands. Then they tied me up in a bundle, all the way down to my feet; they beat me, I could feel their blows to my stomach, they told me that my husband's spirits were up."

They threatened to infect her with AIDS. They pushed her into a bucket of water: "I felt as if the water was going into my brain; then I felt as if there were a black tunnel and I lost

¹⁰⁴ Annex 18: Medical Examiner's Certificate No. 003821-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004, pp. 2 to 5. The original is written in block capitals.

consciousness, I didn't know if it was hours or minutes; I couldn't feel my body, all I could feel was someone trying to push."

A man began to beat her feet; when she saw that, she became aware of what was happening but she no longer felt any pain; she felt as if her body wasn't her own, and recalls asking them to kill her. [...] "One was holding me by the waist (her voice breaks); I felt a piece of wood, it was in my anus. I heard a terrible scream; it was me shouting out." After that, she lost all notion of time; she did not know how many days she went without food, or drink, or sleep. She remembers her screams, and the black tunnel; she doesn't remember how many times they strung her up. She believes there was a survival mechanism inside her that let her put herself above it all and disconnect [...].

"I had four medical certificates, for beatings, torture, and rape. They took me to the police hospital and told them I was acting, because I'd go from consciousness to unconsciousness. They dressed me to take me to the hospital; I was on a gurney and a man took off my stretch-pants and began to put his hand in my vagina; I thought, not in the hospital. I felt him masturbating, he was the doctor; I didn't react. He was another one of them. They just gave me aspirin."

After the visit to the hospital, they returned her to the DIVISE, where she was received by a lieutenant who was taken back by her appearance. "I saw myself in the mirror; they had destroyed my brain. The Red Cross went looking for me, they hid me from my family. When APRODEH managed to meet with Ketin Vidal, they let my family see me, but that was much later. Two agents from the Public Prosecution Service also came; I was showing signs of torture, my entire head was covered with lumps. I remember there were other women being held; they looked after me very carefully, but I don't know who they were."¹⁰⁵

122. The Inter-American Court has ruled that certain particular kinds of aggression, such as rape, take place in the absence of any persons other than the victim and the assailants, and that in such cases, the victim's statement and narrative of the events provide essential evidence of the facts.¹⁰⁶ The Court has stated that statements by the victims must be assessed in the context of the evidence at trial as a whole, "since they [...] can provide additional information on the alleged violations and their consequences."¹⁰⁷

123. The IACHR notes that Gladys Carol Espinoza's statements contain mutually consistent narratives that describe deliberate acts of violence by police officers. Although her narratives vary in terms of the sequence of events and the locations where she was held, Dr. Carmen Wurst's expert assessment notes that during her interviews of the victim,

recollections of dates and the sequence of events were not entirely accurate. That is normal among victims of torture and rape because the very intent of such acts is to confuse and disorient the victim. Thus, the fact that she does not exactly remember the details supports her claim to have suffered torture.¹⁰⁸

¹⁰⁵ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, pp. 4 and 5.

¹⁰⁶ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 89.

¹⁰⁷ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 52, citing: *Loayza Tamayo Case*, Judgment of September 17, 1997, Series C No. 33, para. 43; *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 25, 2010, Series C No. 212, para. 56; and *Case of Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of May 26, 2010, Series C No. 213, para. 65.

¹⁰⁸ Annex 10: Audio of the hearing on Case 11.157, held on October 23, 2008, during the IACHR's 133rd regular session; address by expert Carmen Wurst, at 10'23" to 10'55" in the audio recording.

124. Thus, in examining the credibility of statements from victims who have suffered such traumatic episodes as rape, the Inter-American Court has ruled that “it is not unusual for narratives of incidents of this kind to contain certain aspects that might be considered, *a priori*, inconsistencies.”¹⁰⁹

125. According to the Peruvian State, Gladys Carol Espinoza’s claims regarding the violation of her physical integrity are an attempt to avoid her responsibility for the crime of terrorism, for which she was convicted. On this point, the IACHR notes that its task is not to rule on Ms. Espinoza Gonzales’s guilt or innocence and reiterates that the facts in the case at hand do not include any possible violations of the American Convention arising from the criminal proceedings brought against her.¹¹⁰

(b) The context behind the victim’s narrative

126. The facts that Ms. Espinoza Gonzales narrates are typical of the widespread torture and sexual violence used in police interrogations during Peru’s internal armed conflict. The IACHR notes that several of the episodes she describes agree with the *modus operandi* used by the police at the time, including the victim’s violent arrest and blindfolding, her transfer to a detention center, and the fact that some of her assailants had been drinking. Similarly, the physical attacks described by Gladys Carol Espinoza agree with the methods used at DINCOTE facilities and other police detention centers: physical exhaustion, blindfolding, insults and threats against detainees and their loved ones or associates, blows to sensitive parts of the body, stretching, and plunging into tanks of noxious liquid.

127. Several elements that Ms. Espinoza Gonzales describes are in line with the pattern of sexual violence followed during police interrogations at the time of counterinsurgency effort, particularly at facilities belonging to the DINCOTE in Lima: insults, groping, stripping, and insertion of objects into the vagina and anus. As with the victim in the case at hand, other witnesses who gave testimony to the CVR stated they were sexually abused by the medical examiners who examined them after they had been tortured and raped by DINCOTE agents.

128. In addition to the general context of torture and sexual violence during interrogations of people suspected of belonging to insurgent groups, the IACHR notes that Gladys Carol Espinoza was arrested and kept incommunicado in the same way as Rafael Salgado Castilla who, according to the CVR’s conclusions, died from the intense torture inflicted on him by DIVISE agents.¹¹¹ Rafael Salgado Castilla’s autopsy report identifies his cause of death as the following:

Injuries to the head, with many bruises and some recent abrasions to the face, together with an extensive subarachnoid hemorrhage with cerebral bruising, which was the cause of death.

In addition, on the limbs, signs of abrasions suggesting that his hands were bound.

The body also shows signs of having been asphyxiated...¹¹²

¹⁰⁹ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 91; and *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 104.

¹¹⁰ See paragraph 56 above.

¹¹¹ Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, p. 842, available at: www.cverdad.org.pe/ifinal/index.php.

¹¹² Final Report of the CVR, 2003, Vol. VII, 2.72 *The Torture and Murder of Rafael Salgado Castilla*, pp. 840 and 841, citing: extracts from Autopsy Report No. 1597-93 of April 18, 1993, issued by the Legal Medicine Institute. Available at www.cverdad.org.pe/ifinal/index.php.

129. Since Gladys Carol Espinoza was in the custody of police officers who, according to the CVR, tortured and killed Rafael Salgado Castilla, the IACHR believes that this reinforces the credibility of the victim's statements regarding the facts that took place at the DIVISE's facilities.

(c) Medical examinations performed by the National Police and by the Legal Medicine Institute

130. During the processing of this case, the parties submitted copies of four reports and medical certificates produced by professionals from the National Police and from the Legal Medicine Institute arising from examinations of Gladys Carol Espinoza performed between April 18 and May 18, 1993.¹¹³ The following paragraphs set out the injuries recorded in each of these documents, ordered by the dates on which they were issued:

– Medical examination of April 18, 1993:

Pink bruise, 8x7 cm, on right wrist.
Pink bruise, 6x2 cm, on back of right hand.
Pink bruise, 2x1.5 cm, on rear of left forearm.
Six (6) bruises, 1x0.6 cm each, all on outside rear of left arm.
Hematoma on scalp, 8x6 cm, located in right parietal region.
[...]

b. Old injuries
None.

[...] signs of recent bruising on head and arms.¹¹⁴

– Medical examination of April 19, 1993:

Sutured contusion, 1 cm, in right parietal region. Multiple bruises, in remission, at middle 1/3 right arm, lower 2/3 right forearm, middle 1/3 left forearm, front of both legs.
Bruise to left eye, both lids; upper lip; rear of both buttocks.
Bruised swelling, left front.¹¹⁵

– Medical examination of April 21, 1993:

Traumatic brain/skull injury, multiple contusions.¹¹⁶

– Medical examination of May 18, 1993:

¹¹³ Annex 19 (a): Expert Medical Examiners Report No. 4775/93, examination date April 18, 1993, signed by Col. Julio O. Ladines Castello and Maj. Julio G. Schaffer Sánchez, doctors of the Peruvian National Police, on April 22, 1993. (b) Medical Certificate No. 16111-L, examination date April 19, 1993, issued by the Legal Medicine Institute on April 20, 1993. (c) Document No. 235-SE.HC.PNP.604000.93, describing an examination of April 21, 1993, signed by Col. Luis Pelaez Astete, Head of the Emergency Service at the Peruvian National Police Hospital; (d) Medical Certificate No. 1816-H, issued by the Legal Medicine Institute on May 18, 1993; documents enclosed with the State's communication of December 5, 2006, and received by the IACHR on December 6 of that year.

¹¹⁴ Annex 19 (a): Expert Medical Examiners Report No. 4775/93, examination date April 18, 1993, signed by Col. Julio O. Ladines Castello and Maj. Julio G. Schaffer Sánchez, doctors of the Peruvian National Police, on April 22, 1993.

¹¹⁵ Annex 19 (b): Medical Certificate No. 16111-L, examination date April 19, 1993, issued by the Legal Medicine Institute on April 20, 1993.

¹¹⁶ Annex 19 (c): Document No. 235-SE.HC.PNP.604000.93, describing an examination of April 21, 1993, signed by Col. Luis Pelaez Astete, Head of the Emergency Service at the Peruvian National Police Hospital.

Torn hymen at 3, 6, and 9 o'clock, old injuries. Anus, torn at 12 o'clock, healing; presence of hemorrhoids at 6 o'clock. Conclusion: Deflowering not recent; indications of recent unnatural act.¹¹⁷

131. This information indicates that while she was in the custody of agents of the DIVISE and the DINCOTE, Gladys Carol Espinoza presented new injuries each time she was examined, from her arms and head on April 18, 1993, to her legs, face, and buttocks on April 19, 1993, culminating with the tearing of her anus on May 18. A considerable increase can also be seen in the seriousness of her injuries, going from bruises to her upper limbs and hematoma on the scalp to traumatic brain/skill injury and tearing of the anus.

132. On February 20, 2004, the Legal Medicine Institute issued a medical examiner's certificate at the request of the National Terrorism Chamber, before which Gladys Carol Espinoza had been brought for the crime of terrorism. Its conclusion on the injuries found in an external examination of the victim are transcribed below:

V. ANALYSIS AND CONCLUSIONS

The subject claims to have suffered mistreatment during the investigation phase of her trial. She currently has a scar on her scalp, in the left and right parietal regions, and multiple hypochromic scars on the rear thorax. [...]

Observations: Previous forensic medical certificates are requested.¹¹⁸

133. While the examination of April 18, 1993, reported no old bodily injuries, the one dated February 20, 2004, refers, *inter alia*, to "multiple hypochromic scars on the rear thorax." Finally, the Commission notes that the examination of May 18, 1993, reports a healing wound "compatible with a recent unnatural act." That coincides with Gladys Carol Espinoza's claims that a wooden object was inserted into her anus. Other bodily injuries recorded by these medical examinations are also consistent with the victim's narrative of the beatings she received while in the custody of the DIVISE and DINCOTE agents.

(d) Psychological evaluations carried out by the National Police and the Legal Medicine Institute, and the expert report of Dr. Carmen Wurst de Landázuri

134. On April 26, 1993, psychologists from the Peruvian National Police examined the victim and issued the following appraisal:

1. Her attitude toward the interview appears fake, with monosyllabic and laconic language.
2. Her behavior is subdued, with characteristics of a "depressive state."
3. Taking advantage of her current situation, she manipulates constantly to earn "pity," thus seeking a "secondary gain."
4. Her mental processes are controlled, and she assesses reality with objectivity.
5. A selective intention to respond to nonsubversive situations is noted.

¹¹⁷ Annex 19 (d): Medical Certificate No. 1816-H, issued by the Legal Medicine Institute on May 18, 1993; documents enclosed with the State's communication of December 5, 2006, and received by the IACHR on December 6 of that year.

¹¹⁸ Annex 20: Medical Examiner's Certificate No. 009598-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004; enclosed with the State's communication of October 15, 2010, and received by the IACHR on October 18 of that year.

C. CONCLUSIONS

1. The detainee Gladys ESPINOZA GONZALES (39), at the time of her examination, showed a situational "depressive state," and managed to evolve favorably.
2. She handles her mental processes with objectivity, with a forced (simulated) attitude in order to achieve a "secondary gain."¹¹⁹

135. Several years later, between January and February 2004, psychologists from the Legal Medicine Institute examined Gladys Carol Espinosa and reached the following conclusion:

The person examined shows no symptoms or signs of mental distress preventing her from grasping reality; in other words, she is aware of her actions.

She displays a histrionic disorder, which does not prevent her from contact with reality except when she disassociates herself.¹²⁰

136. The expert assessment given to the IACHR by Dr. Carmen Wurst de Landázuri contains an evaluation of the two psychological examinations described above. Regarding the first examination, Dr. Wurst noted that the diagnoses of a "situational depressive state" and a "forced (simulated) attitude" are, from a clinical point of view, contradictory. In addition, she stated that the professional who signed the psychological evaluation, Capt. Damian R. Fernández Hoyo of the National Police, is not registered with the corresponding professional association.¹²¹

137. Regarding the expert psychological report produced by the Legal Medicine Institute in early 2004, Dr. Carmen Wurst said that:

the diagnosis seeks to demonstrate that the patient has faked, through her histrionic characteristics, the torture episode. That is absolutely improbable and incorrect, since such reactions and symptoms are NORMAL and TO BE EXPECTED and, quite the contrary, **they indicate** the aftermath of torture in accordance with the Istanbul Protocol. The report therefore CONFIRMS that Gladys Carol Espinoza was subjected to acts of torture that left IRREVERSIBLE mental aftereffects that are characteristic of victims.¹²²

138. Dr. Carmen Wurst added that although the Legal Medicine Institute has a guide for evaluating torture cases, in line with the international standards set out in the Istanbul Protocol, the evaluation of Gladys Carol Espinoza was performed "on the basis of mental and psychological examinations, such as would be used for any evaluation; it does not take into account the context and the relationship existing between the symptoms and the torture and rape she suffered."¹²³ In her own assessment of Gladys Carol Espinoza's symptoms, Dr. Carmen Wurst concluded that:

¹¹⁹ Annex 21: Report No. 052-ODINFO-DINCOTE, signed on April 26, 1993 by Capt. Damian R. Fernández Hoyo and Maj. Eloy Castillo Castillo, psychologists of the National Police of Peru; enclosed with the State's communication of October 15, 2010, and received by the IACHR on October 18 of that year. Underlinings and quotation marks per original.

¹²⁰ Annex 18: Medical Examiner's Certificate No. 003821-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004, p. 7.

¹²¹ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, Introduction, p. 1.

¹²² Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, Introduction, p. 1.

¹²³ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, Introduction, p. 1.

as a result of the trauma experienced, she began to show dissociative symptoms (loss of awareness) that are typical of histrionic personalities; in her case, however, they cannot be considered pathological, since they were triggered by the acts of torture and rape.¹²⁴

139. The IACHR notes that the Peruvian State offered no specific comments on the expert testimony offered by Dr. Carmen Wurst de Landázuri.

140. From its analysis of the evidence indicated above, the IACHR takes it as established that Gladys Carol Espinoza was subject to deliberate acts of violence while in the custody of agents of the DIVISE and the DINCOTE. Those acts included humiliation, threats, beatings, submersion in tanks of water mixed with excrement, being strung up, groping, anal penetration with a wooden object, vaginal penetration with her assailants' hands, and forced fellatio. Those actions caused Gladys Carol Espinoza intense suffering, with multiple scars to her thorax and parietal region,¹²⁵ contracted muscles, headaches, losses of consciousness, vertigo, balance disorders, and suffocating.¹²⁶ She also experienced mental aftereffects such as disassociation, anxiety, and aversion to noise,¹²⁷ symptoms of depression, and irritability.¹²⁸

141. In light of the context in which the facts took place, the IACHR concludes that the intent of the agents of the National Police of Peru was to humiliate the victim and, by reducing her physical and mental resistance, to obtain information on her alleged involvement in illicit activities. In addition, the IACHR takes it as established that the medical certificates and psychological reports issued between April and May 1993 and the National Police reports describing Gladys Carol Espinoza's arrest sought to evade, or in any event served to evade, the responsibility of the DIVISE and DINCOTE agents who carried out the aforesaid acts of violence.

5. The detention conditions and acts of violence faced by Gladys Carol Espinoza during her incarceration at Yanamayo Prison

142. The petitioners allege that after being held for several weeks at the DINCOTE, Gladys Carol Espinoza was transferred to Chorrillos Women's Maximum Security Prison on June 24, 1993, and on January 17, 1996, she was admitted to the Yanamayo Maximum Security Closed Regime Penitentiary Establishment (hereinafter "Yanamayo Prison" or "Yanamayo"), where she remained until April 17, 2001. They contend that at that facility, the victim endured inhuman detention conditions and received no appropriate medical treatment for the symptoms she had developed since May 1993. They add that during an inspection on August 5, 1999, the victim and another four inmates were beaten and mistreated by security officers, after which they were provided with no kind of medical attention.

¹²⁴ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, p. 9;

¹²⁵ Annex 20: Medical Examiner's Certificate No. 009598-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004, Conclusions.

¹²⁶ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, pp. 5 and 6.

¹²⁷ Annex 20: Medical Examiner's Certificate No. 009598-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004, Section I, Physical Examination, 1. Anamnesis, D. Symptoms Described, stating that the subject "reports anxiety and insomnia, largely related to the legal proceedings she lately has had to face. Aversion to noise."

¹²⁸ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, pp. 7 and 9.

143. The State offers no specific claims regarding Gladys Carol Espinoza's detention conditions at Yanamayo. Regarding the acts of violence and the victim's health conditions described by the petitioners, Peru submitted two medical reports dated August 24 and December 17, 1999, which indicated that the subject was "in a good general state of health." The second report certifies that Gladys Carol Espinoza "has been suffering from vertigo since 1996" and states that she suffers from constant dizziness, headaches, and nausea, for which reason the professional who signed the report suggested she be assessed by a neurologist.¹²⁹ In spite of that, the State has submitted no information on any specialized medical follow-up.

144. In its 1997 Annual Report, the IACHR said that "prison conditions, in general, are deplorable throughout Peru [and] particularly severe for persons incarcerated for 'terrorism' or 'treason against the fatherland'."¹³⁰ Similarly, a 1995 report by Human Rights Watch concluded that terrorism and treason prisoners suffer severe restrictions on food, family visits, and activities within prison.¹³¹

145. In its Second Report on the Situation of Human Rights in Peru, the IACHR said that after visiting several detention centers, it noted that the Challapalca and Yanamayo facilities were "in totally inhospitable places, both cold and geographically isolated... [making] it very difficult, in practice, for relatives to visit, because of the distance and other related obstacles."¹³²

146. After assessing the situation at Yanamayo Prison, the United Nations Committee Against Torture noted that it was at more than 3800 meters above sea level and that detention conditions there entailed cruel and inhuman treatment and punishment, and it recommended that the Peruvian State should close it down.¹³³

147. On August 25, 1999, the People's Defender, Jorge Santistevan de Noriega, published Ombudsman's Report No. 28, titled *Report on the Penal Establishment of Yanamayo, Puno*.¹³⁴ In its analysis of general detention conditions at Yanamayo, that report found that in the maximum-security area, the cells had no natural light and there was one fluorescent tube in the corridors for each two cells. It also stated that:

Prison services are deficient, particularly as regards inmate health, with the services of only one general physician, no specialized treatment, no facilities for care to be given at local hospitals, and a regular shortage of medicines [which] is further complicated to worrying levels by the combination of insufficient food, extreme weather conditions, and long hours of confinement, conditions which some inmates have endured for more than six years.¹³⁵

¹²⁹ Annex 22: Report No. 433-99-INPE-DRAP-EPMSY-MIN, December 17, 1999; enclosed with the State's communication of June 13, 2000, and received by the IACHR on June 15 of that year.

¹³⁰ IACHR, *Annual Report of the Inter-American Commission on Human Rights 1997*, Chapter V, Human Rights Developments in the Region, Peru, para. 4, available at: www.cidh.oas.org/annualrep/97span/cap.5d.htm.

¹³¹ Human Rights Watch, *Peru: The Two Faces of Justice*, July 1, 1995, Prosecution of Terrorism and Treason Cases, Prison; available at: www.unhcr.org/refworld/docid/3ae6a7ed4.html.

¹³² IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Chapter IX, Prison Situation, para. 17, available at: www.cidh.oas.org/countryrep/Peru2000sp/capitulo9.htm.

¹³³ UN, Committee against Torture, Inquiry under Article 20: Peru, 16/05/2001. A/56/44, paras. 144-193, paras. 183 and 184, reference available in: I/A Court H. R., *Case of García Asto and Ramírez Rojas*, Judgment of November 25, 2005, Series C No. 137, para. 224.

¹³⁴ Annex 23: Ombudsman's Report No. 28, *Report on the Yanamayo Penal Establishment, Puno*, August 25, 1999, available at: www.defensoria.gob.pe/accesibilidad/biblio.php.

¹³⁵ Annex 23: Ombudsman's Report No. 28, *Report on the Yanamayo Penal Establishment, Puno*, August 25, 1999, para. 60, available at: www.defensoria.gob.pe/accesibilidad/biblio.php.

148. This report also contains a narrative of the acts of violence against Gladys Carol Espinoza and another four inmates of Block 1D of Yanamayo Prison during an inspection carried out on August 5, 1999, by members of the National Special Operations Directorate (DINOES) of the Peruvian National Police. It also reports that during an inspection performed on August 13 and 14, 1999, by Mr. Julio Mágan Zevallos, a Commissioner sent by the Office of the People's Defender, the inmates who suffered the attack described the events of August 5 of that year. According to Gladys Carol Espinoza's narrative, "she was kicked, held down by bars around her neck, and hung in the air. She lost consciousness due to the tear gas thrown in her face. She shows bruising on the legs and neck."¹³⁶

149. After conducting an investigation into the incident, People's Defender Jorge Santistevan concluded that the police officers used disproportionate force against the inmates, who presented injuries caused by blunt instruments on the pubis, buttocks, and forearms.¹³⁷ He added that the director of Yanamayo at the time, Col. Juan Chávez Arenazas, and the regional inspector of the National Police, Col. Oscar Alfredo Altamirano Flores, along with other police officers responsible for the inspection of August 5, 1999, "have not only denied the facts, but have systematically sought to conceal them."¹³⁸

150. The Ombudsman's Report noted that in spite of the inmates' visible injuries, they were not examined by doctors and were not given any medical attention other than drugs provided by a nurse.¹³⁹ The report also noted that as of the date of its publication on August 25, 1999, the Public Prosecution Service had begun no criminal investigation into the police officers responsible for the attacks on the prison inmates.¹⁴⁰

151. The IACHR notes that in spite of the conclusions of the aforesaid Ombudsman's Report, the Peruvian State submitted a medical certificate dated August 24, 1999, which offered the following diagnosis of the victim: "in an apparently good general state of health."¹⁴¹ That diagnosis supports the conclusion of the Office of the People's Defender, according to which the actions of the state agents responsible for ensuring Gladys Carol Espinoza's person and health were directed toward covering up the attacks and abuses committed by agents of the DINOES during the inspection carried out on August 5, 1999.

152. In light of the above considerations, the IACHR takes it as established that Gladys Carol Espinoza was subjected to extremely severe detention conditions during the time she was held at Yanamayo Prison from January 17, 1996, to April 17, 2001, without access to appropriate medical treatment and food and denied the possibility of receiving visits by her family. The IACHR also takes it as established that on August 5, 1999, agents of the DINOES beat her in sensitive parts of the body, that those facts were not investigated by the competent authorities, and that the

¹³⁶ Annex 23: Ombudsman's Report No. 28, *Report on the Yanamayo Penal Establishment, Puno*, August 25, 1999, para. 43, available at: www.defensoria.gob.pe/accesibilidad/biblio.php.

¹³⁷ Annex 23: Ombudsman's Report No. 28, *Report on the Yanamayo Penal Establishment, Puno*, August 25, 1999, para. 52, available at: www.defensoria.gob.pe/accesibilidad/biblio.php.

¹³⁸ Annex 23: Ombudsman's Report No. 28, *Report on the Yanamayo Penal Establishment, Puno*, August 25, 1999, paras. 61 and 62, available at: www.defensoria.gob.pe/accesibilidad/biblio.php.

¹³⁹ Annex 23: Ombudsman's Report No. 28, *Report on the Yanamayo Penal Establishment, Puno*, August 25, 1999, para. 53, available at: www.defensoria.gob.pe/accesibilidad/biblio.php.

¹⁴⁰ Annex 23: Ombudsman's Report No. 28, *Report on the Yanamayo Penal Establishment, Puno*, August 25, 1999, paras. 63 and 64, available at: www.defensoria.gob.pe/accesibilidad/biblio.php.

¹⁴¹ Annex 24: Report No. 143-99-INPE/DRAP-EPY-MIN, August 24, 1999; enclosed with the State's communication of December 30, 1999, and received by the IACHR on January 3, 2000.

victim was not afforded timely medical attention. The IACHR finds that those facts are particularly serious in view of the physical and mental aftereffects that Gladys Carol Espinoza had begun to present since early 1993.

VI. ANALYSIS OF LAW

1. Right to personal liberty (Article 7 of the Convention)

153. Article 7 of the American Convention establishes, in its pertinent parts, that:

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

154. The Inter-American Court has ruled that in accordance with Article 7.1 of the Convention, the protection of liberty safeguards “both the physical liberty of the individual and his personal safety, in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those arrested of the minimum legal protection.”¹⁴²

155. According to the legal precedents set by the Inter-American Court,¹⁴³ the analysis of an arrest and its compatibility with Articles 7.2 and 7.3 of the American Convention requires, first, determining the legality of the detention from a material and formal standpoint, which entails identifying whether it is compatible with the domestic legislation of the State in question. The second step involves the analysis of those domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.

¹⁴² I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 80; *Case of García Asto and Ramírez Rojas*, Judgment of November 25, 2005, Series C No. 137, para. 104; *Case of Acosta Calderón*, Judgment of June 24, 2005, Series C No. 129, para. 56; *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, para. 97; and *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, para. 82.

¹⁴³ See: I/A Court H. R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, para. 139; *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, para. 85; *The “Street Children” Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, para. 131; *Suárez Rosero Case*, Judgment of November 12, 1997, Series C No. 35, para. 43; *Gangaram Panday Case*, Judgment of January 21, 1994, Series C No. 16, paras. 45 to 51.

156. The 1979 Constitution of Peru, in force as of Gladys Carol Espinoza's arrest on April 17, 1993, provided, in Article 20.g, that "no person may be arrested other than under a written, grounded order from a judge or by police authorities *in flagrante delicto*."¹⁴⁴ Similar language was used in Article 2.24.f of the 1993 Constitution, which came into force on January 1, 1994.¹⁴⁵

157. As has been established, Gladys Carol Espinoza was detained by agents of the DIVISE in the absence of a court order and without any evidence to indicate she was committing a crime *in flagrante*. That was in breach of the terms of the Constitution in force at the time and in violation of the guarantees enshrined in Articles 7.2 and 7.3 of the American Convention.

158. The IACHR has established that Gladys Carol Espinoza's arrest involved physical blows, insults, and threats, which continued as she was taken to the offices of the DIVISE in the city of Lima. It has also been established that the DIVISE agents who took the victim in to custody make no record of her detention. Given those circumstances, the IACHR concludes that Gladys Carol Espinoza was not promptly notified of the reason for her arrest, and that consequently there was a breach of the guarantee contained in Article 7.4 of the Convention.

159. The Inter-American Court has ruled that under Article 7.5 of the Convention, any person who is detained has the right to the prompt review of his detention by a judicial authority, in order to prevent arbitrary and illegal arrests and to ensure the rights of detainees.¹⁴⁶ Similarly, the Court has ruled that simply making a judge aware that a person has been detained does not satisfy this guarantee, "as the detainee must appear personally and give his statement before the competent judge or authority."¹⁴⁷

160. In the *Cantoral Benavides* and *Castillo Petruzzi* cases, the Court addressed the possibility of keeping terrorism suspects in preventive custody at police facilities for a period of 15 days, extendable for an additional 15 days in investigations for treason against the fatherland, allowed for by Article 12.c of Decree Law No. 25475 and Article 2.a of Decree Law No. 25744.¹⁴⁸ On this point, the Court stated:

"such provisions contradict the Convention, which states 'Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power'. "¹⁴⁹

161. The United Nations Human Rights Committee has concluded that keeping a person incommunicado for three days is a violation of Article 9.4 of the Covenant on Civil and Political

¹⁴⁴ Constitution of the Republic of Peru of July 12, 1979, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/ConstitucionP.htm.

¹⁴⁵ 1993 Constitution of Peru, available on the web site of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/ConstitucionP.htm.

¹⁴⁶ I/A Court H. R., *Case of García Asto and Ramírez Rojas*, Judgment of November 25, 2005, Series C No. 137, paragraph 109.

¹⁴⁷ I/A Court H. R., *Case of García Asto and Ramírez Rojas*, Judgment of November 25, 2005, Series C No. 137, paragraph 109, citing: *Case of Acosta Calderón*, Judgment of June 24, 2005, Series C No. 129, para. 78.

¹⁴⁸ I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, paras. 73 and 74; and *Castillo Petruzzi et al. Case*, Judgment of May 30, 1999, Series C No. 52, paras. 110 and 111.

¹⁴⁹ I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, para. 73.

Rights.¹⁵⁰ Similarly, the Inter-American Court has ruled that not taking a detainee before a judicial authority until five days after his arrest is contrary to the terms of Article 7.5 of the Convention.¹⁵¹

162. In the case at hand, the IACHR has established that after being arrested on April 17, 1993, Gladys Carol Espinoza was kept incommunicado for several days and that she was not taken before a judicial authority of the military justice system until June 24, 1993, eighty days after her arrest. This implies a violation of the terms of Article 7.5 of the American Convention, and, in addition, Gladys Carol Espinoza's arrest was arbitrary, in breach of Article 7.3.

163. The Inter-American Court has ruled that the guarantee enshrined in Article 7.6 of the Convention may not be suspended, not even during states of emergency,¹⁵² since it is intended to control the legality of an arrest and to safeguard a range of basic rights.

In order for habeas corpus to achieve its purpose, which is to obtain a judicial determination of the lawfulness of a detention, it is necessary that the detained person be brought before a competent judge or tribunal with jurisdiction over him. Here habeas corpus performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment.¹⁵³

164. According to the jurisprudence of the Inter-American Court, the rights to life and to humane treatment are threatened when habeas corpus remedies are partially or totally suspended,¹⁵⁴ because people are left defenseless against the unchecked power of the State, which becomes abusive and arbitrary. Consequently, constitutional and legal provisions that authorize, either explicitly or implicitly, the suspension of this remedy at times of emergency are incompatible with the American Convention.¹⁵⁵

165. The Inter-American Court has further ruled that the guarantee contained in Article 7.6 of the Convention is not satisfied with the formal existence of judicial remedies; instead, they must also be "effective; that is, they must meet the goal of promptly obtaining a decision on the legality of the arrest or detention."¹⁵⁶

166. As indicated above in Section C.2, from Gladys Carol Espinoza's arrest on April 17, 1993, to November 25 of that same year, Article 6 of Decree Law No. 25659 prohibited the filing of habeas corpus remedies on behalf of persons charged with terrorism or treason against the fatherland. In the cases of *Cantoral Benavides* and *Castillo Petruzzi*, the Inter-American Court ruled

¹⁵⁰ CCPR, *Hammel v. Madagascar*, Communication 155/83, decision of April 3, 1987.

¹⁵¹ I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 102.

¹⁵² I/A Court H. R., *Habeas Corpus in Emergency Situations* (Arts. 27.2, 25.1, and 7.6 of the American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987, Series A No. 8, paras. 42-43. See also: I/A Court H. R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 38; I/A Court H. R., *Loayza Tamayo Case*, Judgment of September 17, 1997, Series C No. 33, para. 50.

¹⁵³ I/A Court H. R., *Habeas Corpus in Emergency Situations*, (Arts. 27.2, 25.1, and 7.6 of the American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987, Series A No. 8, para. 35; *Suárez Rosero Case*, Judgment of November 12, 1997, Series C No. 35, para. 63.

¹⁵⁴ I/A Court H. R., *Habeas Corpus in Emergency Situations*, (Arts. 27.2, 25.1, and 7.6 of the American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987, Series A No. 8, para. 36.

¹⁵⁵ I/A Court H. R., *Habeas Corpus in Emergency Situations*, (Arts. 27.2, 25.1, and 7.6 of the American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987, Series A No. 8, para. 43.

¹⁵⁶ I/A Court H. R., *Case of Vélez Loor v. Panama*, Judgment of November 23, 2010, Series C No. 218, para. 129.

that this provision of the antiterrorist legislation enacted during the 1990s was in breach of Article 7.6 of the Convention.¹⁵⁷

167. Based on the foregoing considerations, the IACHR finds that the Peruvian State did violate the guarantees established in Articles 7.1, 7.2, 7.3, 7.4, 7.5, and 7.6 of the American Convention with respect to Gladys Carol Espinoza.

2. Right to humane treatment and to privacy (Articles 5.1, 5.2, 11.1, and 11.2 of the Convention) and obligation to prevent and punish torture (Articles 1 and 6 of the IACPPT)

168. The relevant part of Article 5 of the American Convention provides:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. [...]
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

169. Article 11 of the Convention guarantees all individuals the right of respect for their honor and recognition of their dignity; its second paragraph states that “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.”

170. Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, which was in force for the State at the time of the facts, establishes the following:

Article 1

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

171. In light of the facts established in the case at hand, the IACHR will rule on the legal nature of the acts of violence perpetrated against Gladys Carol Espinoza, the absence of a response from the judicial authorities, and the resulting responsibility of the Peruvian State.

(a) The acts of torture and cruel, inhuman, and degrading treatment inflicted on Gladys Carol Espinoza

172. The Inter-American Court has ruled that the absolute prohibition of torture, both physical and mental, is currently part of the international *ius cogens*, and that the prohibition

¹⁵⁷ I/A Court H. R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, paras. 169 and 170; and *Castillo Petruzzi et al. Case*, Judgment of May 30, 1999, Series C No. 52, para. 188.

remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil commotion or domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes.”¹⁵⁸ The Court has also noted that the universal and regional instruments have enshrined that prohibition and the inalienable right not to be tortured. Similarly, various international instruments enshrine this right and reaffirm that prohibition, including international humanitarian law.¹⁵⁹

173. The Inter-American Convention to Prevent and Punish Torture is a part of the inter-American *corpus iuris* that the Commission must use in establishing the content and scope of the general provision contained in Article 5.2 of the American Convention.¹⁶⁰ Specifically, Article 2 of the IACPPT defines torture as:

any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

174. According to the jurisprudence of the inter-American system, for an act to be considered torture, the following elements must be present: (a) an intentional act, (b) which causes severe physical or mental suffering, (c) committed with a given purpose or aim.¹⁶¹ The Inter-American Court has ruled that “threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered psychological torture.”¹⁶²

¹⁵⁸ I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, para. 76; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 271; and I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, para. 117.

¹⁵⁹ I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C. No. 164, para. 77, citing: Covenant on Civil and Political Rights, Art. 7; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 2; Convention on the Rights of the Child, Art. 37; International Convention on the Protection of the Rights of All Migrant Workers and Their Families, Art. 10; Inter-American Convention to Prevent and Punish Torture, Art. 2; African Charter on Human and Peoples’ Rights, Art. 5; African Charter on the Rights and Welfare of the Child, Art. 16; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), Art. 4; European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6; Code of Conduct for Law Enforcement Officials, Art. 5; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 87.a; Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live, Art. 6; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 17.3; Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Art. 4; Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight against Terrorism, Guideline IV; Common Article 3 of the four Geneva Conventions; Third Geneva Convention, relative to the Treatment of Prisoners of War, Arts. 49, 52, 87 and 89, 97; Fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War, Arts. 40, 51, 95, 96, 100, and 119; Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 75.2.ii; and Additional Protocol to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Art. 4.2.a.

¹⁶⁰ I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, para. 145.

¹⁶¹ IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996, section 3, Analysis; and I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, para. 79.

¹⁶² I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 272; *Case of Baldeón García*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 119; *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, para. 147; and *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, para. 92.

175. The Court has also stated that injuries, suffering, damage to health, or harm suffered by an individual while he is deprived of liberty may become a form of cruel punishment when, owing to the circumstances of his imprisonment, there is a deterioration in his physical, mental, and moral integrity, which is strictly prohibited by Article 5.2 of the Convention.¹⁶³

176. The Inter-American Court has also said that people deprived of freedom are in a situation of particular vulnerability, and so the competent authorities are obliged to adopt measures to protect their physical integrity and the dignity inherent to all human beings.¹⁶⁴ In addition, it has held that the State may be held responsible for torture and cruel, inhuman, or degrading treatment if the authorities fail to conduct a rigorous investigation into such incidents committed against people held in its custody.¹⁶⁵

177. The Commission and the Inter-American Court have said that the State's obligation of respecting the physical integrity of persons held in custody, of not using cruel and inhuman treatment, and of respecting inherent human dignity also includes assuring them access to appropriate medical attention.¹⁶⁶

Acts of violence at the premises of the DIVISE and the DINCOTE

178. As has been established, since the moment of her arrest on April 17, 1993, Gladys Carol Espinoza was subjected to beatings, humiliations, and threats. Upon being taken to the DIVISE facility in the city of Lima, the victim was subjected to interrogations during which she was blindfolded, hung from her arms, plunged into a tank of fetid water, and beaten on sensitive parts of her body, including the head, face, lumbar region, and the soles of her feet. On April 19, 1993, she was transferred to a DINCOTE facility, where she was kept incommunicado for the first days and continued to be beaten and threatened.

179. The IACHR has established that the acts of violence against Gladys Carol Espinoza were perpetrated deliberately, with the aim of humiliating her, reducing her physical and mental resistance, and obtaining information on her alleged involvement in illicit activities. It has also been established that the perpetrators of those acts inflicted intense suffering on the victim, who subsequently developed a range of physical and mental aftereffects. In addition, the continuous acts of violence at the premises of the DIVISE and the DINCOTE caused her to suffer from suffocation, fainting, convulsions, loss of consciousness, an inability to feel pain, temporal and spatial disorientation, and such anxiety that she begged her assailants to kill her.¹⁶⁷ Those elements are enough to conclude that the acts perpetrated by agents of the DIVISE and the DINCOTE between

¹⁶³ I/A Court H. R., *Case of Lori Berenson Mejía*, Judgment of November 25, 2004, Series C No. 119, para. 101.

¹⁶⁴ See also: U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), Human Rights Committee, General Comment 21, para. 3; European Court of Human Rights, *Case of Dzieciak v. Poland*, Application No. 77766/01, Judgment of December 9, 2008; European Court of Human Rights, *Case of Slimani v. France*, Application No. 57671/00, Judgment of July 27, 2004, para. 28.

¹⁶⁵ I/A Court H. R., *Case of Baldeón García*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 120; and *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, para. 170. See also: ECHR, *Yavuz v. Turkey*, Judgment of January 10, 2006, App. No. 67137/01, para. 38; ECHR, *Aksoy v. Turkey*, Judgment of December 18, 1996, App. No. 100/1995/606/694, paras. 61 and 62; and ECHR, *Tomasi v. France*, Judgment of August 27, 1992, Series A No. 241-A, paras. 108 to 111.

¹⁶⁶ IACHR, Application to the Inter-American Court of Human Rights, Case 11.535, Pedro Miguel Vera Vera, Ecuador, February 24, 2010, para. 42. See also: I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, paras. 102 and 103; *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, para. 132; and *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, para. 157.

¹⁶⁷ Annex 18: Medical Examiner's Certificate No. 003821-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004, pp. 2 to 5.

April and May 1993 constitute torture in the terms of Article 5.2 of the American Convention and the article of the IACPPT.

180. In connection with the incommunicado detention in which Gladys Carol Espinoza was held for several days while in police custody in accordance with the terms of Article 12.d of Decree Law No. 25475, in force at the time, the Inter-American Court has ruled that “prolonged isolation and compulsory incommunicado are, in themselves, cruel and inhuman treatment, which harm the physical and moral integrity of the individual and the right to respect for the inherent dignity of the human person.”¹⁶⁸

181. As will be seen below, in spite of complaints regarding the ongoing torture of Gladys Carol Espinoza lodged by the victim’s next-of-kin and the APRODEH organization on April 26 and 28, 1993, respectively, the Peruvian State ordered no criminal investigation to cast light on the facts and punish those responsible.

182. On account of all the foregoing, the Peruvian State failed to uphold, with respect to Gladys Carol Espinoza Gonzales, the obligations of respecting and ensuring the rights enshrined in Articles 5.1 and 5.2 of the American Convention, in conjunction with Article 1.1 thereof, and it also violated the provisions of Articles 1 and 6 of the IACPPT.

Detention conditions and acts of violence at Yanamayo Prison

183. As has been established, Gladys Carol Espinoza served part of her sentence for the crime of treason against the fatherland while the terms of Article 20 of Decree Law No. 25475 and Article 3 of Decree Law No. 25744 were still in effect. Those provisions ordered continuous solitary confinement during the first year of detention, a permanent maximum-security regime throughout the prison term, access to the open air for a period of thirty minutes a day, and a series of restrictions on visits. Far from complying with the goal of social readaptation set for imprisonment by Article 5.6 of the Convention, that regime, in conjunction with the general detention conditions, violated the human dignity of persons serving sentences for terrorism or treason against the fatherland. On this point, the Inter-American Court has ruled that the penal regime established by Decree Laws Nos. 25475 and 25744 constituted cruel, inhuman, and degrading treatment.¹⁶⁹

184. It has been established that not only was the regime provided for in those decree laws applied with respect to Gladys Carol Espinoza, but that she also was subjected to severe detention conditions at Yanamayo Prison, in an inhospitable and excessively cold room, with limited access to natural light, and without either adequate food or appropriate medical attention. The IACHR has further established that on August 5, 1999, agents of the Peruvian National Police’s National Special Operations Directorate (DINOES) conducted an inspection with excessive use of force at the prison block at Yanamayo where Gladys Carol Espinoza was being held. In spite of the bodily injuries described in the report of the Office of the People’s Defender of August 25, 1999, the prison authorities did not order timely medical attention in order to protect the victim’s integrity.

185. In the case of *Montero Aranguren et al.*, the Inter-American Court developed the basic principle that “the use of force by governmental security forces must be grounded on the

¹⁶⁸ I/A Court H. R., *Case of Lori Berenson Mejía*, Judgment of November 25, 2004, Series C No. 119, para. 103, citing: *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, para. 87; *Bámaca Velásquez Case*, Reparations and Costs, Judgment of February 22, 2002, Series C No. 91, para. 150; and *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, para. 83.

¹⁶⁹ I/A Court H. R., *Case of García Asto and Ramírez Rojas*, Judgment of November 25, 2005, Series C No. 137, paras. 229 and 233; and *Case of Lori Berenson Mejía*, Judgment of November 25, 2004, Series C No. 119, para. 108.

existence of exceptional circumstances and should be planned and proportionally limited by the government authorities," whereby coercive means may only be used "once all other methods of control have been exhausted and failed."¹⁷⁰ Similarly, Article 3 of the Code of Conduct for Law Enforcement Officials states that "law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."¹⁷¹

186. The Standard Minimum Rules for the Treatment of Prisoners state that in using force, prison officers must abide by the principles of legality, need, proportion, and oversight.¹⁷² Similarly, the Principles and Best Practices on the Protection of Persons Deprived of Liberty provide, in more broad terms, that:

the personnel of places of deprivation of liberty shall not use force and other coercive means, save exceptionally and proportionally, in serious, urgent and necessary cases as a last resort after having previously exhausted all other options, and for the time and to the extent strictly necessary in order to ensure security, internal order, the protection of the fundamental rights of persons deprived of liberty, the personnel, or the visitors.

187. In terms of the legal assessment of the incident of August 5, 1999, the information available to the IACHR indicates that prison authorities and members of the DINOES pitilessly attacked inmates in Yanamayo's Block 1D, deliberately beating them with the purpose of punishing them. From the injuries reported by the Office of the People's Defender, it can be seen that the attack suffered by Gladys Carol Espinoza caused her intense physical suffering. The IACHR therefore concludes that the actions that took place on August 5, 1999, constitute torture in the terms of Article 5.2 of the American Convention and Article 2 of the IACPPT.

188. Finally, the IACHR takes it as established that during her incarceration at Yanamayo Prison, Gladys Carol Espinoza was not provided with a specialized neurological evaluation, in spite of having requested it and in spite of one being recommended by a general physician at the prison.¹⁷³ That failing is particularly grave in light of the aftereffects suffered by the victim after being tortured by agents of the DIVISE and the DINCOTE in early 1993.

189. Consequently, with respect to Gladys Carol Espinoza, the Peruvian State failed to meet its obligation of respecting and ensuring the rights enshrined in Articles 5.1, 5.2, and 5.6 of the American Convention, in conjunction with Article 1.1 thereof, and it also failed to meet the obligations contained in Articles 1 and 6 of the IACPPT.

(b) Specific considerations regarding the rape of Gladys Carol Espinoza by agents of the Peruvian National Police

190. The IACHR has consistently held that rape committed by members of the security forces of a state against the civilian population constitutes, in any situation, a serious violation of the human rights protected by Articles 5 and 11 of the American Convention.¹⁷⁴ Such illicit acts

¹⁷⁰ I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, para. 67.

¹⁷¹ UN, Code of Conduct for Law Enforcement Officials, adopted by the General Assembly by means of resolution 34/169, December 17, 1979.

¹⁷² UN, Standard Minimum Rules for the Treatment of Prisoners, adopted by the First Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, No. 54.1.

¹⁷³ Annex 22: Report No. 433-99-INPE-DRAP-EPMSY-MIN, December 17, 1999.

¹⁷⁴ IACHR, Application to the Inter-American Court of Human Rights, Case 12.579, Valentina Rosendo Cantú *et al.*, Mexico, August 2, 2009, para. 60; Application to the Inter-American Court of Human Rights, Case 12.580, Inés Fernández Continues...

impose severe and long-lasting physical and mental suffering, due to their nonconsensual and invasive nature, affecting the victim, her family, and the community. That is aggravated when the perpetrator is a state agent, because of the aggressor's position of authority and because of the physical and psychological power he can exercise over the victim.¹⁷⁵

191. The Inter-American Court has said that sexual violence against women has physical, emotional, and psychological consequences that are devastating for the victims¹⁷⁶ and it has also ruled that the sexual rape of a detainee by a state agent is an especially gross and reprehensible act, taking into account the victim's vulnerability and the abuse of power displayed by the agent.¹⁷⁷ In addition, it has held it to be an extremely traumatic experience that can have serious consequences¹⁷⁸ and that causes great physical and psychological damage, which leaves the victim "physically and emotionally humiliated" – a situation that, in contrast to other traumatic experiences, is difficult to overcome with time.¹⁷⁹

192. In its final verdict in the *Čelebići* case, the International Criminal Tribunal for the former Yugoslavia (ICTY) held that "there can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law."¹⁸⁰ The concept of rape as torture has undergone development in recent years, particularly by the aforesaid International Criminal Tribunal.

As evidenced by international case law, the reports of the United Nations Human Rights Committee and the United Nations Committee Against Torture, those of the Special Rapporteur, and the public statements of the European Committee for the Prevention of Torture, this vicious and ignominious practice can take on various forms. International case law, and the reports of the United Nations Special Rapporteur evince a momentum towards addressing, through legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a

...continuation

Ortega, Mexico, May 7, 2009, para. 88; Report No. 53/01, Case 11.565, Merits, Ana, Beatriz, and Celia González Pérez, Mexico, April 4, 2001, para. 45.

¹⁷⁵ IACHR, Application to the Inter-American Court of Human Rights, Case 12.579, Valentina Rosendo Cantú *et al.*, Mexico, August 2, 2009, para. 90; Application to the Inter-American Court of Human Rights, Case 12.580, Inés Fernández Ortega, Mexico, May 7, 2009, para. 117.

¹⁷⁶ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 313, citing: United Nations Commission on Human Rights, 54th Session, *Report presented by Mrs. Radhika Coomaraswamy, Special Rapporteur on violence against women, with the inclusion of its causes and consequence, pursuant to resolution 1997/44 of the Commission*, E/CN.4/1998/54 of January 26, 1998, para. 14.

¹⁷⁷ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 311.

¹⁷⁸ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 311, citing: Report of the UN Commission on Human Rights, 50th Session, *Matter of the human rights of all persons submitted to any form of detention or imprisonment, and especially torture and other cruel, inhuman, or degrading treatments or punishments*, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1992/32, E/CN.4/1995/34 of January 12, 1995, para. 19.

¹⁷⁹ I/A Court H. R., *Case of the Miguel Castro Castro Prison, Merits, Reparations, and Costs*, Judgment of November 25, 2006, Series C No. 160, para. 311, citing: ECHR, *Case of Aydın v. Turkey* (GC), Judgment of September 25, 1997, App. No. 57/1996/676/866, para. 83.

¹⁸⁰ Case No. IT-96-21-T, Judgment, para. 476, November 16, 1998. From Louis Henkin *et al.*, *Human Rights*, Foundation Press, New York, 1999, pp. 380 and 381.

detainee, as a means of punishing, intimidating, coercing or humiliating the victim, or obtaining information, or a confession, from the victim or a third person.¹⁸¹

193. The United Nations Special Rapporteur on Torture has said that rape is one of the methods of physical torture, used on occasions to punish, intimidate, and humiliate.¹⁸² Similarly, the European Court of Human Rights has ruled that:

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.¹⁸³

194. In another case involving rape at the hands of members of the security forces during Peru's internal armed conflict, the IACHR described such actions as a form of psychological torture because its objective, in many cases, is not just to humiliate the victim but also her family or community:

Rape causes physical and mental suffering in the victim. In addition to the violence suffered at the time it is committed, the victims are commonly hurt or, in some cases, are even made pregnant. The fact of being made the subject of abuse of this nature also causes a psychological trauma that results, on the one hand, from having been humiliated and victimized, and on the other, from suffering the condemnation of the members of their community if they report what has been done to them.¹⁸⁴

195. The Inter-American Court has defined rape not only as vaginal intercourse, but also "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."¹⁸⁵ The Inter-American Court also ruled recently that sexual violence is a paradigmatic form of violence against women with consequences that go beyond the person of the victim.¹⁸⁶

196. In connection with the impact that rape cases have on private life, the Inter-American Court has ruled that the rights enshrined in Article 11 of the Convention cover a range of areas, including "sexual life and the right to establish and develop relationships with other human beings."¹⁸⁷ The Court has also stated that rape implies violations of essential aspects of private life

¹⁸¹ ICTY, *Prosecutor v. Anto Furundžija*, Judgment of December 10, 1998, para. 163; upheld on appeal by the Appeals Chamber of the ICTY in a judgment of July 21, 2000.

¹⁸² United Nations, E./CN.4/1986/15, paras. 119 and 431.

¹⁸³ European Court of Human Rights, *Aydin v. Turkey*, (57/1996/676/866), Judgment of September 25, 1997, para. 83.

¹⁸⁴ IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996.

¹⁸⁵ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 310.

¹⁸⁶ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 109; *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 119.

¹⁸⁷ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 119; *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 129, citing the following judgments of the European Court of Human Rights: *Case of Dudgeon v. the United Kingdom*, Judgment of October 22, 1981, App. No. 7525/76, para. 41; *Case of X and Y v. the Netherlands*, Judgment of March 26, 1985, App. No. 8978/80, para. 22; *Case of Niemietz v. Germany*, Judgment of December 16, 1992, App. No. 13710/88, para. 29; and *Case of Peck v. United Kingdom*, Judgment of January 28, 2003, App. No. 44647/98, para. 57.

and the nullification of the “right to freely make decisions regarding with whom to have sexual relations [...] and about basic bodily functions.”¹⁸⁸

197. According to the facts established in the case at hand, between April and May 1993 Gladys Carol Espinoza suffered stripping, humiliation, groping, anal penetration with a wooden object, vaginal penetration with her assailants’ hands, and was also forced to perform oral sex on one of them. Those acts were committed at a time when the victim was in a situation of absolute defenselessness and under the control of the authorities at facilities of the DIVISE and the DINCOTE, in incommunicado detention, and, later, without being allowed to meet with her family members or with an attorney. The IACHR has also established that Gladys Carol Espinoza was severely beaten by agents of the DINOES during an inspection at Yanamayo Prison on August 5, 1999. As will be described in the following section, neither the acts of sexual violence of April and May 1993 nor the later torture of August 5, 1999, gave rise to a criminal investigation or the punishment of those responsible.

198. In light of all the foregoing, with respect to Gladys Carol Espinoza, the Peruvian State failed to meet the obligations of respecting and ensuring the rights enshrined in Articles 5.1, 5.2, 11.1, and 11.2 of the American Convention, in conjunction with Article 1.1 thereof, and it also violated Articles 1 and 6 of the IACPPT.

3. Right to a fair trial and to judicial protection (Articles 8.1 and 25.1 of the American Convention, in conjunction with Article 1.1) and obligation of preventing and punishing torture (Articles 1, 6, and 8 of the IACPPT)

199. Article 8.1 of the Convention stipulates that:

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.

200. In turn, Article 25.1 of the American Convention states that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

201. Article 8 of the Inter-American Convention to Prevent and Punish Torture provides that:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

¹⁸⁸ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 119; *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 129, citing: ECHR, *Case of M.C. v. Bulgaria*, Judgment of December 4, 2003, App. No. 39272/98, para. 150; and ICTY, *Case of Mucić et. al. “Čelebići Camp,”* Judgment of November 16, 1998, Case No. IT-96-21-T, para. 492.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

202. The Inter-American Court has ruled that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”¹⁸⁹ In addition, the Court has stated that:

It is evident from Article 8 of the Convention that the victims of human rights violations or their next of kin should have substantial possibilities of being heard and acting in the respective proceedings, both in order to clarify the facts and punish those responsible, and to seek due reparation.¹⁹⁰

203. The Inter-American Court has ruled that victims and their next-of-kin have the right to expect – and the State, the obligation to ensure – that what befell the alleged victims will be investigated effectively by the State authorities, that proceedings will be filed against those allegedly responsible for the unlawful acts, and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired.¹⁹¹ According to the above, the State’s authorities, once apprised of a violation of human rights – in particular of the right to life, humane treatment, or personal liberty –¹⁹² have the duty of initiating, without delay and on an ex officio basis, a serious, impartial, and effective investigation,¹⁹³ which must be completed within a reasonable time.¹⁹⁴

204. Regarding the duty of conducting an investigation “with due diligence,” the Inter-American Court has ruled that this means that inquiries must be pursued through all legal means available and must be oriented toward the determination of the truth.¹⁹⁵ The Court has further ruled that the State has the duty of ensuring that all steps necessary to learn the truth about what

¹⁸⁹ I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 124; *Case of the La Rochela Massacre*, Judgment of May 11, 2007, Series C. No. 163, para. 145; *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 381; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment of November 24, 2006, Series C No. 158, para. 106.

¹⁹⁰ I/A Court H. R., *Case of García Prieto et al.*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 102; *The “Street Children” Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, paragraph 227; and *Case of the Serrano Cruz Sisters, Merits, Reparations, and Costs*, Judgment of March 1, 2005, Series C No. 120, para. 63.

¹⁹¹ I/A Court H. R., *Case of García Prieto et al.*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 103; *Case of Bulacio*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, para. 114; and *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 382.

¹⁹² I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 100.

¹⁹³ I/A Court H. R., *Case of García Prieto et al.*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 101; *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, para. 146; *Case of Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 130.

¹⁹⁴ I/A Court H. R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, para. 114; *Case of the La Rochela Massacre*, Judgment of May 11, 2007, Series C. No. 163, para. 146; and *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160 para. 382.

¹⁹⁵ I/A Court H. R., *Case of García Prieto et al.*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 101.

happened and for those responsible to be punished are carried out,¹⁹⁶ involving all institutions of the State in that undertaking.¹⁹⁷

205. Similarly, the Inter-American Commission has maintained that:

A breach of the State's obligation of investigating does not occur simply because no one has been convicted or because, in spite of the efforts made, it was impossible to establish the facts. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive, and impartial investigation.¹⁹⁸

206. Although the obligation of investigating is an obligation of means and not of results, it must be undertaken by the State as its own legal duty, and not as a mere formality preordained to be ineffective,¹⁹⁹ or as a step taken by private interests that depends upon the initiative of victims or their families or upon the offer of proof by private parties.²⁰⁰

207. In cases of rape at the hands of security agents, the Inter-American Court has ruled that the investigation must be carried out with resolve and effectiveness, in consideration of society's duty of rejecting violence against women.²⁰¹

208. The Inter-American Court has said that when a complaint has been filed or when there are sufficient reasons to believe that an act of torture has been committed, the State has the obligation to immediately initiate, ex officio, an effective investigation to identify, prosecute, and punish the perpetrators, in accordance with the general obligation of ensuring all persons under its jurisdiction the human rights enshrined in the Convention, as set out in Article 1.1 thereof, in conjunction with the right to humane treatment.²⁰²

¹⁹⁶ I/A Court H. R., *Case of Bulacio*, Judgment of September 18, 2003, Series C No. 100, para. 114; *Case of the La Rochela Massacre*, Judgment of May 11, 2007, Series C. No. 163, para. 146; and *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160 para. 382.

¹⁹⁷ I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 130; *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, para. 120; and *Case of Huilca Tecse*, Judgment of March 3, 2005, Series C No. 121, para. 66.

¹⁹⁸ IACHR, Report No. 33/04, Case 11.634, Merits, Jailton Neri Fonseca, Brazil, March 11, 2004, para. 97.

¹⁹⁹ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, para. 177; *Case of Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 131; and *Case of Zambrano Vélez et al.*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 120.

²⁰⁰ I/A Court H. R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, para. 177; and *Case of Zambrano Vélez et al.*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 120.

²⁰¹ I/A Court H. R., *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, Series C No. 216, para. 177; and *Case of Fernández Ortega et al. v. Mexico*, Merits, Reparations, and Costs, Judgment of August 30, 2010, Series C No. 215, para. 193.

²⁰² I/A Court H. R., *Case of Baldeón García*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 156; *Case of Gutiérrez Soler*, Merits, Reparations, and Costs, Judgment of September 12, 2005, Series C No. 132, para. 54; *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, para. 159; and *Case of Ximenes Lopes*, Merits, Reparations, and Costs, Judgment of July 4, 2006, Series C No. 149, para. 148. See also: ECHR, *Assenov and others v. Bulgaria*, No. 90/1997/874/1086, Judgment of October 28, 1998, paragraph. 102; and ECHR, *Ilhan v. Turkey* [GC], No. 22277/93, Judgment of June 27, 2000, paras. 89-93.

209. The United Nations Commission on Human Rights has defined a series of principles to be taken into account by medical practitioners in investigating torture allegations.²⁰³ The “accurate written report” to be prepared promptly by the medical expert is to include, at the least, the following information:

- (i) Circumstances of the interview: name of the subject and affiliation of those present at the examination; the exact time and date; the location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor.
- (ii) History: a detailed record of the subject’s story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms.
- (iii) Physical and psychological examination: a record of all physical and psychological findings on clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries.
- (iv) Opinion: an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination.
- (v) Authorship: the report should clearly identify those carrying out the examination and should be signed.

210. Likewise, the Istanbul Protocol states that the most significant component of a medical evaluation may be the examiner’s assessment of the background information and demeanor of the individual, bearing in mind the cultural context of the woman’s experience.²⁰⁴

211. Although these United Nations parameters were published after the acts of torture that have been established in the case at hand, the IACHR notes that the medical reports produced on April 18, 19, and 21, and on May 18, 1993, and the psychological report dated April 26 of that year, lack such essential details as the symptoms reported by Gladys Carol Espinoza during the examinations, her version of how the injuries to her body occurred, and the exact time at which the examinations were carried out (with the exception of the report dated April 18, 1993). The IACHR highlights the fact that the evaluations of April 18 and 21, 1993, and the psychological report of April 26, 1993, were prepared by officers of the National Police of Peru, when the victim was in the custody of agents belonging to the same institution. It also highlights the fact that the psychological report of April 26, 1993, is signed by professionals assigned to a psycho-social section of the DINCOTE, the same police force that had been holding Gladys Carol Espinoza since April 19, 1993, and whose members had been accused by the victim’s next-of-kin.

212. The IACHR also notes that those medical examinations were not aimed at establishing the possible causes of the bodily injuries found on the victim, and that the reports of

²⁰³ United Nations, *Torture and other cruel, inhuman or degrading treatment or punishment, “Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment,”* Annex, E/CN.4/RES/2000/43, April 20, 2000.

²⁰⁴ United Nations, *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 2001, para. 227.

the April 19 and May 18 examinations do not even contain conclusions or a diagnosis. Although the superficial nature of those examinations prevented more detailed information from being obtained, the descriptions of bruising, hematomas, traumatic brain/skull injury, and recent tearing of the anus provide sufficient elements for the Peruvian authorities to have begun an ex officio criminal investigation.

213. On April 26 and 28, 1993, Mrs. Teodora Gonzales Vda. de Espinoza and the APRODEH organization filed complaints informing the 14th Special Prosecutor's Office for Terrorism, Supreme Criminal Prosecutor in charge of the special prosecutions unit of the Office of the People's Defender, and the Attorney General that the victim was being tortured at a DINCOTE facility.²⁰⁵ During interviews with the expert Carmen Wurst de Landázuri, Gladys Carol Espinoza reported having been visited by two agents of the Public Prosecution Service while she was at the DINCOTE.²⁰⁶ In spite of these complaints, and of the visit made by representatives of the Public Prosecution Service when Gladys Carol Espinoza was showing visible signs of aggression on her body, the Peruvian authorities did not order the launch of a criminal investigation to examine the facts.

214. In connection with the acts of torture carried out at Yanamayo Prison on August 5, 1999, nineteen days after the incident a surgeon from the National Penitentiary Institute examined Gladys Carol Espinoza and recorded the following diagnosis: "Clinically healthy."²⁰⁷ That examination contradicts the conclusions of the report published by the Office of the People's Defender of Peru on August 25, 1999, which described a series of wounds to sensitive parts of Gladys Carol Espinoza's body and recommended a criminal investigation be opened against the police officers responsible.

215. The Peruvian State argues that no investigations were opened into the violent acts suffered by Gladys Carol Espinoza on account of the absence of reliable proof to back up the claims. It thus stated that "had reasonable indications of a possible violation [...] of humane treatment been presented, the competent institutions – such as the Public Prosecution Service and the judiciary – would have opened the necessary investigations and the persons found guilty would have been punished."²⁰⁸

216. The State indicates that during Gladys Carol Espinoza's second criminal trial, the National Terrorism Chamber asked the Legal Medicine Institute to conduct psychological and physical evaluations²⁰⁹ and it concluded, in the conviction handed down on March 1, 2004, that "the forensic analysis concluded that she has multiple scars on the chest and head, and the expert medical examiner in the oral proceedings stated that the origin of those injuries could not be

²⁰⁵ Annex 16 (a): Complaint filed by Mrs. Teodora Gonzales Vda. de Espinoza with the 14th Special Prosecutor's Office for Terrorism, stamped received on April 26, 1993; (b) Complaint filed by the APRODEH organization with the Supreme Criminal Prosecutor in charge of the special prosecutions unit of the Office of the People's Defender, stamped received on April 28 1993; (c) Complaint filed by the APRODEH organization with the Attorney General, stamped received on April 28 1993.

²⁰⁶ Annex 17: Psychological report by Dr. Carmen Wurst Calle de Landázuri of October 8, 2008, based on interviews with Gladys Carol Espinoza at Chorrillos Women's Maximum Security Prison, p. 5;

²⁰⁷ Annex 24: Report No. 143-99-INPE/DRAP-EPY-MIN, August 24, 1999.

²⁰⁸ Communication from the State, dated October 15, 2010, para. 33, received by the IACHR on October 18 of that year.

²⁰⁹ Annex 20: Medical Examiner's Certificate No. 009598-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004. Annex 18: Medical Examiner's Certificate No. 003821-V, issued by the Legal Medicine Institute after examining Gladys Carol Espinoza on January 27 and February 9, 2004. Annex 2: Psychological Examination Report No. 003737-2004-PSC, produced by the Legal Medicine Institute after interviewing Gladys Carol Espinoza, February 9 and 10, 2004.

determined, nor could it be established that they were produced by physical mistreatment or torture.”²¹⁰ The State contends that in the deed of execution of November 24, 2004, the Supreme Court of Justice stated that “during the oral proceedings, the medical experts have stated that Gladys Carol Espinoza González’s injuries are not compatible with torture, and the expert psychological examination concluded that the subject was a person given to manipulation in order to secure advantage.”²¹¹ It added that the justices of the National Chamber and of the Supreme Court:

have the authority to order the referral of the relevant documents to the Public Prosecution Service for the corresponding investigation when, during the processing of a case, the possible commission of a criminal act is detected (Code of Criminal Procedure, Article 265). However, the proceedings in the criminal prosecution of Gladys Carol Espinoza González established no violation of her right to humane treatment.²¹²

217. In turn, the petitioners contend that during the oral proceedings before the National Terrorism Chamber on February 24, 2004, the physicians of the Legal Medicine Institute responsible for the medical examinations of May 18 and April 19, 1993, were called as witnesses. When asked about the causes of Gladys Carol Espinoza’s injuries, those professionals stated that “the injuries described were caused by a hard blunt object.” When a justice of National Terrorism Chamber asked whether it was possible that the accused had injured herself or whether she was attacked by others, the physicians “replied that either possibility was possible.”²¹³ The petitioners add that the physicians called on as witnesses ratified the reports claim of “indications compatible with a recent unnatural act” and that nevertheless, the National Terrorism Chamber did not order a criminal investigation; instead, it denied the existence of torture.

218. Regarding the State’s contention that no investigations were opened because of an absence of evidence indicating the possible violation of Gladys Carol Espinoza’s physical integrity, the IACHR notes that the petitioners or the victim’s next-of-kin cannot be required to provide evidence for the domestic authorities to initiate the corresponding inquiries.²¹⁴ Gathering evidence and ruling on the existence of a publicly actionable offense must take place as part of a criminal investigation led by the competent authorities in line with guarantees of due process. The case at hand contains abundant evidence that Gladys Carol Espinoza was brutally tortured and raped at DIVISE and DINCOTE facilities between April and May 1993 and that she was subjected to cruel, inhuman, and degrading treatment and acts of torture at Yanamayo Prison. Clearing up those incidents and identifying and punishing the guilty is of particular importance in the case at hand, on account of the widespread and systematic use of torture in police interrogations for the crimes of terrorism and treason against the fatherland during the 1990s.

219. Regarding the State’s contention that the existence of torture was disproved by the National Terrorism Chamber and the Supreme Court of Justice, the IACHR underscores the fact that

²¹⁰ Communication from the State, dated October 15, 2010, para. 17, received by the IACHR on October 18 of that year, citing a whereas paragraph from the judgment of the National Terrorism Chamber of March 1, 2004, case file No. 509-03.

²¹¹ Communication from the State, dated October 15, 2010, para. 18, received by the IACHR on October 18 of that year, citing a whereas paragraph from the deed of execution of the Supreme Court of Justice of November 24, 2004, case file No. 1252-2004.

²¹² Communication from the State, dated October 15, 2010, paras. 24 and 25, received by the IACHR on October 18 of that year.

²¹³ Petitioners communication of September 14, 2010, received by the IACHR on that same date, p. 24.

²¹⁴ In its report on *Access to Justice for Women Victims of Violence*, the IACHR underscored the need for the judicial authorities to consider evidence over and above medical records of physical injuries and witness testimony in ruling on cases of violence against women. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 138, available at: www.cidh.oas.org/women/Acceso07/indiceacceso.htm.

the conclusions of those courts do not constitute a criminal investigation intended to cast light on the acts of violence against Gladys Carol Espinoza, to identify and punish the guilty, and to order the applicable reparations. The courts' conclusions, although preceded by medical and psychological examinations by personnel from the Legal Medicine Institute, are accessory rulings within a criminal trial that had the sole purpose of determining Gladys Carol Espinoza's guilt of the crime of terrorism. By denying the existence of torture in proceedings unrelated to casting light on the allegations made on behalf of Gladys Carol Espinoza, the National Terrorism Chamber and the Supreme Court of Justice compounded the impunity surrounding the facts already established in the case at hand.

220. Consequently, the IACHR concludes that the failure to investigate the torture and cruel and inhuman treatment suffered by Gladys Carol Espinoza, and the total impunity that still surrounds those incidents, constitutes a violation of Articles 8.1 and 25.1 of the American Convention, and of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

4. Article 7 of the Convention of Belém do Pará

221. This section will analyze the particular repercussions of the duty of acting with due diligence in investigating, prosecuting, punishing, and making amends for violence against women under Article 7 of the Convention of Belém do Pará.

222. The Convention of Belém do Pará, the instrument of the inter-American human rights system with the most ratifications,²¹⁵ establishes that the obligation of acting with due diligence has a special connotation in cases of violence against women. The Convention reflects the hemisphere's shared concern about the seriousness of the problem of violence against women, its relationship with historical discrimination, and the need to adopt comprehensive strategies for preventing, punishing, and eradicating it. The Convention of Belém do Pará recognizes the critical link that exists between women's access to adequate judicial protection after suffering acts of violence, and the elimination of the problem of violence and discrimination perpetuating this suffering.

223. Article 7 of the Convention of Belém do Pará sets out a set of complementary and immediate obligations whereby the State can ensure effective prevention, investigation, sanction, and redress in cases of violence against women. These include:

- a. Refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. Apply due diligence to prevent, investigate, and impose penalties for violence against women;
- c. Include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. Adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. Establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

²¹⁵ The Convention of Belém do Pará has been ratified by 32 OAS member states.

- g. Establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and,
- h. Adopt such legislative or other measures as may be necessary to give effect to this Convention.

224. As the Inter-American Court has held, Article 7.b of the Convention of Belém do Pará requires States to act with due diligence in investigating and punishing violence against women.²¹⁶ That provision creates specific obligations and complements the State's obligations as regards complying with the rights enshrined in the American Convention.²¹⁷

225. The IACHR has ruled that among the most important principles, the State's obligation in cases of violence against women includes the duty of investigating, prosecuting, and punishing the guilty, along with the duty to "prevent these degrading practices."²¹⁸ The IACHR has stated that judicial ineffectiveness in cases of violence against women creates a climate of impunity that is conducive to violence "since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts."²¹⁹ The IACHR has further noted that the obstacles such women face in securing access to suitable and effective judicial remedies to redress the violations they suffer can be even more daunting in that they suffer from a combination of various forms of discrimination: as women, because of their ethnic or racial origin, and/or by virtue of their socio-economic status.²²⁰

226. In a case involving the murder of three young women in a context of widespread violence against women, the Inter-American Court stated that the judicial authorities' failure to respond to such incidents "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."²²¹

227. In the case at hand, the IACHR finds that the Peruvian authorities' failure to investigate the complaints lodged on behalf of Gladys Carol Espinoza fostered a climate of impunity in this and many other cases of torture, rape, and other forms of violence against women that occurred during the internal armed conflict in Peru.

228. Since more than 17 years have gone by since the acts of sexual violence against Gladys Carol Espinoza were reported and no investigations have been opened, the State failed in its duty to prevent, investigate, and punish violence against women. The State also failed to meet that obligation by failing to investigate the torture inflicted on Ms. Gonzales Espinoza on August 5, 1999, while she was in custody at Yanamayo Prison and, consequently, failed in its duty of refraining from any act or practice of violence against women.

²¹⁶ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 378

²¹⁷ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 379.

²¹⁸ IACHR, Report on Merits, No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, para. 56.

²¹⁹ IACHR, Report on Merits, No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, para. 56.

²²⁰ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 195, available at: www.cidh.oas.org/women/Accesso07/indiceacceso.htm.

²²¹ I/A Court H. R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 400.

229. For all the foregoing, the Peruvian State is responsible for violating the right enshrined in Article 7 of the Convention of Belém do Pará with respect to Gladys Carol Espinoza Gonzales.

5. Right to integrity of Gladys Carol Espinoza's next-of-kin

230. The Inter-American Court has stated that under the general obligation of states parties to respect and ensure the rights of all individuals subject to their jurisdiction, set out in Article 1.1 of the American Convention, the State has the duty of starting, immediately and on its own initiative, an effective investigation to identify, prosecute, and punish the guilty when a complaint has been made or good reason exists to believe that an act of torture has been committed in violation of Article 5 of the American Convention. In the case at hand, as has already been seen, the State did not act in accordance with those precepts.²²²

231. Article 5.1 of the American Convention stipulates that "every person has the right to have his physical, mental, and moral integrity respected." Based on international human rights case law, under certain circumstances, the anguish and suffering imposed on the close relatives of the victims of serious human rights violations also constitute a violation of the right of those persons to humane treatment.²²³ Among the elements to be considered are the existence of close family ties, the particular circumstances of the bond with the victim, the way in which the family witnessed the violations or was involved in the quest for justice, in light of the subsequent actions or omissions of the state authorities in connection with the facts.²²⁴

232. In the case at hand, it has been established that upon learning of her daughter's arrest, Mrs. Teodora Gonzales Vda. de Espinoza went to the DINCOTE's offices on several occasions but was never given any kind of answer. Following the intervention of the director of that police division, Ms. Gonzales Vda. de Espinoza and one of her children were authorized to visit Gladys Carol Espinoza for the space of a few minutes, on which occasion she broke down and fainted upon seeing her daughter's physical condition. The Commission finds that the right to humane treatment of Gladys Carol Espinoza's next-of-kin was affected as a consequence of their actions in reporting the torture and rape suffered by the victim between April and May 1993 and by the failure of the judicial authorities to take any action in connection with those allegations. The IACHR notes that Mrs. Teodora Gonzales Vda. de Espinoza died in the year 2004, without having obtained any kind of response to the accusations of torture she presented on behalf of her daughter on and after April 26, 1993.

233. Finally, it has been established that under the penal regime provided for in Article 20 of Decree Law No. 25475 and, particularly, during the time Gladys Carol Espinoza was held at Yanamayo Maximum Security Prison in the department of Puno, her family was prevented from visiting her for several years.

234. In consideration whereof, the Commission concludes that the Peruvian State is responsible for violating Article 5.1. of the American Convention, in conjunction with Article 1.1 thereof, with respect to the victim's mother, Mrs. Teodora Gonzales Vda. de Espinoza, and her

²²² I/A Court H. R., *Case of Tibi*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 7, 2004, Series C No. 114, para. 159.

²²³ IACHR, Report No. 53/01 (Merits), Ana, Beatriz, and Celia González Pérez (Mexico), April 4, 2001.

²²⁴ I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 335; *Case of Servellón García et al.*, Merits, Reparations, and Costs, Judgment of September 21, 2006, Series C No. 152, para. 128; and *Bámaca Velásquez Case*, Reparations and Costs, Judgment of February 22, 2002, Series C No. 91, para. 163.

siblings Marlene, Mirian, and Manuel Espinoza Gonzales, through the repercussions of its failure to provide a judicial response to the torture and rape suffered by Gladys Carol Espinoza, and through the visiting restrictions imposed in the emergency terrorism laws and by the victim's imprisonment for several years at Yanamayo Prison.

VII. CONCLUSIONS

235. In this report the Inter-American Commission has evaluated all the elements available in the case file in light of the human rights provisions of the inter-American system and other applicable instruments, jurisprudence, and doctrine, in order to decide on the merits of the matter brought before it. The IACHR ratifies its conclusions whereby the Peruvian State is responsible for violations of the rights enshrined in Articles 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 11.1, 11.2, 8.1, and 25.1 of the American Convention, in conjunction with Article 1.1 thereof. It also concludes that the State is responsible for violating Article 7 of the Convention of Belém do Pará, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to Gladys Carol Espinoza. Regarding the victim's next-of-kin, the IACHR ratifies its conclusion that the State is responsible for violating Article 5.1. of the American Convention, in conjunction with Article 1.1 thereof, with respect to Teodora Gonzales Vda. de Espinoza and Marlene, Mirian, and Manuel Espinoza Gonzales.

VIII. RECOMMENDATIONS

236. Based on the analysis and conclusions of this case, the Inter-American Commission on Human Rights recommends that the Peruvian State:

1. Conduct an immediate, serious, and impartial investigation into the torture and rape of Gladys Carol Espinoza as established in this report, with a gender-aware perspective.
2. Identify all parties responsible for those acts, be they military or civilian, and impose on them the corresponding civil, administrative, and criminal penalties as a guarantee of nonrepetition.
3. Investigate and establish the civil, administrative, and criminal responsibilities of the medical personnel, officers of the National Police of Peru, agents of the Public Prosecution Service, and judicial officials who committed irregularities in connection with the allegations of torture lodged on behalf of Gladys Carol Espinoza.
4. Extend reparations to Gladys Carol Espinoza Gonzales and her next-of-kin for the human rights violations established herein. That redress shall be comprehensive and shall include treatment for her physical and mental health by specialized medical personnel and agreed on jointly with the victim, until her recovery can be established.
5. Adopt the legislative, administrative, and other measures necessary to ensure that allegations of torture and sexual violence involving members of the security forces are investigated on an ex officio basis and with due diligence. Implement training programs for the public officials responsible for enforcing those measures.
6. Design protocols to facilitate and encourage the effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence, taking into account the international provisions established in the Istanbul Protocol and other applicable international rules.
7. Develop training programs for state officials, taking into account the international provisions set forth in the Istanbul Protocol, to ensure those officials have the technical and

scientific elements necessary for evaluating potential cases of torture or cruel, inhuman, or degrading treatment.

8. Implement, within a reasonable time, permanent human rights education programs within all hierarchical levels of its police forces, and include in the curriculum of those training programs a particular reference to international human rights instruments, specifically those related to the protection of the rights of women, particularly their right to a life free of violence and discrimination.