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CASE 12,797

REPORT ON THE MERITS

LINDA LOAIZA LÓPEZ SOTO AND RELATIVES
VENEZUELA

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I. SUMMARY

1. On November 12, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received a petition filed by Linda Loaiza López Soto and Juan Bernardo Delgado (hereinafter “the petitioners”)¹ alleging that the Bolivarian Republic of Venezuela (hereinafter “the State,” “the State of Venezuela,” “the Venezuelan State,” or “Venezuela”) was internationally responsible.

2. The petitioners alleged that Linda Loaiza López was abducted by Luis Carrera Almoina in Caracas on March 27, 2001, who kept her deprived of her liberty until July 19 of the same year at which time she was able to call for help and was rescued by local authorities. They held that during the kidnapping, Linda Loaiza López was subjected to a variety of kinds of physical, sexual and psychological violence, causing serious injuries whose effects persist to this day. They indicated that the State is responsible for having failed its duty to guarantee against these serious facts, although her sister tried unsuccessfully to report the disappearance. They alleged that the serious acts of sexual violence committed by a private individual remain in impunity, and that for the purposes of establishing the scope and content of the State’s obligations to investigate and assign punishment, said acts should be considered a form of torture. In light of this, they alleged that the State violated several rights enshrined in the the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”),² as well as in failure to comply with the obligations contained in the Inter-American Convention on the Prevention, Punishment, and Eradication Of Violence against Women (hereinafter the “Convention of Belém do Pará”) and the Inter-American Convention to Prevent and Punish Torture (hereinafter “ICPPT”).

3. The State of Venezuela held that it is not responsible for violations of the American Convention, the Convention of Belem do Para, or the ICPPT. Throughout the proceeding before the Commission, it submitted detailed information on the steps taken, the investigation, and the domestic legal proceedings. In reiterated that the facts were committed by a private individual—not an agent of the State—who was convicted and sentenced for the crimes of illegal deprivation of liberty and serious bodily injury, a sentence that effectively was served. The State indicated that all the competent authorities took action to protect the rights of Linda Loaiza López and guarantee due process for the parties in the trial, and that the length of the preceding was due to the procedural dynamic of the two parties and was not a delay for which the State could be held responsible. It also submitted general information on the framework and public policies on violence against women.

4. After analyzing the positions of the parties, the Commission concluded that the Venezuelan State is responsible for the violation of the rights to humane treatment (Article 5), personal liberty (Article 7), privacy, dignity and autonomy (Article 11), judicial guarantees (Article 8), equal protection and nondiscrimination (Article 24), to judicial protection (Article 25) established in the American Convention,

¹ Later, on May 12, 2011, and June 20, 2014, the Center for Justice and International Law (CEJIL in its Spanish acronym) and the Committee of relatives of victims of the events of February and March 1989 (Comité de Familiares de Víctimas de los sucesos de febrero y marzo de 1989, COFAVIC), respectively, were accredited before the Commission to act as co-petitioners in the case.

² The State of Venezuela denounced the American Convention on September 10, 2012. The facts of this case took place before September 10, 2013, at which time entered into force the denunciation of the American Convention. As the Commission has stated, as a member State of the Organization of American States (hereinafter “OAS”), Venezuela continues to be bound by the obligations established in the OAS Charter and the American Declaration of the Rights and Duties of Man, signed by the State of Venezuela in 1948. In light of this, the IACHR will take into account, when appropriate, the application of the American Declaration in this case.

with regard to the obligations established in articles 1.1 and 2 of the Convention, and Article XVIII (right to fair trial) of the American Declaration of the Rights and Duty of Man (hereinafter the “American Declaration”). The Commission also concluded that the Venezuelan State is responsible for the violation of Article 7 of the Convention of Belém do Pará and articles 1, 6, and 8 of the ICPPT. Based on these conclusions, the Commission made the corresponding recommendations.

II. PROCEEDING BEFORE THE COMMISSION FOLLOWING THE REPORT ON ADMISSIBILITY

5. The initial petition was received by the Commission on November 12, 2007. The processing of the petition up until the decision on admissibility is detailed in Report No. 154/10 dated November 1, 2010³ In that report, the IACHR declared the petition admissible with respect to the possible violation of i) the rights enshrined in articles 5.1, 5.2, 8.1, 11.1, 24, and 25 of the American Convention, in conjunction with its articles 1.1 and 2; and ii) Article 7 of the Convention of Belém do Pará. The parties were notified of the report on admissibility on November 17 and December 1, 2010, pursuant to Article 37.1 of the Rules of Procedure in force at the time. Also, in keeping with Article 48.1.f of the Convention and Article 37.4 of the Rules of Procedure in force at the time, the IACHR made itself available to the parties to negotiate a friendly settlement on the matter.

6. After a deadline extension and repeated reminders from the Commission, on June 20 and 23, 2014, the petitioners submitted additional comments on the merits. The Commission forwarded that brief and its addendums to the State for it to submit its comments within the term of four months, as established in the Rules of Procedure. On October 22, 2014, the State submitted additional comments on the merits. On January 4, 2014, the petitioners submitted additional comments, which were forwarded to the State.

7. On March 17, 2015, the Commission held a public hearing on the merits of the case during which it received testimony from Linda Loaiza López Soto and the pleadings of the parties. The cost of Ms. López’s participation in the hearing was covered by the Legal Assistance Fund of the inter-American human rights system, pursuant to the Rules of Procedure of the IACHR governing its use.

8. On May 1, 2015, the petitioners submitted an additional brief with comments, which was forwarded to the State of Venezuela.

III. POSITION OF THE PARTIES

A. The petitioners

9. The petitioners alleged that Linda Loaiza López Soto was kidnapped by Luis Carrera Almoina in the city of Caracas on March 27, 2001, and that he kept her deprived of liberty until July 19 of the same year, at which time she was able to call for help and was rescued by local authorities. They held that during the kidnapping, Linda Loaiza López was seriously abused and tortured by her attacker, who subjected her to a variety of kinds of physical, sexual, and psychological violence, causing serious injuries whose effects persist to this day.

10. They indicated that in the early morning hours of the day following the kidnapping of Linda Loaiza López—that is, on March 28, 2001—her sister, Ana Cecelia López, received a phone call in which a voice she did not recognize told her that “Linda would not be coming home,” and that when she tried to call the number back, she heard a recorded message saying that it belonged to Luis Carrera Almoina. They indicated that with this information and because the whereabouts of her sister were unknown, Ana Cecilia López went to file a report with the police, but they would not accept it because they said the issue was a “domestic problem” and they had to wait it out. They held that Ana Cecilia López tried to file the report at

³ IACHR, Report No. 154/10, Petition 1462-07, Admissibility, Linda Loaiza López Soto and relatives, Venezuela, November 1, 2010, paras. 6 and 7.

least six times and that the report was only accepted two and a half months later, and then it was not accepted as a report on the disappearance of Linda, but as a report of a death threat against Ana Secilia López.

11. The petitioners indicated that Mr. Carrera Almoina repeatedly victimized Linda Loaiza López, inflicting upon her severe forms of physical, psychological and sexual abuse. They indicated that the alleged assailant hit the victim, smoked and put out cigarettes on her body, burned her with a lighter and raped her repeatedly. They stated that he also forced her to take drugs and watch pornographic movies. Oftentimes he left her tied up, handcuffed, with her mouth gagged, sometimes enclosed in the bathroom or the closet or tied to the bed. They claimed that the alleged perpetrator always made sure the curtains were drawn and the doors were well locked and that the victim was not close to the telephone. According to the petitioners, Luis Carrera Almoina constantly told her that he had previously killed eight women and dropped their bodies on the highway. They stated that, during the kidnapping, the alleged assailant took Linda Loaiza López to the house of this father, who did nothing about the matter, although he witnessed the abuse suffered by the victim.

12. The petitioners pointed out that, on July 19, 2001, Mr. Almoina contacted his father to inform him that Linda Loaiza López was no longer of any use to him and that he would look for black bags to take her out of the place where she was. They indicated that the rescue of Linda Loaiza López began because on that same date she took advantage of her attacker's absence to call for help to people nearby from the window of the apartment where she was being held. They indicated that due to her poor health and physical condition, she had to be taken in an ambulance to the University Hospital of Caracas. They stated that it took five hours after her rescue for her to be transported to the hospital. They indicated that from the very first moment of her rescue, Linda Loaiza López identified Luis Carrera Almoina as her attacker and said she had been victim of sexual violence. They also said that after she was rescued, Linda Loaiza López initially had to stay in a number of different hospitals over a period of 15 months, and that during that time, the Public Prosecutor issued an order denying her access to her attorney, affecting her right to have information and assistance on the investigation and criminal proceeding.

13. The petitioner stated that the case of Linda Loaiza López is an emblematic example of the "institutional violence and re-victimization suffered by women who are victims of sexual violence and seek justice" in Venezuela. They indicated that although it is a problem throughout the region, it can be demonstrated that in Venezuela there is a context of "general impunity" in cases of violence against women—and in cases of rape in particular—that has not been properly addressed by the Venezuelan State. The petitioner submitted information containing official statistics on cases of violence against women and the failure to effectively process them through the courts, along with a variety of documentation on the obstacles faced by the victims of gender-based violence when seeking justice in Venezuela. They highlighted the lack of access to official numbers on the situation that are public and up-to-date. They also indicated that the available data suffers from underreporting—meaning that levels of impunity are actually higher—given the lack of trust in the courts and reluctance to use the justice system.

14. Regarding the legal framework on the issue of violence against women, the petitioners indicated that although the State has implemented significant legal and institutional initiatives, insufficient attention is paid to victims of violence; several of the plans that were ordered implemented face legislative delays; and no clear public policy against gender-based violence has been adopted. Specifically with regard to the crime of rape, they indicated that the 1947 Criminal Code in force at the time the facts took place considered it a crime "against good customs;" required that it involve threats or violence to be classified as such—not lack of consent; and established distinctions allowing for a reduced sentence: for example, if the victim was a "prostitute."

15. The petitioners allege that although the facts were committed by a private individual, the State failed to comply with its enhanced obligation to prevent, investigate, and punish acts of violence against women. With regard to the duty to prevent, they held that the State was aware that Linda Loaiza López was at risk and did not take any measures to establish her whereabouts despite the repeated attempts of her sister to report her disappearance.

16. They also indicated that based on these facts, an investigation and criminal proceeding were launched that, although resulting in a partial conviction for the crimes of personal injuries and illegal deprivation of liberty, the sexual violence suffered by Linda Loaiza López remains in impunity. In addition they alleged that the investigation and criminal proceeding were marred by multiple irregularities, omissions, unjustified delays, disciplinary measures against judges hearing the case, and constant mistreatment of Linda López and her relatives at the hands of a variety of judicial branch officials, as well as the application of a number of stereotypes that resulted in the specific facts of sexual violence remaining in impunity. They added that the investigation was also skewed because the person identified as the perpetrator of Linda Loaiza López belonged to a wealthy family with political influence.

17. The petitioners specifically alleged that the State made serious omissions starting in the investigation stage into the facts with regard to the collection of evidence, the securing of the crime scene, and the care provided to Linda Loaiza López, given the fragile state in which she was found and the attacks of which she had been a victim. They held that DNA tests were never performed, even though there was enough evidence to do so; that materials of forensic interest were lost at the site due to improper safeguarding of the evidence; and that the photography of the scene and collection of evidence there were both deficient. They indicated that Luminol tests were never carried out at the apartment where she was rescued and that forensic tests were not performed until eight days after the rescue. They indicated that despite her serious injuries, Linda Loaiza López was subjected to numerous interviews by different representatives of the police and of the public prosecutor initially assigned to the case, as well as psychiatric evaluations carried out mostly by men, even though her medical history indicated that “she was fearful of the male gender.”

18. The petitioners also allege that the State did not take the measures necessary for the domestic judicial proceeding to be carried out under adequate conditions, given that Linda Loaiza López, her relatives, her attorney, and some judicial officials involved in the case were subjected to threats and harassment allegedly intended to get them to stop seeking justice. They alleged that domestic measures of protection were ordered for her, but they were not effective. They added that the State also failed to investigate the threats and harassment to discover their origin and prevent them from happening again.

19. They also alleged that Linda Loaiza López’s disappearance in the absence of help from the authorities, the news about what had taken place, her difficult recovery process, and the lack of justice in her case have caused her relatives profound suffering. They indicated that seeking justice impacted their financial situation and affected the dynamic of the family, whose members had to interrupt their activities or studies so they could travel to and stay in the city of Caracas to help Linda Loaiza López and follow the judicial proceeding.

20. The petitioners described the chronology of the internal proceedings, the details of which will be described in the section on proven facts based on the parties’ description and the evidence found in the case file. In this section, the Commission will summarize the legal arguments of the petitioners.

21. The petitioners first of all argued that the case should be analyzed in the light of international *corpus juris* on the protection of women from violence to establish the content and scope of the State’s obligations with regard to the facts and thereby determine its international responsibility. In that context, they held that the failure to comply with the duty to investigate and punish in cases of violence against women also constitutes a form of discrimination.

22. The petitioners argued that this case should be analyzed from a number of perspectives and “the exceptional seriousness of the violence suffered” by Linda Loaiza López should be taken into account, along with the “particular impact that sexual violence has on human dignity.” They asked that the sexual violence alleged in this case be considered a form of torture and noted that the constituent elements of such violation are present in the case.

23. Regarding intentionality, they stated that Linda Loaiza López was “raped repeatedly by her attacker, who also kept her deprived of her liberty, drugged, and tied up for several months in order to keep her under his control.” With regard to the goal or purpose, they indicated that “the serious acts of sexual

violence” were committed by the alleged attacker in order to discriminate against the alleged victim; to “destroy her personality and harm her capacity as a woman” through “numerous acts of humiliation;” and “to demonstrate power and control.” They indicated that although “the purpose of discrimination” is not explicitly established in the ICPPT, it should be considered as included in the reference “to any other purpose” of Article 2. It is also provided for in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment Regarding the suffering caused, they pointed to the physical and mental suffering inherent to sexual violence and reiterated that Linda Loaiza López suffered “terrible” physical and psychological injuries during the more than 120 days she was deprived of liberty when she was 18 years old and has gone through a long recovery process.

24. As a result, with regard to this point they asked the IACHR to find that the State violated Article 5 of the Convention in conjunction with the obligations contained in its Article 1.1; Articles 7 of the Convention of Belém do Pará; and articles 1, 6, and 8 of the ICPPT. They also alleged that the State is responsible for the violation of the right to humane treatment to the detriment of Linda Loaiza López because of the impunity in which this case remains. They also alleged the violation of this right with regard to her relatives.

25. The petitioners alleged that the State is also responsible for the violation of the rights to judicial guarantees and judicial protection in conjunction with the obligations contained in Article 1.1 of the ACHR; the violation of Article 7 of the Convention of Belém do Pará; and the violation of articles 1, 6, and 8 of the ICPPT, due to the impunity in which the facts of sexual violence committed to the detriment of Linda Loaiza López remain. They emphasized that these facts should be analyzed according to the standards derived from the absolute prohibition of torture and the obligation of enhanced due diligence in cases of violence against women.

26. In addition to their pleadings regarding irregularities in the investigation and criminal process, the petitioners alleged that the assessment of the evidence during the domestic proceedings was discriminatory because it was based on stereotypes regarding her sexuality and the role of a woman. They alleged that during the trial, discussion revolved around the alleged sexual and work activity of Linda Loaiza López, giving the greatest weight to the testimony of Luis Carrera Almoina, who argued that her injuries were caused by others, that Linda and her sister belong to a prostitution ring, and that Linda had “seduced” and blackmailed him. They indicated that the judges required Linda Loaiza López’s testimony be corroborated through other evidentiary means in order to establish responsibility for the crime of rape. This hurt her credibility and implicitly blamed her for what took place. They argued that the State discriminated in its application of criminal law and also violated articles 1.1 and 24 of the Convention.

27. Finally, the petitioners argued that the State failed to comply with its duties to adopt provisions in domestic law to effectively guarantee Linda Loaiza López’s rights. First, they allege the violation of articles 2 and 24 of the American Convention because at the time of the facts, the provisions of the Criminal Code covering the crime of rape were in themselves discriminatory. Second, they indicated that the State failed to comply with the obligations contained in Article 2 of the Convention and articles 1, 6, and 8 of the ICPPT, since although Venezuela has been a party to the latter instrument since 1991, at the time of the facts the crime of torture was not defined under the domestic law.

B. The State

28. During the merits stage, the State submitted an account of the facts and actions surrounding the rescue of Linda Loaiza López on July 19, 2001, as well as the investigation and criminal proceeding launched in the case. The State highlighted the “quick actions” of the police who helped with the rescue, as well as the actions taken by the Office of the Public Prosecutor and the Courts in that process. The State also indicated that all the authorities and institutions with competency to protect fundamental rights, the rights of women, and the right to justice have followed up on the case at the domestic level in a timely fashion.

29. As far as the petitioners’ allegations on the reports that one of Linda Loaiza López’s sisters tried to file that were not accepted in a timely fashion by the Technical Judicial Police, the State reiterated that

according to the domestic criminal case file, the alleged victim was rescued thanks to the actions of the police who responded to a call made to the Chacao Police Station; and that the Office of the Public Prosecutor has launched the corresponding criminal proceeding to “punish the commission of the crimes” committed to the detriment of Linda Loaiza López.

30. As far as the judicial processes, the State submitted a detailed account of the actions taken by the 33rd Prosecutor of the Office of the Public Prosecutor of the Metropolitan Area of Caracas; the Technical Division of the Judicial Police; the General Forensic Medicine Division; the oversight courts and the court that participated in the process; and the requests filed and remedies sought by the parties during the various stages of the process. Along with those actions, the State indicated that the criminal investigation was quickly ordered launched by the 33rd Office of the Prosecutor on July 19, 2001, along with the steps necessary to resolve the facts. That office also ordered “the securing of all passive and active objects related to the perpetration of the crime.” In its brief of comments on the merits, the State also made reference to certain evidence collection, stating that Luminol tests and tests comparing the blood of Linda Loaiza López with the blood and semen of the person she indicated as her attacker were ordered and carried out. Also, during the public hearing on the case, the State indicated that it had performed a Luminol test but did not give any details as far as the date and how it was done.

31. The State also indicated that the purpose of the “rule prohibiting visits” put in place while Linda Loaiza López was admitted at the University Clinic Hospital was to “preserve her physical safety and allow the Office of the Prosecutor to carry out a better investigation;” and that on July 25, 2001, the Office of the Public Prosecutor sent an official letter to the hospital authorizing Linda’s father, mother, and aunt to visit her in her room based on their family ties.

32. The State also indicated that on August 22, 2001, the Prosecutor requested that Luis Antonio Carrera Almoína be placed in preventative detention in connection with the alleged crimes of hiding psychotropic or narcotic substances, rape, and causing general personal injury. It indicated that although that measure was not initially agreed upon by the Eighteenth First Instance Oversight Tribunal, the Court “was not unaware of the injuries caused” to the detriment of Linda Loaiza López, and for its part, on the following September 10, it ordered he be placed under house arrest with a permanent police guard. The State therefore argued that this was a well-founded court decision based on options available under the domestic legal system and that it did not represent a violation of the rights of the alleged victim. It also stated that the measure was later annulled by the Eighteenth Oversight Court Tribunal itself, but that on November 8, 2001, Luis Antonio Carrera Almoína, his father and two other individuals were ordered placed in preventative detention. The State added that although the attacker escaped from his house arrest on November 6, 2001, his disappearance was investigated immediately and the accused was detained within a matter of hours.

33. The State indicated that the investigation phase lasted a total of three months and 17 days and can therefore not be considered a violation of the reasonable period of time requirement when taking into account the complexity of the facts investigated and the media controversy surrounding the case. As far as the trial stage, the State detailed the delays ordered by the Trial Court and the process of gathering a pool of candidates and then selecting the lay magistrates for the mixed tribunal, a process which in the end failed. Thus the State indicated that on August 22, 2002, the Thirtieth First Instance Trial Tribunal of the Caracas Metropolitan Area was established as a single-judge trial tribunal. It indicated that once the oral argument stage concluded, the 20th Trial Court found the defendant not guilty on November 5, 2004.

34. In this regard, the State indicated that as with all the decisions in the judicial process, the judgment was well-founded and all the available evidence was analyzed, including the testimony of the alleged victim and the defendant. The State highlighted that the Tribunal did find that crimes had been committed against Linda Loaiza López and recognized their seriousness, but that it had not been proven that the defendant was the perpetrator “of the injuries and the rape.” Specifically with regard to the crime of torture, the State pointed to the finding in the ruling to acquit to the effect that pursuant to the International Criminal Court Statute (hereinafter “the Rome Statute”), torture was a systematic and generalized crime committed against a civilian population, for which reason it could not be applied in this case.

35. The State argued that it had not arbitrarily violated the right to privacy of the alleged victim or her relatives, as the petitioners' allegations that Linda Loaiza López and her sister had allegedly been investigated for belonging to a prostitution ring does not correspond to the reality of the domestic criminal case file. The State explained that because the ruling to acquit—which requested that this investigation be opened—was annulled, its provisions were voided and replaced with a later decision. Without prejudice to this, the State reported that the Office of the Public Prosecutor “has not received any formal complaint” for such facts and therefore it cannot be assigned responsibility for alleged discriminatory conduct resulting in international responsibility.

36. In its narration of the processes, the State indicated that the aforementioned ruling to acquit was later annulled by the Seventh Chamber of the Appellate Court on April 12, 2005, which ordered a new trial to be held. That trial began on November 9, 2005, and the pleadings of the parties concluded on April 9, 2006. The State indicated that this proceeding resulted in the conviction of Luis Carrera Almoína for the crimes of serious personal injury and illegal deprivation of liberty and a sentence of six years and one month in prison. It indicated that this sentence was upheld on December 19, 2006, and the write of cassation filed by Linda Loaiza López's legal counsel was dismissed.

37. The State reported that on May 8, 2008, the First Instance Sentence Execution Tribunal of the Caracas Metropolitan Area ruled that the principal sentence imposed on Luis Carrera Almoína had been served, releasing him to the “supervision of the authorities” for a period equivalent to a quarter of the time period of his sentence, which concluded on November 15, 2009. The State indicated that on November 26 of that year, “expiry of criminal responsibility” was declared with regard to Luis Carrera Almoína.

38. The State also observed that the petitioners had pointed to the recusals and disqualifications of prosecutors, judges, and magistrates during the criminal process as if they in themselves represented an irregularity without explaining that they were duly processed in the case file and that only some of them were admitted. It added that according to the applicable legal framework, these incidents cannot be considered an “instrument of procedural delay” because they do not interrupt the case itself and their purpose is rather to “ensure the suitability and quality of the court officials.”

39. The State highlighted that during the course of the process, Linda Loaiza López requested a number of recusals as a tool for correcting the process to her benefit when she felt the impartiality of the judges and prosecutors involved had been compromised. It indicated that the postponements ordered during the trial were partly due to the various recusals and failures of the parties to appear and that, among other reasons, the alleged victim's health status “was a determining factor as far as the duration of the process.” The State indicated that while it recognized the seriousness of the injuries suffered by Linda Loaiza López, the procedural delays cannot be laid at its feet but was rather the result of the “dynamic of the parties to the process.”

40. It also held that the petitioners are imprecise and “reckless” in the way they refer to the suspension of the judge in charge of the Eighteenth Court—which annulled the house arrest measure on November 6, 2001—by the Commission on the Functioning and Restructuring of the Judicial System (hereinafter “the CFRSJ” according to its Spanish acronym). It claimed that: i) the judge had committed an infraction on annulling, *motu proprio*, the ruling he had previously made, something that the law does not allow; ii) the provisional measure ordered against the judge was a 60-day suspension while the corresponding procedure was carried out before the General Inspectorate of Tribunals; and iii) the president of the CFRSJ at the time did not in the end participate as a witness in the criminal proceeding against Luis Carrera Almoína.

41. The State also held that the allegations of the petitioners as far as the lack of prevention and effective punishment of rape do not allow for the conclusion that the State should be held internationally responsible, since although different factors from international organizations on the crime of rape are used, they are applied to contexts and facts that are different from the ones in this case. More specifically, the State repeated the arguments from its response to the initial petition to the effect that the violations were committed by a private party and not State agents.

42. The State submitted general information on the legal framework on violence against women and its development in recent years. It highlighted that on January 16, 1995, Venezuela ratified the Convention of Belém do Pará without reservations, and that since that time, it has amended its Criminal Code to adapt it to that instrument. It indicated that one of the most important amendments was implemented in 2005 and “constituted an undeniable step forward on [correcting] leniency” for the crime of rape, broadening it to cover situations not previously included. It also indicated that in 2007, the Organic Law on the Right of Women to a Life Free of Violence consolidating this progress in Venezuelan legislation on gender-based violence was passed. The State added that it has encouraged changes in the socio-cultural patterns on which gender inequality and unequal power relations are based to foster the construction of a democratic society. It rejected the idea that there is a “general context of impunity” in these types of cases in Venezuela.

43. The State concluded that it has done everything in its power to protect the rights of Linda Loaiza López and respond to her demand for justice. It reiterated that all actions and proceedings were based on respect for the rules of due process, resulting in the conviction of Luis Carrera Almoína in a judgment that was duly served and executed. It also reiterated that Venezuela has complied with its international obligations by acting with all due seriousness and diligence to prevent, investigate, punish, and eradicate violence against women, for which reason it is not responsible for violations of the American Convention, the Convention of Belém do Pará, or the ICPPT.

IV. PROVEN FACTS

A. Relevant legal framework

44. The Inter-American Commission has recognized that the 1999 Venezuelan Constitution formally establishes that men and women have equal rights in all areas of life, including in the family, the workplace, politics, social activities, the community, and participation in the economy.⁴ Likewise, in addition to the Constitution, by 2001 the Violence against Women and the Family Act was in force in Venezuela,⁵ as was the Equal Opportunities for Women Act.⁶

45. For its part, the Criminal Code in force at the time of the facts included a chapter on “crimes against good customs and family order,” which included the following:

Article 375: Those who, using violence or threats, compel an individual, of either sex, to commit a carnal act, will be punished with a prison term of 5 to 10 years.

⁴ IACHR, Democracy and Human Rights in Venezuela. OEA/SER.L/V/II. Doc. 54. December 30, 2009, para. 914. Available at: <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

⁵ Official Gazette, special edition No. 36,531. Passed on September 3, 1998, and put into effect on April 1, 1999. See: Annex 1. United Nations Committee on the Elimination of Discrimination against Women Examination of the reports submitted by the States parties. Combined fourth fifth, and sixth periodic reports of the Bolivarian Republic of Venezuela. CEDAW/C/VEN/4-6. September 9, 2005. Annex “00 Contexto 2005 09 09 CEDAW Examen Informes Art 18” of the brief from the petitioners, June 20, 2014.

Specifically, this Act built on a number of the principles and provisions of the Convention of Belém do Pará and categorized violence against women and the family as a crime; established its definition and types; and established institutional measures, prevention and aid policies, and responsibilities and procedures to be followed by different government authorities when dealing with these types of incidents, including sanctions to those authorities who failed to respond to a complaint, among other measures. The Act also classified a new series of actions as crimes, including threats and physical and psychological violence against women and the family. Its general provisions likewise establish that the agencies that receive complaints should provide victims “with treatment befitting their condition as victims, facilitating their participation in the proceedings in which they must be involved as much as possible.”

⁶ Promulgated in the Official Gazette, special edition No. 4,635 of September 28, 1993. The content of this Act addresses “equality, employment opportunities, the right to work, compensation, and social security, with the goal of guaranteeing women’s full exercise of their human rights.” Annex 1. United Nations Committee on the Elimination of Discrimination against Women. Examination of the reports submitted by the States parties. Combined fourth fifth, and sixth periodic reports of the Bolivarian Republic of Venezuela. CEDAW/C/VEN/4-6. September 9, 2005. Annex “00 Contexto 2005 09 09 CEDAW Examen Informes Art 18” of the brief from the petitioners, June 20, 2014.

The same punishment shall be applied to an individual who commits a carnal act with another person of either sex who, at the time of the crime: [...] 4: was not able to resist because of physical or mental illness; because of another reason independent of the will of the guilty party; or as a result of fraudulent measures or narcotic or stimulant substances that the guilty party has employed.

Article 379: [...] A carnal act performed upon a woman older than the age of sixteen and younger than the age of 21 with her consent is punishable when she has been seduced with promises of marriage and the woman is known to be honest; in that case, the punishment is six months to one year in prison.

Article 380: As regards the crimes described in the foregoing articles, a trial will not take place without the accusation of the offended party or her legal representatives. [...] The case will go forward ex officio in the following circumstances: 1. If the act caused the death of the offended party or was accompanied by another crime that can be tried ex officio. 2. If the act was committed in a public place or in view of the public [...]

Article 382: Any individual who, beyond the cases described in the foregoing articles, has affronted modesty or good customs via acts committed in a public place or exposed to the view of the public will be punished with three to fifteen months in prison. Those who repeatedly or for the purposes of profit and to satisfy the passions of another indulge, facilitate, or aid in the prostitution or corruption of another person will be punished with one to six years in prison. If this crime is committed against a minor, the term of the punishment to be applied is between the middle and maximum of this.

Article 393: When any of the crimes defined in articles 375, 376, 377, 384, and 385 is committed against a prostitute, the punishments established under this law shall be reduced by a fifth.

Article 395: Anyone guilty of any of the crimes defined in articles 375, 376, 377, 379, 388, 389, and 390 shall be exempt from punishment if he marries the offended party prior to the conviction, and the trial in all its aspects shall cease with regard to the punishment corresponding to these punishable acts. If the marriage takes place after conviction, execution of the punishment and all criminal consequences shall cease. If a marriage does not take place, those imprisoned for seduction, rape, or elopement shall be sentenced via civil indemnity to provide for the offended party if she is single or a widow and as long as she is an honest woman.

46. Both the Inter-American Commission and bodies of the United Nations have urged the Venezuelan State to eliminate this type of law from the Criminal Code and adapt it to international human rights standards on the rights of women.⁷

47. With regard to the crime of torture, the Criminal Code in force in 2000 established the following:

Article 182: [...] The suffering, offenses to human dignity, ridicule, torture, or physical or moral abuses committed against detained persons by their guards or jailers or those who

⁷ See: United Nations Committee on the Elimination of Discrimination against Women Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela. CEDAW/C/VEN/CO/7-8. November 14, 2014. Available at: <http://acnudh.org/wp-content/uploads/2015/01/N1462775.pdf>; IACHR, Democracy and Human Rights in Venezuela. OEA/SER.L/V/II. Doc. 54. December 30, 2009, para. 924. Available at: <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>; United Nations Committee on the Elimination of Discrimination against Women Concluding observations of the Committee on the Bolivarian Republic of Venezuela. CEDAW/C/VEN/CO/6. January 31, 2006. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=CEDAW/C/VEN/CO/6>

give the order to execute said actions, in violation of the individual rights recognized in the third subsection of Article 60 of the Constitution shall be punished with three to six years in prison.

B. Linda Loaiza López Soto, her disappearance, deprivation of liberty, and rescue

1. Background

48. Linda Loaiza López Soto was born on December 12, 1982, in Azulita, state of Mérida, Venezuela. She is the son of Nelson López Meza (farmer) and Paulina Soto de López (domestic employee) and is the second daughter of 11 siblings: Ana Secilia⁸ Diana Carolina, Anyi Karina, Nelson Enrique, Elith Johana, Gerson José, Yusmely del Valle, Luz Paulina, José Isidro, and Emmanuel Adrián, all with the surname López Soto.⁹ Prior to 2001, Linda Loaiza López lived with her family in the state of Mérida, studied agriculture and received a certificate in zootechnics in the state of Trujillo.¹⁰ In February 2001, when she was 18 years old, she moved to the city of Caracas with her sister, Ana Secilia, to study for her undergraduate degree at a university.¹¹ They lived together in a residence close to Avenida Panteón in the city of Caracas.¹²

2. Disappearance of Linda Loaiza López Soto and actions taken by her relatives

49. According to the relatives of Linda Loaiza López, they lost track of her whereabouts starting the morning of March 27, 2001.¹³ Likewise, Ana Secilia López indicated that in the early morning of the following day, she received a call in which a person she did not recognize told her that “Linda would not be returning home.” When she called that number back, a recorded message indicated that the telephone belong to Luis Carrera Almoina. Ana Secilia López stated she received threatening calls from this person. She also stated that she called him several times to seek information on her sister, but got no response.¹⁴ She stated

⁸ The case file in this case uses the names “Ana Cecilia” and “Ana Secilia” to refer to the same person. Hereinafter, only the second of these two names will be used, as it is the one used on her birth certificate.

⁹ Information provided by the petitioners, not challenged by the State. The relatives are also named in the following documents. Annex 9. Birth certificate of Linda Loaiza López Soto. Civil Prefecture of the Municipality of Caracciolo Parra Olmedo, Andrés Bello District of the state of Mérida; marriage license of Nelson López and Paulina Soto. Civil Prefecture of the Municipality of Caracciolo Parra Olmedo, Andrés Bello District of the state of Mérida; and birth certificate of Ana Secilia López Soto. Civil Prefecture of the Municipality of Caracciolo Parra Olmedo, Andrés Bello District of the state of Mérida. All in Annex “01 Certified Documents” of the brief from the petitioners, June 20, 2014. Also see: Annex 3. Public record of the oral trial. Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. JJ07-313-05. Statement of Nelson López Meza, pg. 143. Annex Y from the State’s brief, January 16, 2009. Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pg. 117. Annex D of the brief from the petitioners, July 14, 2009.

¹⁰ See: Annex 3. Public record of the oral trial. Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. JJ07-313-05. Statement of Nelson López Meza, pg. 143. Annex Y from the State’s brief, January 16, 2009. Annex 5. Evidence from the Ministry of Education, which accredited Linda López as holding a “certificate in agriculture, with emphasis on livestock.” Escuela Granja, El Cenizo, state of Trujillo. July 17, 2001. Annex “01 Certified Documents” of the brief from the petitioners, June 20, 2014.

¹¹ See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pgs. 117, 120. Annex D of the brief of the petitioners of July 14, 2009; and Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006. Statement of Ana Secilia López Soto, page 147. Annex E of the brief from the petitioners, July 14, 2009.

¹² See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Annex D of the brief from the petitioners, July 14, 2009.

¹³ Her sister, Ana Secilia, stated during the domestic proceeding that on that day, she had left at approximately 10 o’clock in the morning, when Linda was still in the apartment, and when she returned in the afternoon Linda was not there. When night fell, Linda still had not appeared. See: Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006. Statement of Ana Secilia López Soto, pages 147-418. Annex E of the brief from the petitioners, July 14, 2009. Also see: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Nelson López, pg. 427. Annex D of the brief from the petitioners, July 14, 2009; Annex 7. Sworn statement before the Colombian General Consul in Venezuela of Nelson López and Paulina Soto. April 25, 2002. Annex “11 Varios” of the brief from the petitioners, June 20, 2014.

¹⁴ According to her testimony, Luis Carrera Almoina insulted her, told her he was going to kill her, and told her that her sister had left the country to study modeling. Once they arranged to meet in a public place in Caracas, but in the end Ana Secilia was too afraid to meet up with him. Afterwards, she received a call in which he supposedly told her “look you dirty bitch, you stood me up and you’re
[continues ...]

that she was able to talk with her sister only once, but Linda Loaiza insulted her and said “leave me alone, I don’t want to know anything about you or my siblings or my dad, bitch [...]” According to Ana Secilia, “Linda’s voice was not normal” and she felt “very bad” because she “did not know what was happening.”¹⁵

50. As indicated later on, there is no dispute over the fact that Linda Loaiza López was rescued almost four months later, on July 19, 2001, by the Chacao Municipal Police and the fire department. However, there is dispute over what the State knew and the actions it took between the disappearance and the rescue.

51. As Ana Secilia López tells it, on March 28, 2001, she went to one of the offices of the Technical Judicial Police (PTJ in its Spanish acronym) on Avenida Urdaneta in Caracas to report her sister’s disappearance. She stated that she gave an official the information about the phone call she received, and the telephone number, but he told her, “let’s wait,” and refused to receive the report, telling her that “they are probably a couple.” According to her testimony, she tried to file the report “six times” and it was not until “like two and a half months later” that it was accepted.¹⁶ The petitioners indicated that the report was not processed as a report of the disappearance of Linda Loaiza López but as a report of a death threat against Ana Secilia López.¹⁷ The State did not dispute this information.

52. The information provided by the parties, in particular the description of events from Ana Secilia and her parents, indicates that until the rescue of Linda Loaiza López on July 19, 2001, her family did not know her whereabouts and was not aware of any action taken by the authorities in response to the report that was filed.¹⁸

3. The facts of March 27, 2001, and the testimony of Linda Loaiza López regarding her deprivation of liberty

53. The information provided by the parties and the testimony given by Linda Loaiza López Soto during the hearing on the merits of the case before the IACHR¹⁹ indicate that she reported to the Venezuelan authorities that on the morning of March 27, 2001, when she was leaving her residence in Caracas, she was

[... continuation]

going to pay for it.” See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Ana Secilia López Soto, pgs. 252-253. Annex D of the brief from the petitioners, July 14, 2009.

¹⁵ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Ana Secilia López Soto, pg. 252. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶ Ana Secilia López stated during the domestic criminal proceeding that she continue trying to communicate with Luis Carrera Almoína, begging him to tell her where her sister was. She stated that “[...] I tried calling the local number. A man answered and I told him I was receiving calls from the number and asked for Carrera Almoína. He told me it was his son and told me his name was [...], then I said my sister had disappeared and was kidnapped and he said quit bothering me, that I wasn’t getting calls from that number and that he didn’t know anything. Another time I called again and he insulted me and told me not to call again or he would tell his son to find me and kill me, and I didn’t call that number again [...]” Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Ana Secilia López Soto, pg. 256. Annex D of the brief from the petitioners, July 14, 2009.

¹⁷ Brief of the petitioners of June 20, 2014, pg. 32.

¹⁸ Ana Secilia López stated during the domestic criminal proceeding that she continued to insist and was “desperate” because “he [Luis Carrera Almoína] continued calling and tormenting me, he said vulgar things to me, I didn’t know where to turn [...]” She stated that “At the police station they said they were going to investigate, come back in five days, the guy I filed the report with disappeared, [...] they gave me the [receipt] it should be in the case file because I submitted it [...] I had already gone to the police two times what else could I do.” Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Ana Secilia López Soto, pgs. 252-256. Annex D of the brief of the petitioners of July 14, 2009; and Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006, pg. 149. Annex E of the brief from the petitioners, July 14, 2009. Also see: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Nelson López Meza, pg. 247. Annex D of the brief from the petitioners, July 14, 2009; and Annex 8. Testimony of Paulina Soto, Nelson López Meza, Ana López Soto, Diana López Soto and Nelson Enrique López Soto. Annex “11 Varios Testimonios Familia López Soto” of the brief from the petitioners, June 20, 2014.

¹⁹ Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

ambushed by a person, later identified as Luis Carrera Almoina, who, using violence and threatening to kill her, force her into his vehicle and kept her deprived of liberty until July 19, 2001. The following is a partial transcript of the testimony given by Linda López on these facts and the attacks she suffered during this time:

[...] Someone came up behind me and took me by force to a dark red SUV, pointed a pistol at me, moved the seat forward... he took me to Hotel Aventura, before parking he told me that [...] if I did anything he would kill me, he had the gun in his suit coat pocket, he took me to the hotel, I wasn't asked for identification [...] he dragged me, I tried with my eyes to make signs to a guard... [the hotel room was not ready so they went to the Dorávila apartment complex] where likewise [he kept a grip on her] so [she] couldn't make a move, when we got the elevator, a woman saw us and he said I was his girlfriend, I was crying, we got to his house and he got his things [... later they returned to Hotel Aventura] we got to the room, he hit me, he lock me in, he threw me to the floor, he made me eat soap, he violently beat me, he got a phone call from his father inviting him to [the Teresa Carreño Theater], he said he could not miss that invitation, that he had to attend [...] he received phone calls from his father and when the time came he hit me again, he put dark glasses on me [...] he threatened me again with his pistol [...] when we got to the lobby, the father was just getting there, that chauffeur was driving, he introduced me as his girlfriend and said I was from Maracaibo and that I was loud and mean but I'm from Merida, the father and the chauffeur were up front and I was in back next to him, we got to the Teresa Carreño and he introduced me to ELIO GÓMEZ GRILLO [...] I don't drink and he wanted to force me to drink, he made me have two drinks [...] then we went to a restaurant... I was crying, I tried to make a sign, when his father went to the bathroom, he kicked me under the table, he pinched me, we went back to the hotel [...] he told me that he didn't want those people to know what was happening, that all the crying in the street was hurting him, he hit me, he turned on the TV at a high volume, he took me to the bed and raped me, he put a sleeping mask on me, he turned on pornographic movies, [...] he hit me really hard, he took drugs [...] after raping me repeatedly he gagged me with his T-shirts, he handcuffed me to him when he got tired, the door was chained and dead-bolted [...] he put [the key] under the mattress he was sleeping on, to make sure I couldn't leave [...] the whole time he forced me, he raped me while I was tied up, I went to the bathroom while handcuffed [...] every day I was there he raped me, he always had the pistol he threatened me with [...] ²⁰

54. Linda Loaiza López stated to the IACHR that:

A week later [March 27, 2001], I was taken in the early morning hours to the state of Sucre [in the eastern part of the country], where the violence continued [...] I was sexually abused, beaten, tied up, handcuffed, and once he tried to drown me on a beach near the house, I was put in a stress position on bottle caps, objects were broken off inside me, I was threatened by my attacker with his firearm, he penetrated my vagina with objects, he penetrated me with his hand and my vagina was torn [...] ²¹

55. According to her statement, while she was deprived of liberty she was not able to communicate with her family, but her attacker took her address book and started to call her family and one time forced her to call her sister and "insult her with obscenities." She also stated during the domestic criminal proceeding that her attacker made a deposit money for her father, Nelson López, telling her that that way, "there was evidence and nobody could hold them responsible for what he had done." She stated that he

²⁰ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pgs. 112-113, 117, 299. Annex D of the brief from the petitioners, July 14, 2009.

²¹ Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

forced her to write “letters” and “things on photographs” that she had in her purse,²² that he hit her “day after day [...] giving [her] pills,” “with his hands, with his feet,” “with his shoes,” he raped her “three or four times per day” without even “respecting” her periods, he forced her to cook for him and to stay naked, he threatened to kill her family and told the neighbors who noticed Linda’s condition that they were having “domestic issues” and were working them out.²³

56. Linda Loaiza López said that in Sucre, she was also taken to a hotel in the city of Cumaná where the attacker only registered himself and snuck her into the room, forcing her to wear a long sleeve shirt, hat, and his dark glasses.²⁴ Linda Loaiza López said that on that day, they entered the room and “[...] he started to hit me, he raped me, I was bleeding, I told him to take me to the doctor, and he said no, that he wouldn’t be able to explain to a doctor how I had my vagina all torn up [...]”²⁵

57. She also testified during the domestic criminal proceeding that her attacker’s father, knew about what was happening. She stated that when she had “very serious bruising,” Luis Carrera Almoina “didn’t know what to do” and called his father, “he told him that my ear was inflamed and the father told him to take out the blood with a syringe and he stuck it in and took out the blood and dispose of it in the sink [...]” She said that when she returned to the city of Caracas, they went to the apartment of Luis Carrera Almoina’s father, and he told his son “that some people were calling his house and he told them that it was [her] family wanting to know what happened to [her].”²⁶

58. During the hearing on the merits before the IACHR and the domestic criminal proceeding, Linda Loaiza López stated that:

[After I was taken to the state of Sucre for] a month and a half of this violence, I was taken again to the city of Caracas to the same hotel [Aventura], where I stayed for several days, and thanks to help from the attacker’s father, he was able to rent an apartment in the eastern part of Caracas, to which I was moved in the early hours of the morning [...] There [...] the violence from the attacker continued. The attacker had access to a computer connected to the Internet through which he was able to access pornographic videos. He forced me to perform what was practiced on those videos, the violence there was constant, my jaw was broken, it was fractured in three places, every time he hit me with his closed fist he told me, in my mouth, that it was his father’s hand that was hitting me, he told me he had a powerful family and lots of friends and that he would never go to jail, that there were eight victims he had [...] kidnapped and abused the same as me, and he even showed me pictures of them [...] and they were not taken as evidence during the investigation.²⁷

²² During the domestic criminal proceeding, Linda Loaiza López recognized a series of documents included in the case file as evidence at the request of the defense of Luis Carrera Almoina and identified them as the ones she wrote, “against her will and under threat with a pistol to the head.” See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pgs. 118-119. Annex D of the brief from the petitioners, July 14, 2009.

²³ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pgs. 114-115, 122. Annex D of the brief from the petitioners, July 14, 2009.

²⁴ The petitioners provided a registration card from the Hotel Minerva under the name of Luis Antonio Carrera A, with the check-in date of May 2001 (the day is illegible) and check-out date of May 13, 2001. Annex 9. Hotel Minerva registration card. Annex “11 Varios 2005 05 13 Registro Hotel Minerva” of the brief from the petitioners, June 20, 2014. The documents submitted by the parties indicate that this card was submitted as evidence during the domestic criminal proceeding.

²⁵ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pg. 115. Annex D of the brief from the petitioners, July 14, 2009.

²⁶ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pg. 115. Annex D of the brief from the petitioners, July 14, 2009.

²⁷ Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

[While in the apartment in Caracas] he inserted a whisky bottle in my anus and vagina, he liked all of this, he laughed, he thought it was all great what he was doing, while I was suffering so much because of everything he was doing to me, he hit me more often, he put out cigarettes on my face, he burned me with lighters, he hit me all the time, [...] one time when a person came to do I don't know what with him, he handcuffed and tied me and stuck me in the closet, the day before he made me take a rag and disinfectant and clean every corner of that apartment, he humiliated me, he beat me with broomsticks, [...] he called room service and ate whatever he wanted, and when he felt like it he gave me leftovers and I had to eat them to survive, [...] every day he was constantly giving me pills that he forced me to take [...] I had to take them to survive [...] every time [he left the apartment] he handcuffed me, tied me up, and told me that I had to tell my sister that she had to withdraw the complaint [...] after several days [...] of raping me, torturing me, [...] always with his pistol pointed at me [...] he's taller and stronger than me, in the El Rosal (sic) apartment, the torture grew worse, the humiliations, he felt good, he was happy, but if I wanted to go to the bathroom I had to beg him to take me to the bathroom [...]²⁸

4. Rescue of Linda Loaiza López Soto, reunion with her family, and physical and psychological injuries suffered

59. The testimony of Linda Loaiza López indicates that on July 19, 2001, she heard her attacker tell his father over the telephone that “she no longer satisfied him, to get some garbage bags” to get her out of the apartment. As she tells it, “[...] he saw [she] was extremely weak and [her] health was in very poor condition and this time he did not tie [her] or handcuff her before leaving.” Linda said she took a sheet, hung it from a window, and began calling for help to people nearby the building.²⁹

60. According to the police report from the Services Section of the Operations Division of the Municipal Police of Chacao, at approximately 7 in the evening on July 19, 2001, two officers patrolling the El Rosal neighborhood in Caracas answered a call to go to Residencias 27 on Avenida Sojo “because on the second floor, apartment 2-A, a person was heard shouting for help.” The report indicates that the officials saw Linda Loaiza López on the balcony of the apartment and that “bruising could be seen on her face and she appeared to be intending to jump.”³⁰ According to the testimony of Officer Giovanni Chicco Salas, he had to climb up to enter the apartment because the door was locked and Linda Loaiza said she did not have the key. The officer said that she was naked, “very dehydrated,” “terrified,” and from the very first moment she said she had been “kidnapped” by Luis Carrera Almoína,³¹ saying he was “armed and wanted to kill her,” and therefore asked him to take her away immediately.³²

²⁸ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pg. 116. Annex D of the brief from the petitioners, July 14, 2009.

²⁹ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pg. 116. Annex D of the brief from the petitioners, July 14, 2009; and Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

³⁰ Police Report of July 19, 2001, No. 2001-1540 of the Services Section of the Operations Division of the Municipal Police of Chacao, state of Miranda, signed by Officer Giovanni Chicco Salas. Cited in the brief of the State of October 22, 2014, pg. 3, and Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 130. Annex D of the brief from the petitioners, July 14, 2009.

³¹ The report states that Linda López said she was kidnapped by citizen LUIS CARRERA, HER HUSBAND [...].” Linda López stated during the domestic criminal proceeding that she had not called him “husband” (*marido*) but rather “accursed” (*maldito*). See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 130. Annex D of the brief from the petitioners, July 14, 2009.

³² During the domestic criminal proceeding, the officer stated the following: “[...] what I noticed were her lips, because it was like someone had ripped them off, [...] in the eight years I’ve been [a police officer] I’ve seen injuries, but not like these. It is one of the most upsetting cases I’ve seen. In my opinion, if this person had been in there for one more day she wouldn’t have come out alive [...]” Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Officer Giovanni José Chicco Salas, pg. 128. Annex D of the brief from the petitioners, July 14, 2009.

61. Another four members of the Eastern Fire Department arrived on the scene and entered the apartment via *repele*. At first they tried to remove Linda Loaiza López via the balcony “using ropes.” Later, the apartment owner came with the keys and opened it. Then the 33rd Prosecutor of the Office of the Public Prosecutor arrived,³³ along with a delegation from the Municipal Institute for Cooperation and Healthcare led by Doctor Luis Esparragoza to attend to Linda Loaiza López. He ordered her transported by ambulance to Hospital Clínico Universitario in Caracas.³⁴

62. Linda Loaiza López was admitted to the University Hospital of Caracas on July 20, 2001, where she received emergency treatment initially from two doctors on duty who noted in her medical record that she said she “had been attacked by the son of the rector of the university in San Bernardino [...]”³⁵ According to the aforementioned medical record:

On admittance, a physical examination revealed the presence of multiple traumas: cranioencephalic, facial, thoracic, abdominal, extremity wounds thought to be bite wounds, burns, and contusive trauma. A cranioencephalic injury was observed on the left parietal region, scabbed over with no active bleeding; facial injuries included bilateral palpebral hematoma, contusive injury to the nasal septum, and deformity of both lips with some missing and both ears. Thoracic injuries involved burns and bite marks on both breasts and costal margins painful to the touch, with restricted thoracic expansion. Abdomen is in pain, with abdominal guarding and peritoneal irritation, no sign of contusive trauma. Gynecological examination; genitals show no sign of injury, tactile vaginal exam, no flow or pain on manipulation of the cervix, nonpalpable adnexal tumors. Tactile rectal exam, no evidence of bleeding or tumors.

Paraclinical tests:

1. X-ray of thorax: evidence of multiple rib fractures, with some healing.
2. X-ray of abdomen found low air-fluid levels.
3. AP and lateral X-ray of cranium: Ascending ramus fracture in lower right jawbone.
4. Pelvic ultrasound: no evidence of injuries in uterus, not pregnant, no injuries to ovaries.
5. Intake lab test: hemoglobin: 5g/dL.³⁶

³³ According to testimony from the officers who were present, the 33rd Prosecutor ordered that Linda not be removed from the apartment until the owner arrived with the keys, which took an hour from the time the first officer entered via the balcony. See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Testimony of Officer Giovanni José Chicco Salas and Firefighter José Miguel Calzadilla Itriago, pgs. 126-133. 126-133. Annex D of the brief from the petitioners, July 14, 2009

³⁴ Linda López stated during the hearing on the merits before the IACHR that her transfer to the hospital was delayed by approximately five hours. Regarding this, the petitioners explained that it “would take a maximum of 10 minutes” to cover the distance between the El Rosal neighborhood and the University Hospital in Caracas. The Commission notes that according to the testimony of one of the doctors who was on duty at the time, Linda Loaiza López arrived to the hospital at approximately midnight. The corresponding medical report indicates she was attended to on July 20, 2001. See: Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>; Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Officer Giovanni José Chicco Salas, Dr. Robert Ángel Lam Leung, Surgeon General of the University Hospital of Caracas, and Police Report of July 19, 2001, No. 2001-1540, pgs. 126-131, 159-162. Annex D of the brief of the petitioners of July 14, 2009; and Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006, pg. 131. Annex E of the brief from the petitioners, July 14, 2009; and Annex 10. Medical report on Linda López Soto. University Hospital of Caracas. Department of Surgery, September 4, 2001. Annex 4.A of the brief of the petitioners of July 14, 2009; and brief of the petitioners of June 20, 2014, pg. 25.

³⁵ Brief from the State, October 22, 2014, pg. 2.

³⁶ Annex 11. Medical exam of Linda López. Signed by Dr. Freddy Sánchez Rivero. University Hospital of Caracas. Department of Surgery. December 7, 2001. Annex “Folder No. 6 Informes médicos” from the initial petition of November 12, 2007; and Annex 11. Medical report prepared by Dr. Robert A. Lam. Surgery Service II, University Hospital of Caracas, September 4, 2001, pgs. 122-123. Annex A-4 of the brief from the petitioners, July 14, 2009.

63. The medical record also indicated that an emergency exploratory laparoscopic surgery was performed, she had to have four blood transfusions, and a variety medical services were administered that same night. One of the doctors who took care of her at that time describes the following:

[...]We have 50 years of experience, [...] We receive gunshot wounded and we have never seen a case of so much brutality and cruelty against an individual, it seems that maximum power weapons had been used to cause this damage [...] she had abdominal, genital and face lesions, [...] the brutality and cruelty is extreme [...] the lower lip is very torn up and she had lost almost all the red part of it and it was sort of mashed, the tissue was completely inflamed, she lost it from being beaten, [...] the ears had what you call cauliflower ear, which is chronic and happens when they have been struck repeatedly, the damage to her jawbone and lips can't be more than 15 days old, [...] if not corrected she wouldn't be able to chew or talk or appear in public because she would have looked like a monster, her face would have been sunken in, and that's apart from the pain, the beatings had destroyed her face so badly that the mucosa had been pushed inside [...]³⁷

64. The forensic medicine examination, which consisted of a gynecological and external genital exam, found the presence of an "extensive and scarred tear that extends all the way to the vaginal mucosa and adjacent vulva," "older deflowering and signs of genital trauma produced more than 8 days ago," "scabbed-over abrasion on the nasal dorsum, multiple anfractuous injuries of various sizes on both lips, substantial external loss with signs of infection on the left auricle [...] signs of abrasions on both hands and dorsal lumbar area."³⁸

65. The 33rd Prosecutor of the Office of the Public Prosecutor, which initially assumed investigation of the case, issued an order banning Linda Loaiza López from receiving visitors while she was hospitalized at the University Hospital The State indicated that the measure was taken, "in order to preserve her physical safety and the investigation."³⁹ On July 25, 2001, the 33rd Prosecutor sent an official letter to the legal counsel of the University Hospital Clinic informing them that visits from the mother, the father, and an aunt were allowed.⁴⁰

66. According to the testimony of Linda Loaiza López and her parents, although they requested it and she had been missing for several months, access was only granted when the Office of the Public Prosecutor ordered that the parents be allowed to visit, and they had to demonstrate that "they truly were [her] parents," since there was "also an issue because [they] are foreigners so [they had to] prove the familial relationship."⁴¹ At that time, Paulina Soto was pregnant. She states in her testimony that when she heard the news that her daughter had been found:

³⁷ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Olaf Sadner Montilla, surgeon, pgs. 168-169. Annex D of the brief from the petitioners, July 14, 2009.

³⁸ Annex 13. Ministry of Justice and the Interior. National Directorate of Criminal Investigations (Technical Body of the Judicial Police), General Forensic Medicine Division. Forensic Evidence No. 8.704-2.001 from the forensic medical examination performed on Linda López on July 27, 2001, by forensic doctor José Enrique Moros. Annex A-1 of the brief from the petitioners, July 14, 2009.

³⁹ Brief from the State, October 22, 2014, pg. 16.

⁴⁰ Official Letter No. AMC.C-33-660-2001 of July 25, 2001, of the 33rd Prosecutor of the Public Ministry of the Caracas Metropolitan Area, addressed to Dr. Luis Virgilio Parra, of the legal counsel of the University Hospital Clinic of the Universidad Central de Venezuela. Cited in the brief from the State, October 22, 2014, pg. 16.

⁴¹ Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp> Ana Secilia Soto also stated that she went to the University Hospital after being notified by the 33rd Prosecutor on July 24, 2001, that she stayed with her, but that Linda "was prohibited from receiving any kind of visit, they [her parents] had to go to the Prosecutor to get permission [...]." Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Ana Secilia López Soto, pg. 252. Annex D of the brief from the petitioners, July 14, 2009.

I borrowed money and went immediately [to Caracas], I went directly to the hospital and they didn't let me see her because we had to prove that we were her parents, all day we did paperwork because the PTJ sent us to three different places, then we had to wait for the prosecutor to tell us that we had to wait for the investigations, I was angry. I went to the [Hospital] Clinic, they didn't want me to see her because of my pregnancy, I insisted and they didn't let me, I said that as her mother, I have a right, they gave me five minutes to see her. I said give me strength, it was very hard to see my daughter destroyed, with no hair, no teeth, no lips. She was delirious and shouted that they were torturing her, they gave her an injection and they took us out of the room. Her father was crying [,] he grew frenzied and fainted when he saw her, we never thought she would be so destroyed [...]⁴²

67. For his part, Nelson López stated: “when we saw her, she seemed like a monster, she couldn't speak [...] I didn't think I was going to find my daughter like that.”⁴³ For Ana Secilia López it was “shocking” to see her sister “so disfigured, very traumatized.”⁴⁴ The information available in the case file indicates that the visitation prohibition ordered by the Prosecutor was kept in place for the entire duration of Linda Loaiza López's stay at the University Hospital.

68. The IACHR has the requests made by attorney Juan Bernardo Delgado to the 33rd Prosecutor to be allowed access to interview Linda Loaiza López.⁴⁵ The case file indicates that on November 7, 2001, the 33rd Prosecutor sent communication to the director of the University Hospital of Caracas asking that attorney Juan Bernardo Delgado be allowed access so that he could interview her.⁴⁶ According to the testimony of Linda Loaiza López, it was only as of that time that Juan Bernardo Delgado was able to have access to the case file.⁴⁷

69. Linda Loaiza López remained hospitalized in the University Hospital until December 25, 2001, when she was transferred to the Military Hospital of Caracas where she remained until June 10, 2002.⁴⁸ Later, she also had to be hospitalized several times for a number of different surgeries.⁴⁹

70. Available evidence indicates that Linda Loaiza López went through a slow and exhausting recovery process to heal from the serious injuries she suffered and the multiple medical processes and services that she required during her initial hospitalization and later hospitalizations, including a number of

⁴² Annex 8. Testimony of Paulina Soto. Annex “Varios SF Testimonios Familia Lopez Soto” of the brief from the petitioners, June 20, 2014.

⁴³ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006. Statement of Nelson López, pg. 141. Annex E of the brief from the petitioners, July 14, 2009.

⁴⁴ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Ana Secilia López Soto, pg. 252. Annex D of the brief from the petitioners, July 14, 2009.

⁴⁵ Annex 14. Request of Juan Bernardo Delgado in his capacity as the legal representative of Linda López to the 33rd Prosecutor of the Office of the Public prosecutor of the Caracas Metropolitan Area, dated November 6, 2001; and Annex 15. Request of Juan Bernardo Delgado in his capacity as the legal representative of Linda López to the 33rd Prosecutor of the Office of the Public prosecutor of the Caracas Metropolitan Area, dated October 10, 2001. Both documents in Annex “Folder No. 1. Office of the Attorney General” to the initial petition of November 12, 2007.

⁴⁶ Annex 16. Official Letter No. AMC-33-992-2,001 addressed to the director of the Instituto Autónomo Hospital Universitario de Caracas by the 33rd Prosecutor of the Office of the Public prosecutor of the Caracas Metropolitan Area, dated November 7, 2001. Annex “Folder No. 1, Office of the Attorney General” to the initial petition of November 12, 2007.

⁴⁷ Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

⁴⁸ Annex 17. Dr. Carlos Arvelo Military Hospital. Department of Plastic and Reconstructive Surgery. Medical report of Linda López. No date; and Annex 18. Dr. Carlos Arvelo Military Hospital. Department of Gastroenterology. Intake report on Linda López. October 17, 2002. Both documents in Annex “Folder No. 6 exámenes médicos” to the initial petition of November 12, 2007.

⁴⁹ See for example: Annex 19. Military Hospital Medical History of Linda López, October 18, 2002; Fundación G. Behrens Belissario. Ophthalmological report on Linda López, January 30, 2003; Venezuelan Social Security Institute. Dr. José María Vargas Hospital. Medical report on Linda López, admitted May 22 and discharged on June 13, 2003. All documents in Annex “11 Varios” of the brief from the petitioners, June 20, 2014.

surgeries, reconstructive surgery, psychological and psychiatric treatment, and ophthalmological service.⁵⁰ For example, a medical report from September 2001 indicates that at that time, she was diagnosed with, among other things, a “large hepatic subcapsular hematoma on the left lobe covering the abdomen as a late complication from the multiple traumas she experienced to her abdomen previously;” and she needed “surgery for the triple fracture on her jaw and the maxilo-facial surgery to fix the problems with her upper and lower lips.”⁵¹ By October and November, her status was still clinically defined as “serious” and she suffered from “[...] full healed tearing extending to the vulval mucosa,” injuries from the human papilloma virus, “hematoma on the right jawbone,” “multiple hypochromic scars on the nasal septum [...] deformity on both ears[,] multiple round scars along the lumbar vertebrae [...]”⁵² a “scar on the anterior face of the right thigh,” and “vestiges of contusions on both legs.”⁵³ Linda Loaiza López was also given a nutritional evaluation, as she was suffering from “severe anemia” and weighed 32 kg at the time she was rescued.⁵⁴ She has suffered from cataracts, ovarian cysts, pancreatic pseudocysts, stress-induced amenorrhea, vaginal warts, and other conditions.⁵⁵

71. Linda Loaiza López also suffered serious impacts to her mental health. According to a report from the Forensic Psychiatric Department of the Technical Body of the Judicial Police of October 2, 2001, she was diagnosed with posttraumatic stress syndrome.⁵⁶ The case file contains a second forensic examination performed on May 13, 2003, confirming this diagnosis and indicating that Linda Loaiza López presents with “a generalized malaise characterized by low self-esteem, rejection of herself, rejection of the sexual approaches of others, repressed anger and frustration [...] she is sad and deeply afraid for her safety and integrity [...]”⁵⁷ These forensic examinations were performed by male psychiatrists and a neurologist, one of which stated during the domestic criminal proceeding that Linda had been referred to as “a person who is

⁵⁰ The IACHR case file contains supporting medical documentation on the reconstructive surgeries performed between 2012 and 2013. See: Annex 20. La Trinidad Teaching Medical Center. Dr. Manuel Vicente Gordon Parra, medical report of April 9, 2012. Annex “11 Varios 2012 04 09 Docente La Trinidad – Cirugía Plástica” of the brief from the petitioners, June 20, 2014; and Annex 21. Supporting medical documentation of Dr. Marcos Oziel of February 22 (ear reconstruction) and July 26, 2013 (second surgery). Both documents in Annex “02 Informes Clínicos” of the brief from the petitioners, June 20, 2014.

⁵¹ Annex 10. Medical report of Linda López. University Hospital of Caracas. Department of Surgery, September 4, 2001. Annex A.4 of the brief from the petitioners, July 14, 2009.

⁵² Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Forensic medical review of the General Forensic Medicine Division, signed by Dr. Sinuhe Villalobos, October 25, 2001, pg. 158. Annex D of the brief from the petitioners, July 14, 2009.

⁵³ Annex 22. Visual inspection report of November 2, 2001 pgs. 363-367. Annex A-2 of the brief from the petitioners, July 14, 2009. Linda Loaiza later stated during the criminal trial that the injury on her thigh was caused when her attacker tried to “insert a broomstick in her vagina.”

⁵⁴ Annex 23. University Hospital of Caracas. Nutritional evaluation. Record No. 0709372 of Linda López. November 8, 2001. Annex “Folder No. 6 exámenes médicos” to the initial petition of November 12, 2007.

⁵⁵ See, among others: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Medical report of February 8, 2002, carried out by Dr. Olaf Sadner, and statements of Drs. María Alicia Molina García (dental surgeon), Milagros Nazaret Hernández Molina (ophthalmologist), and Dora Josefina Tovar Hernández (ophthalmologist), pgs. 170-172, 192-195, respectively. Annex D of the brief from the petitioners, July 14, 2009; Annex 24. Dr. José María Vargas Hospital. La Guaira, Vargas state. Medical report of Linda López, no date; medical record of Linda López. Part I and Part II, no date; Fundación G. Behrens Belisario. Ophthalmological report on Linda López. January 30, 2003; University Hospital Clinic. Computer Imaging Unit. CTA exam of Linda López’ abdomen and pelvis. November 30, 2001. Dr. Carlos Arvelo Military Hospital. Department of Plastic and Reconstructive Surgery. Medical report of Linda López. No date; Dr. Carlos Arvelo Military Hospital. Department of Gastroenterology. Intake report on Linda López. October 17, 2002. All documents in Annex “Folder No. 6 exámenes médicos” to the initial petition of November 12, 2007. Also see: Annex 25. Medical report of Linda López. Annex “02 Informes Clínicos” of the brief from the petitioners, June 20, 2014.

⁵⁶ Annex 26. National Directorate of Criminal Investigations Technical Body of the Judicial Police. Psychiatric Forensic Department. Psychiatric Forensic Medicine Report on Linda López, October 2, 2001, signed by forensic psychiatrist Osiel David Jiménez Gonzalez and forensic neurologist Juan Carlos Guedes Rivas. Annex “02 Informes Clínicos C 2201 10 02 LL Informe Médico Forense Psiquiátrico” of the brief from the petitioners, June 20, 2014.

⁵⁷ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Medical exam of Linda López, signed by forensic psychiatrist Osiel David Jiménez and clinical forensic psychologist Juana Azparren, of the Scientific, Criminal, and Forensic Investigations Unit. Official Letter No. 541 of May 13, 2003, pgs. 227-229. Annex D of the brief from the petitioners, July 14, 2009

fearful of the male figure, shocking to her because for her it has been so traumatic.”⁵⁸ Another of the psychiatrists that cared for her at the Military Hospital of Caracas also stated that Linda López “ask[ed] if she [could be] evaluated by a woman, however, [he] continued with the case.”⁵⁹

72. A clinical psychologist that treated her in the same Hospital said that “we had to switch from a male to a female therapist” and described the damage to her integrity and psyche “from the deprivation of liberty, rape, abuse, and also because of her age. [...]”⁶⁰ Another report issued in the Military Hospital of Caracas also diagnosed her as “the victim of rape or terrorism.”⁶¹ The evidence provided in the case file describes the psychotherapeutic and psychiatric treatment she has received for symptoms of anxiety, depression, insomnia, and other symptoms.⁶² Linda Loaiza López stated in the hearing on the merits before the Commission that “[...] as a victim, I can tell you that sexual violence causes irreparable damage, that it is like living through death itself, fighting against it, conquering it, and inheriting its consequences.”⁶³

C. Investigation and judicial proceedings launched into the facts of violence committed to the detriment of Linda Loaiza López Soto

1. Steps and actions taken during the Office of the Public Prosecutor’s criminal investigation (Case File No. F-935.781)

73. On July 19, 2001, the 33rd Office of the Prosecutor ordered the launch of a criminal inquiry and the steps necessary to confirm that a crime had been committed and investigate it. That office also ordered “the securing of all passive and active objects related to the perpetration of the crime.”⁶⁴ As indicated previously, this prosecutor was present when Linda López was rescued.

⁵⁸ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Osiel David Jiménez González, forensic psychiatrist of the National Directorate for the Evaluation and Diagnosis of Forensic Mental Health of the Scientific, Criminal, and Forensic Investigations Unit. Pgs. 224-226. Annex D of the brief from the petitioners, July 14, 2009.

⁵⁹ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of psychiatrist Danilo Jesús Martínez Araujo from the Dr. Carlos Arvelo Military Hospital of Caracas, pgs. 191-192. Annex D of the brief from the petitioners, July 14, 2009. The petitioners indicated that of the total of eight psychologists and psychiatrists who evaluated Linda López, six of them were men. Brief of the petitioners of June 20, 2014, pg. 31. The State did not submit comments on this.

⁶⁰ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of clinical psychologist María Valentina Ramírez Izarra of the Dr. Carlos Arvelo Military Hospital of Caracas, pgs. 184-187. Annex D of the brief from the petitioners, July 14, 2009.

⁶¹ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Medical report of Drs. Danilo Martínez Araujo, María Valentina Ramírez, Mirta Iacobello, Milagros Hernández, Dora Tovar Hernández, and María Villagrana (Military Hospital of Caracas). March 22, 2002, pgs. 188-189. Annex D of the brief from the petitioners, July 14, 2009.

⁶² See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Medical report of May 27, 2002, and statements of clinical psychologists María Valentina Ramírez Izarra (Military Hospital Caracas), psychiatrist Mirta de Jesús Iacobelli Guerrero, and psychiatrist Danilo Jesús Martínez Araujo (Military Hospital Caracas), pgs. 184-192. Annex D of the brief from the petitioners, July 14, 2009; Annex 27. Medical exams of Linda López. Annex “Folder No. 6 Informes médicos” from the initial petition of November 12, 2007; and Annex 25. Medical report on Linda López. Annex “02 Informes Clínicos” of the brief from the petitioners, June 20, 2014.

⁶³ Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

⁶⁴ Official Letter, no number, July 19. 33rd Prosecutor of the Office of the Public Prosecutor. Caracas Metropolitan Area Judicial Circuit. Cited in the brief from the State, October 22, 2014, pg. 23.

74. That same day, the visual inspection of the apartment where Linda López was rescued was carried out and recorded by four officials with the Chacao Police Station under the National Directorate of Criminal Investigations.⁶⁵ They noted the following with regard to the main bedroom:

[...] Everything is in disarray, on the bed is a sheet, a comforter, a strip of cloth, made of cotton with stripes, colors: blue, white, and pink, two pillows, a black pair of underwear, with dark red and yellow stains, and a blue wrapper made of synthetic material containing plant and seed remains, presumably drugs, [...] There is a bag made of synthetic material, black, brand ATLANTIC, containing personal objects, six cigarette butts with the remains of a white powder, presumably drugs, and a rudimentary pipe, made of metal, [... at the far left in the bathroom] is a closet, wooden, containing a pair of black handcuffs, brand "FURY."⁶⁶

75. With regard to the "living room area and balcony," the report only states that it contains "a variety of furniture," including "a desk with a computer and printer, with a synthetic envelope in one of its drawers, yellow, containing plant remains presumed to be drugs and printed pornographic material, reactives were not used due to the characteristics of the case."⁶⁷ The notes on the photographs attached to the visual inspection report found in the case file before the IACHR indicate that: i) in the living room there was a "coffee table" (various objects can be seen on the table that are not described on the photographs or in the report); ii) on the floor "a sound system and two (2) bottles of whiskey inside the apartment" (at least one additional object can be seen and photographed that is not described in the notes); and iii) on the floor of the living room "various equipment" without specification and "sheets containing pornography inside the apartment." The next photographs depict a "desk with several drawers, with various sheets of paper on top with [illegible] pornographic," a "bag with plant remains" in a drawer, "a sheet of paper with a pornographic depiction and some manuscripts," "a pair of handcuffs," "a bed with a comforter and two pillows, with stains from a substance dark red in color [...]." Finally, there is a picture of Linda Loaiza López at the moment of her rescue and while she was still in the apartment, in which at least six officials can be seen to be present.⁶⁸

76. The officials who were present while this was being carried out stated later during the trial that they saw other evidence in the apartment, such as a bullet⁶⁹ and, in the living room, a "liquor bottle, green, with a black cap."⁷⁰ Agent Juan Manuel Guzmán Rivas indicated that the sheets in the room "were dirty, with dark red stains, the mattress also had dark red stains," and that there were spots on the bedroom wall and on a piece of furniture.⁷¹ He also stated that "these objects were transferred to the microanalysis

⁶⁵ Visual Inspection No. 048. Case related to the procedural documents F-935.981. Place: Calle Sojo, residencias 27, piso 2, apto. 2-A, el Rosal. Carried out by Deputy Inspector Hernan Rodríguez, Detective Ignacio González, Detective Juan Guzmán, Detective Ernesto Gonzáles. Brief from the State, October 22, 2014, pg. 8.

⁶⁶ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Visual Inspection No. 048 dated July 19, 2001, pgs. 141-142. Annex D of the brief from the petitioners, July 14, 2009.

⁶⁷ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Visual Inspection No. 048 dated July 19, 2001, pgs. 141-142. Annex D of the brief from the petitioners, July 14, 2009.

⁶⁸ Annex 28. Visual Inspection No. 048. Case related to the procedural documents F-935.981. Place: Calle Sojo, residencias 27, piso 2, apto. 2-A, el Rosal. Photographs 01, 02, 03, 04, 05, 06, 07, 08, 09, 11 and 12. Annex A-8 of the brief from the petitioners, July 14, 2009;

⁶⁹ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Officer Giovanni José Chicco Salas, pg. 130. Annex D of the brief from the petitioners, July 14, 2009.

⁷⁰ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, Manuel Guzmán Rivas from the Scientific, Criminal, and Forensic Investigations Unit, pg. 135. Annex D of the brief from the petitioners, July 14, 2009.

⁷¹ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006. Statement of Officer Manuel Guzmán Rivas from the Scientific, Criminal, and Forensic Investigations Unit, pgs. 56-57. Annex E of the brief from the petitioners, July 14, 2009. For his part, Officer Luis Ignacio González stated that there were also "traces of a hematic nature [...] on the bed and some pillows." Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Officer Luis Ignacio González from the Scientific, Criminal, and Forensic Investigations Unit, pgs. 139. Annex D of the brief from the petitioners, July 14, 2009.

department to evaluate them for blood or semen stains.”⁷² However, some of these descriptions do not appear in the visual inspection report or the photographs of the scene, while others are not consistent with the aforementioned report.⁷³

77. Also, Agent Guzmán Rivas stated that the bullets had not been collected on the day of the inspection.⁷⁴ Also, as established in the judicial proceeding, the mattress from the bedroom in the apartment was also not taken at that time and later went missing.⁷⁵ The information available in the case file also indicates there was other evidence that, despite the forensic examination, does not appear described in the visual inspection report or photographed, including the fact that fingerprints were not found because this was not considered part of the purpose of the visual inspection.⁷⁶

78. Along the same lines, the Commission notes that the ruling to acquit of November 5, 2004 — whose content will be described later on — highlighted omissions including that “[...] not all the evidence to which the police officials refer is pictured in the crime scene photographs complementing Visual Inspection No. 48,” highlighting for example that according to this testimony, “the walls of the room and the whole apartment were covered in blood in semen, however the visual inspection and the photographs taken there do not reflect this.” Likewise, “the green bottles that appeared in the photographs” were not “described in any way.”⁷⁷

79. As far as the Luminol test, the State indicated in the hearing before the IACHR that it was carried out but did not provide more details. Also, in its brief of observations on the merits, the State disputed that the Luminol test was not performed, pointing to the request made on October 30, 2001, by the Eighteenth First Instance Oversight Court.⁷⁸ The Commission notes that the list of steps provided by the State in its brief also includes a request from the 33rd Prosecutor dated October 29, 2001, to the Eighteenth Court for a search warrant for the property located on Avenida Panteón, Residencias Natali, Parroquia San José, Caracas, and the performance of a Luminol test.⁷⁹

80. Although the State indicates that this request was for the place where Linda López was rescued, the documentary evidence found in the case file and the partially-cited text of the request to the prosecutor indicate that the address is not the same as the one for the apartment where Linda Loaiza López was found. On the contrary, the address in question was identified during the judicial proceeding as the

⁷² Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Officer Manuel Guzmán Rivas from the Scientific, Criminal, and Forensic Investigations Unit, pgs. 134-135. Annex D of the brief from the petitioners, July 14, 2009.

⁷³ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 147. Annex D of the brief from the petitioners, July 14, 2009.

⁷⁴ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Agent Juan Manuel Guzmán Rivas from the Scientific, Criminal, and Forensic Investigations Unit, pg. 138. Annex D of the brief from the petitioners, July 14, 2009.

⁷⁵ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Agent Juan Manuel Guzmán Rivas from the Scientific, Criminal, and Forensic Investigations Unit, pg. 312. Annex D of the brief from the petitioners, July 14, 2009.

⁷⁶ See: Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006. Statement of Agent Gerardo Antonio Paiva Serrano, Visual Inspections Division, pgs. 121-122. Annex E of the brief from the petitioners, July 14, 2009.

⁷⁷ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 147. Annex D of the brief from the petitioners, July 14, 2009.

⁷⁸ Official Letter No. 1967 of October 30, 2001, of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, addressed to the Chief of Police of Chacao, Microanalysis Department of the Directorate of Criminal Investigations of the Technical Unit of the Judicial Police. Cited in the brief from the State, October 22, 2014, pg. 30.

⁷⁹ Official Letter No. AMC-F33-964-2001 October 29, 2001, of the 33rd Office of the Public Prosecutor, Dr. Capaya Rodríguez, addressed to the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area Judicial Criminal Circuit. Cited in the brief from the State, October 22, 2014, pg. 17.

address of the residence where the victim lived with her sister from the time they moved to Caracas.⁸⁰ The IACHR also highlights that the Prosecutor based this request on a line of investigation based on the statement of Luis Carrera Almoina to the effect that the injuries suffered by Linda Loaiza López were caused in a different place and not the apartment where she was found.⁸¹

81. Added to this, the Commission understands from the determinations made in the judgment of November 5, 2004, that the stains and the dried blood located in the apartment where Linda Loaiza López was rescued, which were not photographed or legally recorded, were also not subjected to expert forensic analysis or DNA analysis to determine to whom they belonged. The sentence also indicates that a Luminol test was not performed there.⁸²

82. With regard to handling and securing the scene, in their testimony, the officials who were present at the time of the rescue indicated that although the prosecutor who was present coordinated that action, there was initial confusion as far as which authority would be responsible for collecting evidence, since officials from both the Municipal Police of Chacao and the Technical Police were on the scene, along with firefighters and teams from Salud Chacao and the Prosecutor's office, and the owner of the apartment, even while the apartment was being photographed.⁸³ Also, although the Office of the Public Prosecutor ordered the apartment remain locked, the order was not followed, the crime scene was altered, and evidence could not be gathered further at a later date at that scene.⁸⁴

83. With regard to the examinations of Linda Loaiza López, on July 26, 2001, Linda Loaiza López was administered a toxicology test that came out negative "for alcohol, cocaine, marijuana, and morphine."⁸⁵ For its part, the legal medical examination aforementioned *supra* was carried out eight days after the rescue, on July 27, 2001, by a male officer of the Forensic Medicine Unit of the Technical Unit of the Judicial Police.⁸⁶ The IACHR has no documentation to indicate that evidence was collected (such as remains of seminal liquid or by documenting the human bite marks and other injuries) upon her admission to the University Hospital or afterward for performing technical, forensic, chemical, genetic, and/or DNA tests.

84. During the initial months of her hospitalization, Linda Loaiza López was repeatedly interviewed by police officials and the 33rd Prosecutor of the Office of the Public Prosecutor to get her statement on the facts. Linda Loaiza López alleged that the Prosecutor threatened her and force her to sign a sworn statement taken while she was in the University Hospital of Caracas that he did not let her read and

⁸⁰ This is also evident from the corresponding search warrants and orders to gather evidence issued by the Eighteenth Court in response to the Prosecutor's request. See: Search Warrant No. 052-01 of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area Judicial Criminal Circuit, October 30, 2001. Cited in the brief from the State, October 22, 2014, pg. 18.

⁸¹ The documentary evidence that the Commission has available also establishes that the Luminol test of the apartment where Linda López was living also was never carried out because the officials assigned to do it could not find the location using the information found in the judicial case file. See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Police report on home visit No. 052*01, pgs. 274-275. Annex D of the brief from the petitioners, July 14, 2009.

⁸² See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pgs. 313-315. Annex D of the brief from the petitioners, July 14, 2009.

⁸³ See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statements from Juan Manuel Guzmán Rivas from the Scientific, Criminal, and Forensic Investigations Unit, pg. 137; and Giovanni José Chicco Salas, from the Municipal Police of Chacao, pg. 129. Annex D of the brief from the petitioners, July 14, 2009.

⁸⁴ In his testimony, Ángel Rodríguez Torres, the owner of the apartment, stated that "[...] It really struck me that two months later they had not collected his belongings, it took a month for the prosecutor to call me and say that they had to do a visual inspection, and I told him that the things were down in an area that used to be the sauna, the police never got the mattress, the guys who came to paint took it." Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 312. Annex D of the brief from the petitioners, July 14, 2009.

⁸⁵ Official Letter No. 4077 of the Chacao Police Station addressed to the Forensic Toxicology Service, July 25, 2011, and test carried out by the Forensic Toxicology Division of the Technical Division of the Judicial Police, No. 9700-130-9275. Cited by the State in its brief of observations of October 22, 2014, pgs. 7 and 11.

⁸⁶ Letters cited by the State in its brief of observations of October 22, 2014, pgs. 6-7.

while in the presence of an unidentified individual carrying a firearm. She also stated that the Prosecutor told her that she could not accuse Luis Carrera Almoina or his father because “they were innocent.”⁸⁷ Linda López’s parents also allege that in the days following the rescue, the 33rd Prosecutor tried to take her statement “for a full week at different times,” even when she had recently been operated on and could not speak. They alleged that even under these conditions, the Prosecutor proceeded to interrogate her, and Linda “had to answer in writing on a piece of paper.”⁸⁸ No disciplinary investigation was undertaken into these allegations against the aforementioned prosecutor.⁸⁹

85. According to the case file, the following procedures and tests were performed in the context of the investigation:

i) Report on a police interview of Linda Loaiza López on July 26, 2001, at the University Hospital Clinic, carried out by officials of the Technical Unit of the Judicial Police of the Chacao Police Station.⁹⁰

ii) Expert examination of the Toxicology Division of July 27, 2001, performed on “certain objects” found in the apartment where Linda Loaiza López was rescued, giving the following results: “one (01) gram and six hundred (600) milligrams of marijuana and chlorhydrate cocaine residue.”⁹¹

iii) Visual inspection of July 27, 2001, carried out by male officials of the National Directorate of Criminal Investigations of the Technical Unit of the Judicial Police at the University Hospital of Caracas to assess the physical condition of Linda Loaiza López.⁹²

iv) Test of the Forensic Toxicology Division of the Technical Unit of the Judicial Police of July 30, 2001, performed on an “envelope, made of yellow plastic [...] various pieces of partially burned paper [...] and a] homemade pipe [...],” also collected from the place of rescue. The examination detected the presence of “one (01) gram of marijuana [...].”⁹³ This evidence was also not photographed.⁹⁴

v) Forensic legal blood and semen analysis on August 25, 2001, carried out by the Department of Microanalysis of the National Directorate of Criminal Investigations on two pillows, a duvet, a sheet, and a segment of cloth from a blouse showing “[...] samples of blood and hair,” and a pair of “men’s underwear [...] with semen samples.” Although it says the hairs were collected for testing, the information available in the

⁸⁷ See, among other sources: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of Linda Loaiza López Soto, pgs. 117-124. Annex D of the brief from the petitioners, July 14, 2009.

⁸⁸ See: Annex 7. Sworn statement of Nelson López and Paulina Soto before the Colombian General Consul in Venezuela. April 25, 2002. Annex “11 Varios” of the brief from the petitioners, June 20, 2014. Also see: Annex 29. Brief written by Juan Bernardo Delgado, in his capacity as Linda López’s legal representative, to National Assembly Deputy César López, stamped as received on November 26, 2001. Annex “Folder No. 5, National Assembly” of the initial petition of November 12, 2007; and Annex 30. Brief written by Juan Bernardo Delgado to the Attorney General of the Republic, stamped as received on November 14, 2001. Annex “Folder No. 1, Office of the Attorney General” to the initial petition of November 12, 2007.

⁸⁹ Annex 31. Official Letter No. DID-16-1224-65772 of the Director of Inspection and Discipline Office of the Attorney General of the Republic, September 28, 2004. Annex G2 of the brief from the petitioners, July 14, 2009.

⁹⁰ Cited by the State in its brief of observations of October 22, 2014, pgs. 7-8.

⁹¹ Cited by the State in its brief of observations of October 22, 2014, pg. 8.

⁹² Annex 32. Visual Inspection No. 064. Case File No. F-935.981. National Directorate of Criminal Investigations Technical Body of the Judicial Police. Chacao Police Station. Caracas, July 27, 2001, pg. 47. Annex A-7 of the brief from the petitioners, July 14, 2009.

⁹³ Cited by the State in its brief of observations of October 22, 2014, pg. 11.

⁹⁴ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 208. Annex D of the brief from the petitioners, July 14, 2009.

case file does not indicate whether any analysis was later carried out. These tests were only able to determine that the blood stains were “blood type AB.”⁹⁵

vi) Forensic examination of September 3, 2001, performed by the National Directorate of Criminal Investigations on a “small luggage, like a bag, black,” containing three folders with the emblem of the rector of the Universidad Nacional Abierta and the checkbook; three VHS tapes (“erotic games”), a pair of “Fury brand” metallic handcuffs, a maroon address book, a folder “like a portfolio, with the emblem of the Universidad Santa María and the inscription ‘Universidad Nacional Abierta Doctor Gustavo Luis Carrera.’”⁹⁶

vii) Forensic test of blood and semen of September 2001, performed on “forty-three (43) sheets of bond paper, white [...] and two (02) sheets of single-line paper [...],” which detected the presence of blood and semen. Regarding the bloodstains, it was indicated that it was “not possible to determine the specific blood type due to the small amount of material available.”⁹⁷

viii) Medical report of September 4, 2001, performed on Linda Loaiza López in the University Hospital of Caracas.⁹⁸

ix) Medical psychiatric exam performed on Linda Loaiza López on October 2, 2001, by officials of the Department of Forensic Psychiatry of the National Directorate of Criminal Investigations.⁹⁹

x) Psychiatric and psychological evaluation performed on the accused, Luis Carrera Almoina, in October 2001, ordered by the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area.¹⁰⁰

xi) Forensic medical examination performed on Linda López on October 25, 2001, by officials of the General Forensic Medicine Division of the National Directorate of Criminal Investigations.¹⁰¹

xii) Visual inspection of November 2, 2001, performed by the Eighteenth First Instance Oversight Court in the University Hospital of Caracas to establish the physical condition of Linda Loaiza López.¹⁰²

⁹⁵ Cited by the State in its brief of observations of October 22, 2014, pg. 11. Also see: Annex 33. Expert witness report provided by Detective Anerkys Nieto to the Chacao Police Chief. Official Letter No. 0-035-3819, Microanalysis Department of the Technical Body of the Judicial Police, pages 68-70. Annex A-6 of the brief from the petitioners, July 14, 2009.

⁹⁶ Cited by the State in its brief of observations of October 22, 2014, pg. 12; and Annex 34. Test by the Technical Unit of the Chacao Station of the Technical Body of the Judicial Police, of September 9, 2001. Annex A-5 of the brief from the petitioners, July 14, 2009.

⁹⁷ Annex 35. Expert witness report provided by Deputy Inspector Joaquín Valles P. to the Chacao Police Chief. Official Letter 00-035-4357. Day illegible, September of 2001, pgs. 71-72. Annex A-3 of the brief from the petitioners, July 14, 2009.

⁹⁸ Annex 12. Medical report prepared by Dr. Robert A. Lam. Surgery Service II, University Hospital of Caracas, September 4, 2001, pgs. 122-123. Annex A-4 of the brief of the petitioners of July 14, 2009; and cited in Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. May 22, 2006, pg. 156. Annex E of the brief from the petitioners, July 14, 2009.

⁹⁹ Annex 26. National Directorate of Criminal Investigations Technical Body of the Judicial Police. Psychiatric Forensic Department. Psychiatric Forensic Medicine Report on Linda López, October 2, 2001, signed by forensic psychiatrist Osiel David Jiménez Gonzalez and forensic neurologist Juan Carlos Guedes Rivas. Annex “02 Informes Clínicos C 2201 10 02 LL Informe Médico Forense Psiquiátrico” of the brief from the petitioners, June 20, 2014; and cited by the State in its brief of observations of October 22, 2014, pgs. 15-16.

¹⁰⁰ Cited by the State in its brief of observations of October 22, 2014, pgs. 12 and 16.

¹⁰¹ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Forensic medical examination of the General Forensic Medicine Division, signed by Dr. Sinuhe Villalobos, October 25, 2001, pg. 158. Annex D of the brief from the petitioners, July 14, 2009.

¹⁰² According to the corresponding report, the inspection was also performed in the presence of the 33rd Prosecutor, to officials of the Eighteenth Oversight Court, and Dr. José Enrique Moros of the Forensic Medicine Unit. Annex 22. Visual inspection report of November 2, 2001 pgs. 363-367. Annex A-2 of the brief from the petitioners, July 14, 2009.

xiii) Request for general gynecological exam of Linda Loaiza López to the General Forensic Medicine Division of the National Directorate of Criminal Investigations.¹⁰³The IACHR does not have information as to whether this evaluation was effectively performed and is not aware of its results.

86. During the judicial process, it was established that blood samples were not taken from Luis Carrera Almoína or Linda Loaiza López to compare them with the samples that had been collected, “and neither was the semen studied to establish if it belonged to the defendant or to another individual [...]”¹⁰⁴ According to the statement of the experts at the trial, this omission was due to the fact that these tests were not requested when they should have been and because in the case of the genetic test, it was the responsibility of another department that “at that time was not operating [but rather] was in the planning stages.”¹⁰⁵

2. Actions related to the deprivation of liberty of Luis Carrera Almoína

87. On August 22, 2001, the 33rd Prosecutor of the Office of the Public Prosecutor requested that Luis Antonio Carrera Almoína be placed in preventative detention in connection with the alleged crimes of hiding psychotropic or narcotic substances, as established in the Organic Law on Narcotic and Psychotropic Substances in force at the time, and the crimes of rape and causing general personal injury, as established in the Criminal Code in force at the time.¹⁰⁶ On the same date, the case file was assigned to the Eighteenth Oversight Court, which set the date for the “arraignment hearing for the accused” as August 24.¹⁰⁷

88. On September 10, 2001, the arraignment hearing was carried out, attended by the Prosecutor, Luis Carrera Almoína, and his defense attorney. The Office of the Public Prosecutor reiterated the request for preventative detention and asked for authorization to transport the defendant for a toxicology test.¹⁰⁸

89. At the conclusion of the hearing, the Eighteenth Oversight Court ruled to “preliminarily assign criminal responsibility” to Luis Carrera Almoína for the crimes of serious bodily injury, rape, and illegal possession of narcotics. With regard to deprivation of liberty, the Court took into account that not “frequently” individuals charged with crimes of that “nature” appeared voluntarily for the trial proceedings, for which reason it imposed the substitute precautionary measure of house arrest “under constant guard” of

¹⁰³ Requested through Official Letter No. AMC-F33-955-2001, cited by the State in its brief of October 22, 2014, pg. 16.

¹⁰⁴ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 315. Annex D of the brief from the petitioners, July 14, 2009.

¹⁰⁵ See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pgs. 195-196, 201; Statement of expert Anerkys Mabel Nieto de Mayora from the Scientific, Criminal, and Forensic Investigations Unit, pgs. 197-198. Annex D of the brief from the petitioners, July 14, 2009.

¹⁰⁶ Annex 36. Request filed by the 33rd Prosecutor of the Office of the Public Prosecutor of the Caracas Metropolitan Area, Capaya Rodríguez González, before the First Instance Oversight Court of the same judicial circuit August 22, 2001. Annex “Folder No. 2, Office of the Ombudsman” to the initial petition of November 12, 2007.

¹⁰⁷ Actions cited by the State in its brief of observations of October 22, 2014, pg. 32.

¹⁰⁸ See: Annex 37. Decision of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, September 10, 2001. Annex M from the State’s brief, January 16, 2009. Extracts from that decision are also cited in Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pgs. 15-17, 201. Annex D of the brief from the petitioners, July 14, 2009. The IACHR notes that Luis Carrera Almoína stated during the hearing that he had met Linda Loaiza López in a shopping center in Caracas on March 15, 2001; that she had told him that she was being forced to “work as a masseuse;” and that she appeared in a newspaper advertisement together with her sister through which he could get “a contract” to see both of them alone. He said that he called the number in the newspaper and made the payment “for services,” and starting at that moment they began “a relationship as a couple” that lasted approximately four months. He indicated that during that time, he had learned of her family problems and took the opportunity to make a deposit for Linda Loaiza López’s father. He stated that she had written him a number of letters telling him that he was “the best lover in the world.” He stated that he was afraid at the family problems she had because, among other things, she “said that [her father was] an assassin in Colombia.” Luis Carrera Almoína held that the injuries she suffered had been caused by someone else in an unknown place.

police officials. The Court also ordered that the corresponding transportation measures be taken to perform the toxicology test.¹⁰⁹

90. This decision was appealed by both the Public Prosecutor and the defense of the accused. On October 11, 2001, Appellate Court No. 9 of the Caracas Metropolitan Area ruled in favor of the challenge filed by the Public Prosecutor and ordered the accused placed in preventative detention and transported to the El Rodeo I Judicial Jail.¹¹⁰ On October 30, 2001, Linda Loaiza López's attorney complained to the Office of the Ombudsman that the order issued by the Appellate Court had not been complied with and asked it to intercede. He also reported that Linda Loaiza López "feared for her personal integrity, as she [had] received a series of phone calls threatening her life."¹¹¹

91. The case file indicates that on November 2, 2001, the Eighteenth Oversight Court once again ordered home arrest for the accused as a precautionary measure in lieu of prison.¹¹² On November 6, 2001, the same court reversed this measure and ordered preventative judicial deprivation of liberty and charge the Municipal Police of Chacao with transporting him to the penitentiary.¹¹³ The IACHR learned that on November 7, 2001, the Judicial System Operational and Restructuring Commission (CFRSJ) ruled to apply the precautionary measure of a 60-day suspension to judicial official of the Eighteenth Oversight Court "due to the serious allegations brought against him."¹¹⁴ The dispute between the parties on the purpose of this procedure is addressed in the position of the parties. The IACHR does not have additional information on its outcome.

92. That same day, November 6, Luis Carrera Almoina was transferred from the place where he had been placed under house arrest. This was confirmed by the Eighteenth Oversight Judge, who was present.¹¹⁵ According to the police records of the Technical Unit of the Judicial Police, the officers guarding the place "had been instructed not to enter the building," and Luis Carrera Almoina had left in a Universidad Nacional Abierta SUV in the company of his father, and his chauffeur, an employee of the same university. Later, Luis Carrera Almoina and his father boarded the vehicle of another person who was also an employee of the University. He was captured in the early morning hours of the following day in another location in the city of Caracas.¹¹⁶

¹⁰⁹ Annex 37. Ruling of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, September 10, 2001, pgs. 7-8. Annex M from the State's brief, January 16, 2009.

¹¹⁰ Annex 38. Decision of the Appellate Court of the Caracas Metropolitan Area. Chamber No. 9. October 9, 2001. Case No. 0893-01. Annex "Folder No. 2, Office of the Ombudsman" to the initial petition of November 12, 2007.

¹¹¹ See: Annex 39. Hearing form. Case No. E-11684-01. Office of the Ombudsman. Annex "Folder No. 2, Office of the Ombudsman" to the initial petition of November 12, 2007; and Annex 40. Communication of November 5, 2011, of the Director of Investigations of the General Directorate of Citizen Response of the Office of the Ombudsman. Case No. 44684-01. Annex "Folder No. 2, Office of the Ombudsman" to the initial petition of November 12, 2007.

¹¹² Annex 41. Official Letter No. 1977 of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, addressed to the Director of the El Rodeo I Judicial Prison, November 2, 2001. Annex "Folder No. 2, Office of the Ombudsman" to the initial petition of November 12, 2007.

¹¹³ Annex 42. Ruling of the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area. Official Letter No. 1992 of November 6, 2001, addressed to the Director of the Autonomous Institution of the Police of Chacao. Annex P from the State's brief, January 16, 2009.

¹¹⁴ Annex 43. Resolution of the Judicial System Operational and Restructuring Commission of November 7, 2001. Annex Q to the State's brief of January 16, 2009.

¹¹⁵ See: Annex 44. Final report of the joint team of parliamentarians established to carry out the mandate of the Plenary of the National Assembly of the agreement related to the court decision made in the case of citizen Linda López Soto. February 25, 2005, pgs. 14-15. Annex "Folder No. 5, National Assembly" to the initial petition of November 12, 2007.

¹¹⁶ Annex 45. Police reports of November 6, 2001. National Directorate of Criminal Investigations. Technical Body of the Judicial Police. Chacao Police Station. Annex Ñ of the brief of the State of January 16, 2009.

93. A criminal investigation was launched into the facts surrounding the escape,¹¹⁷ in the context of which on November 7 and 8, 2001, the arraignment hearing was held for Luis Carrera Almoína, his father and the other two employees of the Universidad Nacional Abierta. The Office of the Public Prosecutor charged them, respectively, with the crimes of escape, facilitating the escape of a detainee, and misuse of public property; and for the other two individuals, cover-up.¹¹⁸ In a decision dated November 8, 2001, the Oversight Court ordered preventative detention for all of the accused.¹¹⁹

3. The first oral trial and other allegations of irregularities during the judicial process

94. On November 5, 2001, the 33rd Prosecutor charged Luis Antonio Carrera Almoína with attempted first-degree murder, rape, and illegal deprivation of liberty.¹²⁰ The Office of the Public Prosecutor indicated that Linda Loaiza López was deprived of liberty by the accused on March 27, 2001, and that while she was held against her will and under threat, Luis Carrera Almoína

[...] caused injuries to the victim that could have resulted in her death if it were not for the timely intervention of the police and doctors that to this day continue to treat her; all with the goal of satisfying his exaggerated sexual cravings, which even led him to torture the victim to such a degree that injuries were caused to her ears, her eyes, even performing more subtle torture on her such as burning her with cigarette butts on her private parts and causing other physical damage like making her lose her mouth, as well as causing other deformities that perhaps can only be fixed through surgery [...] and all this in addition to the moral, traumatic, and psychiatric injuries that may never be fully healed; all of this means that at her youth, it will be physically and morally impossible for her to continue to be the same person she once was, working as a professional in with a certificate in zootechnics, something she was not able to accomplish because of the painful situation she is currently facing.¹²¹

95. The preliminary hearing was set for November 20, 2001, but it did not take place because Luis Carrera Almoína's defense had not been sworn in and because the Eighteenth Oversight Court agreed to add the aforementioned case of the defendant's escape.¹²²

96. On November 19, 2001, the representative of Linda Loaiza López filed private prosecution charges on his own behalf against Luis Carrera Almoína for the crimes of attempted first-degree murder, rape, and illegal deprivation of liberty, as defined in the Criminal Code in force at the time. He also filed a criminal complaint for the crime of torture as established in the Rome Statute of the International Criminal Court, which was approved in a law passed by the Congress of the Republic of Venezuela on December 7,

¹¹⁷ Annex 46. Report on the launch of investigations of November 6, 2001. 40th Prosecutor of the Caracas Metropolitan Area. Annex Ñ of the brief of the State of January 16, 2009 and Annex 45. Police report of November 6, 2001. National Directorate of Criminal Investigations Technical Body of the Judicial Police. Chacao Police Station. Annex Ñ of the brief of the State of January 16, 2009.

¹¹⁸ Annex 47. Record of presentation hearing of the accused, November 7 and 8, 2001. Case No. 44C-761-01. Fortieth First Instance Oversight Court of the Caracas Metropolitan Area. Annex O of the brief of the State of January 16, 2009.

¹¹⁹ Annex 48. Decision of the Fortieth First Instance Oversight Court of the Caracas Metropolitan Area, November 8, 2001. Case No. 44C-761-01. Annex O of the brief of the State of January 16, 2009.

¹²⁰ Annex 49. Charges of the 33rd Prosecutor of the Office of the Public Prosecutor of the Caracas Metropolitan area before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, November 5, 2001. Annex N of the brief of the State of January 16, 2009.

¹²¹ Annex 49. Charges of the 33rd Prosecutor of the Office of the Public Prosecutor of the Caracas Metropolitan area before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, November 5, 2001. Annex N of the brief of the State of January 16, 2009.

¹²² Event cited by the State in its brief of observations of October 22, 2014, pg. 40. Also see: Annex 50. El Universal. "Retrasado el juicio a Carrera." November 25, 2001. Annex "10 Notas periodísticas" of the brief from the petitioners, June 20, 2014.

1999.¹²³ On December 11, 2001, the representative filed charges for a second private prosecution for the same crimes against Luis Carrera Almoína's father and the other two individuals involved in the case on the escape.¹²⁴

97. On November 28, 2001, the Office of the Public Prosecutor filed charges for the crimes indicated in this latter case. Also, after a number of postponements, the preliminary hearing was held on December 17, 2001, during which the Eighteenth Oversight Court fully admitted the charges brought by the Office of the Public Prosecutor. It also partially admitted the charges in the private prosecution brought by the attorney of Linda Loaiza López, dismissing the related charges against the two employees of the Universidad Nacional Abierta.¹²⁵

98. On January 2, 2002, the Eighteenth Oversight Court issued the order to proceed with the trial of: Luis Carrera Almoína for the crimes of attempted first-degree murder, rape, illegal deprivation of liberty, and the crime of impeding and obstructing the justice of a judicial proceeding through fraud; of Luis Carrera Almoína's father for the crimes of impeding and obstructing the execution of a judicial action through fraud and the crime of misappropriation; and of one employee of the Universidad Nacional Abierta, for the crime of concealing an offense.¹²⁶ The following January 10, the date to begin the oral and public trial was set as February 5, 2002.¹²⁷

99. According to the information found in the case file, multiple postponements were later submitted prior to the oral trial hearing, for multiple reasons. One was the formation of a mixed tribunal with lay magistrates. Between February and August 2002, a number of failed attempts were made to select and form the aforementioned tribunal.¹²⁸ On August 22, 2002, at the request of the defendant's representation, the Thirtieth First Instance Trial Court admitted this request and scheduled the oral trial for October 14, 2002.¹²⁹

100. The trial hearing was later postponed to October 14 (at the request of the counsel of two of the defendants); November 8 (for the excused absence of the Prosecutor) and December 14, 2002 (time off for the Christmas holiday); February 3 (at the request of the attorney of Linda Loaiza López because of her health and the failure of the Prosecutor and Luis Carrera Almoína to attend, the latter of which "refused to come out of his cell"), March 17 (at the request of the attorney of Linda Loaiza López because of her health), May 6 (at the request of the Prosecutor), May 19 (at the request of Linda Loaiza López's attorney because of her health); and June 2 (over a failure to transport Luis Carrera Almoína and the failure of Linda Loaiza López and her attorney to attend).¹³⁰ On June 4, 2003, the Office of the Public Prosecutor again requested that the

¹²³ Promulgated in the Official Gazette, special edition No. 5,507 of December 13, 2000. Annex 51. Brief of the private prosecution filed by Juan Bernardo Delgado before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, November 19, 2001. Annex B of the brief from the petitioners, July 14, 2009.

¹²⁴ Annex 52. Brief of the private prosecution filed by Juan Bernardo Delgado before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area, December 11, 2001. Annex C of the brief from the petitioners, July 14, 2009.

¹²⁵ Actions cited by the State in its brief of observations of October 22, 2014, pg. 42; and Annex 53. Record of the preliminary hearing of December 17, 2001, before the Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area. Annex S to the State's brief of January 16, 2009.

¹²⁶ Annex 54. Order to proceed to trial in case 18-621-01. Eighteenth First Instance Oversight Court of the Caracas Metropolitan Area. January 2, 2002. Annex S to the State's brief of January 16, 2009.

¹²⁷ Action cited by the State in its brief of observations of October 22, 2014, pg. 42.

¹²⁸ See: State's observations of January 15, 2009, pgs. 19-21; and Annex 55. Constitutional Chamber of the Supreme Tribunal of Justice of July 19, 2004 Case File No. 04-0469. Annex "Folder No. 4, Supreme Tribunal of Justice" to the initial petition of November 12, 2007.

¹²⁹ See: Observations of the State of October 22, 2014, pg. 44; 19-21; Annex 55. Decision of the Constitutional Chamber of the Supreme Tribunal of Justice of July 19, 2004. Case File No. 04-0469. Annex "Folder No. 4, Supreme Tribunal of Justice" to the initial petition of November 12, 2007. Annex 56. Decision of the Appellate Court. Interim Chamber No. 3 of the Caracas Metropolitan Area, acting as a constitutional court, January 26, 2004. Annex V to the State's brief of January 16, 2009.

¹³⁰ See: Observations of the State of January 15, 2009, pg. 22; Annex 55. Decision of the Constitutional Chamber of the Supreme Tribunal of Justice of July 19, 2004. Case File No. 04-0469. Annex "Folder No. 4, Supreme Tribunal of Justice" to the initial petition of

[continues ...]

hearing be postponed “until the victim is able (based on medical reports) to appear and give her corresponding testimony.”¹³¹

101. According to the case file, on June 6, 2003, the Thirtieth First Instance Trial Court dismissed the charges brought in the private prosecution because of “repeated failure to attend” the trial hearing.¹³² The attorney of Linda Loaiza López filed a request for reconsideration based on the fact that the failure to appear was for health reasons.¹³³ The request for reconsideration was rejected,¹³⁴ in response to which on October 23, 2003, Linda Loaiza López sought a writ of constitutional protection (*amparo*). After rejection in first instance, the Constitutional Chamber of the Supreme Tribunal of Justice granted the writ “due to violations of constitutional rights and guarantees,” returning her to the status of private complainant in the proceeding.¹³⁵

102. On September 9, 2003, Linda Loaiza López filed a complaint with the General Inspectorate of Tribunals against the individual in charge of the Thirtieth Trial Court for a variety of irregularities that took place during the processing of the procedure, mainly with regard to the dismissal of the charges brought through private prosecution.¹³⁶ The case file before the IACHR also contains a complaint filed by the chairman of the Permanent Interior, Justice, Human Rights, and Constitutional Guarantees Committee of the National Assembly on the serious irregularities in the proceeding before that court authority and the mistreatment Linda Loaiza López had received there.¹³⁷ The actions of the aforementioned judge were also reported by Linda Loaiza López and her attorney to the Office of the Ombudsman.¹³⁸

103. The list of actions reported by the State indicates that the trial hearing was scheduled to be held on July 26, 2004. However, the hearing once again could not be held at the scheduled time. On August 3, 2004, the attorney of Linda Loaiza López reported that so far, the trial had been delayed 29 times, 26 of which were attributable to the defendants’ legal counsel.¹³⁹

[... continuation]

November 12, 2007. and Annex 56. Final report of the joint team of parliamentarians established to carry out the mandate of the Plenary of the National Assembly of the agreement related to the court decision made in the case of citizen Linda López Soto. February 25, 2005. Annex “Folder No. 5, Office of the Attorney General” to the initial petition of November 12, 2007.

¹³¹ Action cited by the State in its brief of observations of January 15, 2009, pg. 23. See: Annex 56. Decision of the Appellate Court. Interim Chamber No. 3, acting as a constitutional court, January 26, 2004. Annex V to the State’s brief of January 16, 2009.

¹³² See: Annex 57. Decision of the Thirtieth First Instance Criminal Trial Court of the Caracas Metropolitan Area, June 6, 2003. Annex T from the State’s brief, January 16, 2009; and Annex 56. Decision of the Appellate Court. Interim Chamber No. 3 of the Caracas Metropolitan Area, acting as a constitutional court, January 26, 2004. Annex V to the State’s brief of January 16, 2009.

¹³³ See: Annex 58. Decision of the Thirtieth First Instance Criminal Trial Court of the Caracas Metropolitan Area, July 11, 2003. Annex U of the brief of the State of January 16, 2009.

¹³⁴ Annex 58. Decision of the Thirtieth First Instance Criminal Trial Court of the Caracas Metropolitan Area, July 11, 2003. Annex U of the brief of the State of January 16, 2009.

¹³⁵ See: Annex 59. Decision of the Constitutional Chamber of the Supreme Tribunal of Justice of December 1, 2003. Case File No. 03-2921. Annex “Folder No. 4, Supreme Tribunal of Justice” to the initial petition of November 12, 2007; Annex 60. Appeal filed by Linda López with the assistance of her attorney, Juan Bernardo Delgado, before the Supreme Tribunal of Justice, stamped as received on November 3, 2003. Annex “Folder No. 4, Supreme Tribunal of Justice” to the initial petition of November 12, 2007; Annex 56. Decision of the Appellate Court. Interim Chamber No. 3, acting as a constitutional court, January 26, 2004. Annex V to the State’s brief of January 16, 2009.

¹³⁶ Annex 61. Brief from Linda López with the assistance of her attorney, Juan Bernardo Delgado, before the Supreme Tribunal of Justice, stamped as received on September 9, 2003. Annex “Folder No. 3, Inspectorate of Tribunals” to the initial petition of November 12, 2007.

¹³⁷ Annex 62. Brief from Carlos Tablante, chairman of the Permanent Interior, Justice, Human Rights, and Constitutional Guarantees Committee to the Inspector General of Tribunals, September 18, 2003. Annex “Folder No. 3, Inspectorate of Tribunals” to the initial petition of November 12, 2007.

¹³⁸ See: Annex 63. Brief from Linda López with the assistance of her attorney, Juan Bernardo Delgado, before the Ombudsman, stamped as received on November 12, 2003. Annex “Folder No. 2, Office of the Ombudsman” to the initial petition of November 12, 2007.

¹³⁹ See: Annex 64. Recusal brief filed by Juan Bernardo Delgado, in representation of Linda López before the Supreme Tribunal of Justice, stamped as received on August 3, 2004. Annex “08 Tribunal Supremo de Justicia” of the brief from the petitioners, June 20, 2014. In its brief of observations of October 22, 2014, the State provided details of the postponements declared during this stage of the proceeding.

104. The Commission has documentary evidence on a number of postponements during the stage prior to the oral hearing requested by judges assigned to the proceeding.¹⁴⁰ Regarding this, a report issued afterward by the National Assembly monitoring this proceeding found that during this proceeding, there was a “high number of recusals and disqualifications of judges hearing the case, indicating serious irregularities in the administration of justice in Venezuela [...]”¹⁴¹ The IACHR highlights in this context that one of the disqualifications submitted — in October 2003 — was based on the fact that the judge in question had received an anonymous phone call in her office threatening to kill her and her children if she freed Luis Carrera Almoína.¹⁴² This fact, among others, was reported by Linda Loaiza López’s attorney to the Office of the Attorney General of the Republic as part of a potential “climate of violence” that sought to prevent the trial hearing from being held.¹⁴³

105. In addition, on September 3 and 15, 2004, the attorney of Linda Loaiza López reported the postponements that had been submitted during the proceeding, the delay in holding the trial hearing, the multiple postponements submitted, and the requests for disqualification to the Office of the Ombudsman and the General Inspectorate of Tribunals. He alleged that some of the disqualifications were submitted out of order, after the counsel for the defendants applied for recusals that were not granted. He asked for an investigation into this, detailing the actions of seven judges who had been assigned to the case and the more than 30 courts that had been involved in the process in some way.¹⁴⁴ With regard to this and the allegations to the Office of the Ombudsman, there is no indication of the actions taken in 2004. The case file case that in 2006, Juan Bernardo Delgado responded to a request for more details from the General Inspectorate of Tribunals.¹⁴⁵ According to available information, on November 6 and 7, 2006, Linda Loaiza López and her attorney received notifications indicating that a disciplinary proceeding was launched against one of the

¹⁴⁰ See: Annex 65. Record of Disqualification, September 18, 2003. Caracas Metropolitan Area Criminal Judicial Circuit. First Instance Criminal Trial Tribunal. Third Judge. Annex B from the State’s brief, January 16, 2009. Annex 66. Record of Inhibition of October 27, 2003. Tenth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Judicial Circuit. Annex C of the brief of the State of January 16, 2009; Annex 67. Record of Inhibition November 4, 2003. Fifteenth First Instance Criminal Trial Court of the Caracas Metropolitan Area. Annex D of the brief of the State of January 16, 2009; Annex 68. Inhibition Record of May 10, 2004. Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Annex F of the brief of the State of January 16, 2009; Annex 69. Record of Inhibition of July 28, 2004. Twelfth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area. Annex G of the brief of the State of January 16, 2009; Annex 70. Record of Inhibition of August 17, 2004. Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area. Annex H of the brief of the State of January 16, 2009; Annex 71. Record of Inhibition of August 19, 2004. First First-Instance Criminal Trial Tribunal of the Caracas Metropolitan Area. Annex I of the brief of the State of January 16, 2009. Also found in the IACHR case file is a request for disqualification of the 40th and 74th Prosecutors of the Office of the Public Prosecutor of the Caracas Metropolitan Area assigned to the proceeding from December 2003. See: Annex 72. Official Letter No. FMP-74^o -AMC-1802-03 of December 4, 2003, addressed to the Twentieth First Instance Criminal Trial Judge of the Caracas Metropolitan Area. Annex E of the brief of the State of January 16, 2009.

¹⁴¹ Annex 44. Final report of the joint team of parliamentarians established to carry out the mandate of the Plenary of the National Assembly of the agreement related to the court decision made in the case of citizen Linda López Soto. February 25, 2005, pg. 5. Annex “Folder No. 5, Office of the Attorney General” to the initial petition of November 12, 2007. Among its other addenda supporting this, the report contains a list of 44 judges who heard the Linda Loaiza López between August 2001 and July 2004.

¹⁴² According to the disqualification report, these facts were reported to the Scientific, Criminal, and Forensic Investigations Unit. The IACHR does not have any additional information on the course taken by that investigation. See: Annex 66. Record of Disqualification of October 27, 2003. Tenth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Judicial Circuit. Annex C of the brief of the State of January 16, 2009.

¹⁴³ Annex 73. Request of Juan Bernardo Delgado in his capacity as the legal representative of Linda López to the Office of the Attorney General of the Republic, stamped as received on October 28, 2003. Annex “Folder No. 1, Office of the Attorney General” to the initial petition of November 12, 2007. Regarding this report, the case file includes communication of November 25, 2003, informing Linda López that a prosecutor of the Office of the Public Prosecutor had been named to look into these facts. The IACHR does not have information as to whether anymore steps were taken in this inquiry. See: Annex 74. Official Letter No. DDC-R-57888 of November 25, 2003, addressed to Linda López and signed by the Director of the Common Crimes division of the Office of the Attorney General of the Republic, Ramón Alfredo Medina Martínez. Annex “Folder No. 5, National Assembly” to the initial petition of November 12, 2007.

¹⁴⁴ See: Annex 75. Report filed by Juan Bernardo Delgado to the Office of the Ombudsman on September 3, 2004. Annex “Folder No. 2, Office of the Ombudsman” to the initial petition of November 12, 2007. Annex 76. Report filed by Juan Bernardo Delgado to the General Inspectorate of Tribunals on September 15, 2004. Annex “Folder No. 3, Inspectorate of Tribunals” to the initial petition of November 12, 2007.

¹⁴⁵ Annex 77. Brief of May 31, 2006, filed by Juan Bernardo Delgado as the representative of Linda López to the General Inspectorate of Tribunals. Annex “07 Inspectoría Tribunales” of the brief from the petitioners, June 20, 2014.

judges who issued the acquittal referred infra, and for which it is indicated that the General Inspectorate of Tribunals decide to dismiss.¹⁴⁶

106. In August 2004, Linda Loaiza López went on a hunger strike in front of the doors of the Supreme Tribunal of Justice.¹⁴⁷ In the hearing before the IACHR, she stated that she took this measure protest to demand the start of the oral trial and because by that time, “more than 60 judges (...) [had] recused themselves from hearing the case simply because the attacker is the son of an important public figure in Venezuela.”¹⁴⁸

4. Oral trial and acquittal in Judicial Process No. 20,253

107. The oral trial was held in October of 2004. It concluded on October 21, 2004, with the Twentieth First Instance Trial Court ruling to acquit Luis Carrera Almoína, his father and the employee of the Universidad Nacional Abierta of the crimes for which they were charged.¹⁴⁹ On November 5, 2004, the Twentieth Court issued the corresponding sentence with the reasoning to provide justification for its decision.

108. In this section, the Commission reviews some aspects of the oral trial and the reasoning of the aforementioned sentence of November 5, 2004.¹⁵⁰

109. Prior to the start of the oral trial, the legal counsel of Luis Carrera Almoína asked that it be carried out “behind closed doors” in keeping with the provisions of the Organic Criminal Procedural Code in force at the time for certain crimes qualifying to public indictment. Linda Loaiza López’s position was that the trial should be public. The judge ruled that the oral arguments would take place “partially behind closed doors,” specifically when the arguments touched on “crimes against good customs.”¹⁵¹

110. The text of the sentence indicates that the defense counsel of Luis Carrera Almoína reiterated his version of events: that he had a romantic relationship with Linda Loaiza López, that he was trying to help her because of her family and economic situation, and that the injuries and attacks she suffered were caused by another person. The defense indicated that everything started when Luis Carrera Almoína decided to call for the services of escorts advertised in the newspaper “for the normal purposes of the needs [...] of men.” The sentence indicates that Linda Loaiza López’s attorney objected to these expressions because

¹⁴⁶ See: Annex 78. Request to reconsider submitted by Linda López and her attorney to the General Inspectorate of Tribunals on November 10, 2006. Annex “07 Inspectoría Tribunales” of the brief from the petitioners, June 20, 2014.

¹⁴⁷ The case file before the IACHR contains a number of news items from the media coverage of the trial and Linda López’s allegations regarding the irregularities of the process. See: Annex 49. Annex “10 Notas periodísticas” of the brief from the petitioners, June 20, 2014; and Annex 80. News items. Annex to the initial petition of November 12, 2007.

¹⁴⁸ Hearing on the Merits No. 17, Case of Linda Loaiza López Soto and relatives (Venezuela), 154th Period of Sessions, March 2015. Statement of Linda Loaiza López Soto. Available at: <http://www.oas.org/es/cidh/multimedia/sesiones/154/default.asp>

¹⁴⁹ Action cited by the State in its brief of observations of October 22, 2014, pg. 58.

¹⁵⁰ In addition to the considerations cited hereinafter, the sentence of the Twentieth Court acquitted the defendants with regard to: i) the crime of impeding and obstructing a judicial action through fraud, as Luis Carrera Almoína and his father were charged with, reasoning that what happened on leaving the place where he had to serve his house arrest was a failure to comply with that measure, meaning that the corresponding response would be to revoke that measure pursuant to Article 271 of the Organic Criminal Procedural Code in force at that time; ii) the crime of embezzlement, with which the father of Luis Carrera Almoína was charged, reasoning that he had acted “out of necessity,” exempting him from criminal responsibility because the life of his son was “in grave danger, since he was being accused of criminal acts that caused a national uproar, all because of how the case in question was covered in the media, and what was affecting his child compelled him, giving his status as a father [...]; and iii) the crime of cover-up with which the employee of the Universidad Nacional Abierta was charged, reasoning that it had not been proven that this individual “intended to aid in the failure to comply with a precautionary measure in lieu of prison.” Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge tribunal, November 5, 2004. Case No. 20,253, pgs. 388, 392-397. Annex D of the brief from the petitioners, July 14, 2009.

¹⁵¹ Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge tribunal, November 5, 2004. Case No. 20,253, pg. 3. Annex D of the brief from the petitioners, July 14, 2009.

they were offensive to her as the victim in this proceeding. However, the judge found that nothing “had been said to offend the victim” and that the right of the defense to make his arguments should be respected. The attorney for the defense stated that what had happened was a “consensual [...] meeting between the quote-unquote worker and [her] client and there was space for them to fall in love [...] and that’s how] a relationship [began].” The defense stated the following:

[...] if we delve a little further into the start of this situation, we ask ourselves, who is LINDA LOAIZA LOPEZ SOTO? Well, according to the information provided and documented, [...] she is a humble young woman from a village [in the] State of Mérida, a young woman who [...] comes to Caracas with the specific desire to move forward [...] but she never really found these marvelous opportunities that she was dreaming of [...] what she did find was a kind of job that I’m not going to specifically describe, but we all know is the oldest profession in the world, so LINDA LOAIZA LÓPEZ comes in contact with [Carrera Almoína], a person who is to a certain extent cultured, has a certain standing in society, we’re not going to say that he is rich man, but he is a man who at that time had certain financial means that enabled him certain indulgences, for example good restaurants, nice meals, a decent vehicle, [...] [Carrera Almoína] was dazzling for LINDA LOAIZA LOPEZ SOTO and made her fall in love and on [April 27, 2001], she gives him some wallet-sized photos where on one of them she writes ‘Here’s something simple I’m giving you with much love and tenderness and of great value’ [...] after] a month and several days [from the first encounter] they started going out, to put it one way, and now LINDA LOAIZA LOPEZ SOTO felt like she lucked out, going from Tucaní, a humble village [...] to this great metropolis and getting an extraordinary man, but what really happens with the job LINDA LOAIZA LOPEZ SOTO is doing is that [Carrera Almoína] had to accept her whim to continue doing that job [...].¹⁵²

111. The defense argued that the “romantic problems” started when he learned of her family problems, especially the problems with her sister, Ana Secilia López, who she did not get along with, and because Linda Loaiza López was coming home beaten up without telling him why and “because she was so stubborn” she did not let him help her. Luis Carrera Almoína also stated that at some of their encounters she was “on drugs” and “enraged” because she had also fought with another man who “she had also taken a piece out of.” He also stated that the facts of July 19, 2001, took place while Linda Loaiza López was “both mentally and emotionally disfigured because [...] her partner was no longer going to be her partner,” and after arguing with Luis Carrera Almoína, she had decided to appear at the window of the apartment where she was rescued “in the conditions that [according to the defense have not been demonstrated]. Also, with regard to the facts of sexual violence, he reiterated that the relations were always consensual and questioned whether insertion of “bottles [...] in the anus” or “hands in the vagina” could really be possible in “such an intimate and delicate space.”¹⁵³

112. In his testimony, Luis Carrera Almoína answered the Tribunal’s questions on the supposed “work” Linda Loaiza López did with the escort service, her reaction when Luis Carrera Almoína decided to end the “relationship,” and, among other things, asked him if she ever attacked him, to which he responded that “without realizing it, [Linda] hit [him].”¹⁵⁴

113. The Commission highlights certain aspects of the analysis used by the Twentieth Court both in assessing the evidence, testimony, and expert witness testimony and in its reasoning in acquitting the defendant.

¹⁵² Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge tribunal, November 5, 2004. Case No. 20,253. Annex D of the brief from the petitioners, July 14, 2009.

¹⁵³ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253. Annex D of the brief from the petitioners, July 14, 2009.

¹⁵⁴ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pgs. 70, 90-91. Annex D of the brief from the petitioners, July 14, 2009.

114. With regard to the evidence offered during the trial on the physical and psychological injuries suffered by Linda Loaiza López, the court established that she suffered from trauma, depression, posttraumatic stress syndrome, cataracts on her eyes, and other ailments, but took into consideration other aspects such as: i) it was “difficult to establish the object” that had been used to cause certain injuries, like the injuries she indicated had been caused with a “broomstick” that the accused tried to insert in her vagina, indicating that it could have been caused by “something smaller;” ii) she had some scars that were “recent and others that were not, it seemed as if she had been penetrated on multiple occasions;” iii) according to the statement of a clinical psychologist, the posttraumatic stress “could have been caused by rape, abuse, or torture [...] however, [Linda failed to indicate to this psychologist] the name of her attacker;” and iv) while the “anomaly” in her eyes could have been caused by trauma, given that she had not been evaluated by a pathologist, there was no “clear and certain determination of their origin” and the word of the victim was not “enough.”

115. Based on the forensic assessment, the court agreed that Linda Loaiza López had been “sexually abused, given the characteristics of her vagina.” With regard to the rape and attempted first degree murder that Luis Carrera Almoina was charged with, the court took into account the contradiction between Linda’s testimony and the testimony of the shift supervisor of the University Hospital Clinic where she was admitted the night of her rescue, who stated during the trial that she said she had also been raped by other individuals¹⁵⁵ The court determined that there had been serious failures in the collection of evidence, in securing the place where Linda López was rescued, in safeguarding the chain of custody of the evidence, and in photographing the scene, among other things.¹⁵⁶ The sentence includes an analysis of how crucial these elements of the investigation are.

116. Also taking into account the content of Article 375 of the Criminal Code, the court found that the violence required for the crime of rape must “be necessary to overcome the resistance of the passive subject, and the threat should be to cause an injury sufficiently serious that the threatened person cedes to the demands of the active subject.” The Court reiterated that although it had been confirmed that the crimes of attempted first-degree murder and rape had been committed, the fact that her statements and the statements of the defendant were “totally contradictory” made it necessary to corroborate the “credibility” of the victim’s testimony.¹⁵⁷ In that context, the court concluded that:

[...] We can observe that the statements of the victim in this case to the effect that the defendant is responsible for her injuries, and on the carnal access, which allowed for the confirmation of the existence of the crime (sic) of ATTEMPTED FIRST-DEGREE MURDER and RAPE, they have not been corroborated with other evidentiary elements, as the testimony of the officials [...] who conducted the Visual Inspection of the location where the victim was found, in response to questions they were asked, stated that they had not found broken broomsticks, gags, or any instrument that could crush flesh, or pinch, or any other blunt object that would allow for establishing that it was used to cause the serious injuries to her, statements which coincide with the photographs of the scene [...] where it is indicated that the forensic evidence [of a different kind] was collected.”¹⁵⁸

117. With regard to Linda Loaiza López’s statements to the effect that she had been kidnapped by Luis Carrera Almoina on leaving her place of residence, the court determined that this statement was “discredited” given that the examination ordered to be practiced at that place could not be carried out

¹⁵⁵ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pgs. 156, 177. Annex D of the brief from the petitioners, July 14, 2009.

¹⁵⁶ See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, pg. 313. Annex D of the brief from the petitioners, July 14, 2009.

¹⁵⁷ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pg. 309. Annex D of the brief from the petitioners, July 14, 2009.

¹⁵⁸ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pgs. 310-311. Annex D of the brief from the petitioners, July 14, 2009.

because the officials could not locate it.¹⁵⁹ As far as the omissions of failing to perform blood tests to compare the victim's blood with that of the defendant and failing to analyze the semen found in the apartment, the court found that these "physical evidence" was of "vital importance to resolve this case," in light of which fact it found that "on failure to demonstrate that the victim, LINDA LOAIZA LÓPEZ SOTO, was beaten while in the apartment where she was found, the defendant's statement to the effect that the injuries were caused in a different place and by other individuals must be accepted [...]"¹⁶⁰

118. The IACHR also highlights that the analysis used by the Twentieth Court to confirm the truth of Luis Carrera Almoina's version of the facts revolved around the fact that some of the testimony supported his claim that they were in a romantic relationship.¹⁶¹

119. As far as the information contained in the newspaper advertisement submitted as complementary evidence by the legal counsel of the defendant, the court dismissed the Office of the Public Prosecutor's objection and found that the evidence was "useful, pertinent, and necessary" because it contained a telephone number that established the alleged link between the López Soto sisters and "the individuals who published the ad" and "to which the victim made reference on the day [she and the defendant] met each other." The sentence indicates that during the trial, it was demonstrated that "the day the defendant said he met Linda" he received a phone call from the phone number appearing in the advertisement and that calls had also been made to Ana Secilia and vice-versa.¹⁶² Based on that evidence, the court also found that Linda Loaiza López's testimony on how she had been kidnapped by the defendant was discredited and that Luis Carrera Almoina's version was "plausible" insofar as its claim that the attacks on Linda Loaiza López "were caused by third part[ies]." It also found that Ana Secilia López committed the crime of perjury given that during the trial, "she said she did not know the reason for these calls [...] which is hard to believe [... given] the testimony of the defendant to the effect that the sisters [and these persons had] a close relationship."¹⁶³

120. Finally, with regard to the crime of illegitimate deprivation of liberty with which Luis Carrera Almoina was charged, the Twentieth Court took into account the testimony of the witnesses (mostly those put forward by the defense) confirming that Linda Loaiza López had appeared in public places in the company of the defendant. Based on this, it found the victim's claims "by all lights implausible... for two clear reasons: First, because if she had been in this situation, she had a number of opportunities to get help from third parties [...] and second, because it would be illogical for the perpetrator of this type of crime to make deposits in the bank account of the victim's father, even less so for relatives of the victim to communicate with relatives of the perpetrator of the crime [...] without informing the police authorities of this alleged deprivation of liberty [...]"¹⁶⁴ With regard to the charge of the crime of torture, the decision found that it could not be applied in this case when taking into account how that crime was defined in the Rome Statute in relation to crimes against humanity.¹⁶⁵

¹⁵⁹ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pg. 275. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶⁰ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pg. 315. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶¹ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pg. 219 and 267-273. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶² Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pgs. 258. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶³ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pgs. 251, 398. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶⁴ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pgs. 319-320. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶⁵ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253, pgs. 325-326. Annex D of the brief from the petitioners, July 14, 2009.

121. Finally, in response to the request of the defense to investigate whether the “prostitution ring” to which Linda Loaiza López and her sister supposedly belong existed, the Twentieth Court urged the Office of the Public Prosecutor to open the corresponding criminal inquiry.¹⁶⁶ The IACHR does not have information as to the result of this investigation.

5. Actions following the sentence of November 5, 2004, and appeals process

122. Between October 25 and 27, 2004, the legal representation of Linda Loaiza López filed a number of complaints with the Judicial Committee of the TSJ, the Office of the Attorney General, and the Office of the Ombudsperson against the judge who acquitted the defendant, alleging a variety of irregularities.¹⁶⁷ On November 1, 2004, the 19th and 30th Prosecutors of the Office of the Public Prosecutor filed a complaint against the aforementioned judge before the General Inspectorate of Tribunals alleging her lack of impartiality in the trial.¹⁶⁸ On June 21, 2005, the Inspectorate decided not to press charges. This decision was upheld following an appeal from Linda Loaiza López.¹⁶⁹

123. On November 26, 2004, the National Assembly issued a press release to “repudiate the judgment against Linda Loaiza.”¹⁷⁰ On February 25, 2005 the National Assembly issued a final report as a result of an investigation carried out by a special commission created on October 6, 2004, to investigate the irregularities present in the judicial proceeding.¹⁷¹ Among the irregularities, it highlights the omissions of the Office of the Public Prosecutor during the preparatory phase, including the failure to bring charges by the legal deadline, the failure to order CICPC to perform the “blood comparison,” and the failure to investigate evidence of the existence of an alleged “prostitution ring.” The report concludes that the judgement of November 5, 2004, was legal because the judge based it on the pleadings and evidence from the process, applying logical and reasonable evaluation and procedure and abiding by the principle of autonomy and judicial independence. Among its recommendations, the Special Committee urged the Office of the Attorney General to take over the inquiry into the actions of the officials that were involved in the case.¹⁷²

¹⁶⁶ Annex 4. Decision of the Twentieth First Instance Criminal Trial Tribunal of the Caracas Metropolitan Area Criminal Circuit. Single-judge Tribunal, November 5, 2004. Case No. 20,253. Annex D of the brief from the petitioners, July 14, 2009.

¹⁶⁷ Annex 81. Complaint filed by Juan Bernardo Delgado, in representation of Linda López, before the Judicial Committee of the Supreme Tribunal of Justice, stamped as received on October 25, 2004. Annex “Folder No. 4, Supreme Tribunal of Justice” of the initial petition of November 12, 2007; Annex 82. Complaint filed by Juan Bernardo Delgado, in representation of Linda López before the Office of the Attorney General of the Republic, stamped as received on October 25, 2004. Annex “Folder No. 1, Office of the Attorney General” to the initial petition of November 12, 2007; See: Annex 83. Record of the Office of the Ombudsman Delegate to the Caracas Metropolitan Area, the October 27, 2004. Annex “Folder No. 2, Office of the Ombudsman” to the initial petition of November 12, 2007, and Annex 84. Record of appearance of Linda López before the Office of the Ombudsman Delegate to the Caracas Metropolitan Area, the October 27, 2004. Annex G3 of the brief from the petitioners, July 14, 2009.

¹⁶⁸ See: Annex 85. Decision of the General Inspectorate of Tribunals of June 21, 2005. Annex “Folder No. 3, Inspectorate of Tribunals” to the initial petition of November 12, 2007.

¹⁶⁹ Annex 85. Decision of the General Inspectorate of Tribunals of June 21, 2005. Annex “Folder No. 3, Inspectorate of Tribunals” to the initial petition of November 12, 2007. See: Annex 78. Request to reconsider submitted by Linda López and her attorney to the General Inspectorate of Tribunals on November 10, 2006. Annex “07 Inspectoría Tribunales” of the brief from the petitioners, June 20, 2014. Annex 86. Appeal filed by Juan Bernardo Delgado in his capacity as Linda López’s legal representative before the President of the Disciplinary Chamber of the General Inspectorate of Tribunals, stamped as received on November 13, 2006. Annex “Folder No. 3, Inspectorate of Tribunals” to the initial petition of November 12, 2007, and Annex 87. Decision of the Judicial System Operational and Restructuring Commission of November 8, 2007. Case File No. A-008-2007. Annex G4 of the brief from the petitioners, July 14, 2009.

¹⁷⁰ Annex 88. Press release of the National Assembly. “AN repudia sentencia contra Linda Loaiza.” Annex “03 Asamblea Nacional AN Comunicado Prensa Repudio Sentencia de LL” of the brief from the petitioners, June 20, 2014. Other groups also issued press releases rejecting the content of the decision. See: Annex 89. Annex “04 Comunicados públicos” of the brief from the petitioners, June 20, 2014;

¹⁷¹ Annex 44. Final report of the joint team of parliamentarians established to carry out the mandate of the Plenary of the National Assembly of the agreement related to the court decision made in the case of citizen Linda López Soto, pg. 4. February 25, 2005. Annex “Folder No. 5, National Assembly” to the initial petition of November 12, 2007.

¹⁷² Final report of the joint team of parliamentarians established to carry out the mandate of the Plenary of the National Assembly of the agreement related to the court decision made in the case of citizen Linda López Soto, pgs. 31-34. February 25, 2005. Annex “Folder No. 5, National Assembly” to the initial petition of November 12, 2007.

124. Both the Office of the Public Prosecutor and the legal representative of Linda Loaiza López appealed the ruling to acquit on November 5, 2004.¹⁷³ Linda Loaiza López filed a complaint over the failure to name an acting judge to the Appellate Court that heard the appeals.¹⁷⁴ On April 12, 2005, the Seventh Chamber of the Appellate Court of the Caracas Metropolitan Area ruled in favor of the appeals and annulled the judgment based on a lack of legal grounds and ordered a new trial. It also ordered Luis Carrera Almoína be kept in preventative detention and that the precautionary measures against his father and the employee of the University remained in place.¹⁷⁵

6. Hearing in the second trial and judgment to convict in judicial process No. 313-05

125. As a result, a second judicial process was launched with charges from the Office of the Public Prosecutor against Luis Carrera Almoína, his father and the employee of the Universidad Nacional Abierta for the same crimes as the last trial. Likewise, the legal representative of Linda Loaiza López brought charges under private prosecution but only against Luis Carrera Almoína.¹⁷⁶

126. The oral trial began on November 9, 2005, before the Seventh First Instance Court and, after several postponements, concluded on April 9, 2006, with the conviction of Luis Carrera Almoína for the crimes of illegitimate deprivation of liberty and serious personal injury; and acquittal for the crimes of rape and using fraud to obstruct a judicial action. He was sentenced to six years and one month in prison. The Tribunal also acquitted Luis Carrera Almoína's father and the employee of the University.¹⁷⁷ On May 22, 2006, the Seventh Tribunal issued the corresponding judgment with the justifications on which it was founded.

127. The text of the judgment indicates that the majority of the evidence submitted during this second trial was largely the same as in the last one, including the evidence of the newspaper advertisement for "escort" service.¹⁷⁸ The judgment gives no indication that measures were taken to correct the irregularities in the investigation uncovered by both the first-instance trial and the National Assembly. For its part, the defense repeated its version to the effect that Linda Loaiza López and Luis Carrera Almoína had an "intimate relationship" that began when he decided to engage the services of "the oldest profession in the world;" that he had "fallen in love with a person he could not fully have;" that she had gone voluntarily to all the public places they had visited—including in the state of Sucre; and that the problems between them worsened when Linda learned that he "was a married man." Luis Carrera Almoína stated that Linda was in a

¹⁷³ Annex 90. Appeal of the ruling of November 5, 2004, filed by the 19th Prosecutor of the Office of the Public Prosecutor. Annex X from the State's brief, January 16, 2009.

¹⁷⁴ See: Annex 91. Complaint filed by Linda López and her attorney, Juan Bernardo Delgado, before the chairman and other members of the Permanent Committee on Policies on the Interior, Justice, Human Rights, and Constitutional Guarantees, stamped as received on February 16, 2005. Annex "Folder No. 5, National Assembly" to the initial petition of November 12, 2007. Annex 92. Request filed by Juan Bernardo Delgado, in representation of Linda López before the president and other members of the Judicial Committee of the Supreme Tribunal of Justice, stamped as received on February 11, 2005. Annex "Folder No. 4, Supreme Tribunal of Justice" of the initial petition of November 12, 2007; and Annex 93. Request filed by Juan Bernardo Delgado, in representation of Linda López before the president and other members of the Executive Directorship of Magistrates, stamped as received on January 20, 2005. Annex "Folder No. 4, Supreme Tribunal of Justice" of the initial petition of November 12, 2007;

¹⁷⁵ Annex 94. Decision of the Appellate Court of the Caracas Metropolitan Area Criminal Judicial Circuit. Seventh Chamber. April 12, 2005. Annex W from the State's brief, January 16, 2009.

¹⁷⁶ See: Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05, pg. 5. Annex E of the brief from the petitioners, July 14, 2009.

¹⁷⁷ Annex 3. Record of the public oral trial before the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. Annex Y of the brief of the petitioners of July 16, 2009; and Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05. Annex E of the brief from the petitioners, July 14, 2009.

¹⁷⁸ Annex 3. Record of the public oral trial before the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05. Annex Y from the State's brief, January 16, 2009.

“sad situation” because her sister forced her “to work in prostitution,” that they smoked marijuana and she took cocaine, and “she knew where to find it.”¹⁷⁹

128. Linda Loaiza López chose not to testify during the trial.¹⁸⁰ At the conclusion of the trial hearing, she stated that she stands by the charges brought by the Office of the Public Prosecutor and her attorney and was “the only witness to what the defendant did, [she] directly accused him as the sole perpetrator of the violations [she] suffered at his hands, of the 3-month deprivation of liberty, of the various rapes, of the abuse, all of which entail torture.”¹⁸¹

129. As far as the factual and legal justifications for the decision, the Tribunal changed the legal description of the crime from attempted first-degree murder to serious personal injury, as established in Article 416 of the Criminal Code in force at the time.¹⁸² The decision also takes into account a variety of statements from forensic doctors and psychiatrists indicating that Luis Carrera Almoína had traits that made him prone to violence. Based on this, the Tribunal concluded that Luis Carrera Almoína was responsible “insofar as the injuries suffered by the victim were injuries intended to cause her damage without causing her death.”¹⁸³

130. In its analysis of the crime of illegitimate deprivation of liberty, the Tribunal found that Linda Loaiza López “had been locked in, with no chance to freely leave the apartment where she was found because she did not have keys, [...] which were in the possession of [the defendant].” It also took into account that Luis Carrera Almoína had been identified as the perpetrator of these facts and there were “signs that [she] had been tied up.”¹⁸⁴

131. With regard to the crime of rape, the Tribunal again took into account the testimony of the forensic experts and concluded that it only confirmed the existence of the injuries identified in the gynecological exams without demonstrating who was responsible for them. It thus found that it was not possible to assign criminal responsibility to the defendant as “the commission of this crime was not corroborated by witnesses or experts [and there was] no other medical or legal basis for presuming [...] that [it] was committed.”¹⁸⁵

132. Finally, the Tribunal acquitted the other defendants.¹⁸⁶

133. The judgment of May 22, 2006, was appealed by the Office of the Public Prosecutor and the attorney of Linda Loaiza López. On December 19, 2006, the Sixth Chamber of the Appellate Court of the Caracas Metropolitan Area dismissed the appeals. On March 16, 2007, the attorney of Linda Loaiza López filed

¹⁷⁹ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05. Annex E of the brief from the petitioners, July 14, 2009.

¹⁸⁰ Annex 3. Record of the public oral trial before the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area. Case File No. 313-05, pg. 51. Annex Y from the State’s brief, January 16, 2009.

¹⁸¹ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05, pg. 159. Annex E of the brief from the petitioners, July 14, 2009.

¹⁸² Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05, pg. 166. Annex E of the brief from the petitioners, July 14, 2009.

¹⁸³ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05, pages 169 and 170. Annex E of the brief from the petitioners, July 14, 2009.

¹⁸⁴ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05, pg. 172. Annex E of the brief from the petitioners, July 14, 2009.

¹⁸⁵ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05, pg. 174. Annex E of the brief from the petitioners, July 14, 2009.

¹⁸⁶ Annex 6. Decision of the Seventh First Instance Trial Tribunal of the Caracas Metropolitan Area, May 22, 2006. Case File No. 313-05, pgs. 175-176, 179. Annex E of the brief from the petitioners, July 14, 2009.

a writ of cassation against the decision of the Appellate Court.¹⁸⁷ On May 11, 2007, the Interim Criminal Cassation Chamber of the TSJ dismissed the writ of cassation.¹⁸⁸

D. Compliance with the sentence handed down to Luis Carrera Almoina

134. On May 8, 2008, the Sixth Sentence Execution Tribunal of the Caracas Metropolitan Area found that the sentence imposed on Luis Carrera Almoina in the May 22, 2006, judgment had been served. He was also assigned a secondary sentence and ordered to be placed “under supervision of the authorities” until November 15, 2009. On November 26, 2009, the Sixth Sentence Execution Tribunal ruled that the secondary sentence had been served and ordered Luis Carrera Almoina’s release.¹⁸⁹

E. Protective measures for Linda Loaiza López and other alleged facts

135. During the judicial proceedings, protective measures were granted to the benefit of Linda Loaiza López and some of her relatives. The actions that the State reported include a notification dated September 17, 2004 from the Ninth First Instance Oversight Tribunal, addressed to the Office of the Ombudsman, indicating that this measure has been complied with. Also, on December 29, 2006, Linda López requested protective measures, and the Office of the Public Prosecutor ordered the Twenty-sixth First Instance Oversight Court to designate ongoing measures of “24-hour police patrols and guards at the victim’s residence.”¹⁹⁰

136. The case file indicates that on September 14, 2004, Linda Loaiza López filed a complaint with the CICPC indicating that “after leaving a hearing at the Twentieth Trial Tribunal, a number of individuals riding motorcycles and carrying firearms [...injured] her parent and two other individuals on various parts of the body.”¹⁹¹The IACHR does not have information as to the resolution of this case file.

137. On February 4, 2005, Linda Loaiza López filed a complaint with Regional Command No. 5 of the National Guard indicating that an unknown individual wearing a National Guard uniform posed as one of the officials assigned to Linda’s security detail and tried to enter her house to look for her.¹⁹² Based on this, the Office of the Public Prosecutor opened an inquiry into an individual who was detained and identified as the one responsible.¹⁹³ The IACHR does not have information as to the resolution of this case file.

138. Regarding the measures granted in December 2006, the information available indicates that they were requested in response to threats to the lives and safety of Linda and Diana Carolina López Soto. Following up on the measures of protection, on June 20, 2007, Linda Loaiza López filed a complaint with the Superior Prosecutor of the Office of the Public Prosecutor reporting, among other things, that her sister Diana had been attacked in public by an unknown individual.¹⁹⁴

¹⁸⁷ Actions cited by the State in its brief of observations of October 22, 2014, pgs. 67-70 and by the petitioners in their brief of June 20, 2014, pg. 50.

¹⁸⁸ Annex 95. Decision of the Interim Criminal Cassation Chamber of the Supreme Tribunal of Justice of May 11, 2007. Case File No. 2007-0187. Annex F of the brief from the petitioners, July 14, 2009.

¹⁸⁹ Annex 96. Decisions of the Sixth First Instance Sentence Execution Tribunal of the Caracas Metropolitan Area. Annex to the brief from the State, October 22, 2014.

¹⁹⁰ Actions cited by the State in its brief of October 22, 2014, pgs. 107 and 119.

¹⁹¹ Annex 97. Complaint before the Scientific, Criminal, and Forensic Investigations Unit. G-653.612, of September 14, 2004. Annex “09 Medidas de Protección” of the brief from the petitioners, June 20, 2014.

¹⁹² Annex 98. Complaint filed by Linda López with Regional Command No. 5 of the National Guard, Ministry of Defense, February 4, 2005. Annex “Folder No. 1, Office of the Attorney General” to the initial petition of November 12, 2007.

¹⁹³ Annex 99. Official Letter No. FMP-R-2001-86 of the 16th Prosecutor of the Caracas Metropolitan Area of February 4, 2005. Annex “06 Fiscalía” of the brief from the petitioners, June 20, 2014.

¹⁹⁴ Annex 100. Brief filed by Linda Loaiza López Soto before the Superior Prosecutor of the Office of the Public Prosecutor of June 20, 2007. Case File No. 10416-07, pg. 10. Annex “Folder No. 0” to the initial petition of November 12, 2007.

139. The case file indicates that a judicial process was launched following the arrest of the individual alleged to be responsible for these incidents. In lieu of preventative detention, the individual was ordered to appear before the court and banned him from approaching Diana López. In the context of that process, the judge of the Fifteenth Oversight Tribunal recused herself based on the “repulsion” she felt toward both Linda López and her sister Ana Cecilia “for repeatedly disrespecting [judge Rosa Cádiz and the] Venezuelan system of justice [...]”¹⁹⁵

140. The petitioners also submitted information on a complaint filed by the attorney of Linda Loaiza López with the Office of the Public Prosecutor over incidents that took place in August 2006 when two men tried to attack Diana Carolina and Elith Johana López Soto while they were in the office of a private business of that attorney. The record shows that the Common Crimes Directorate remitted the case file “for the corresponding legal purposes.”¹⁹⁶ The IACHR does not have information as to the resolution of this case file.

141. The petitioners also provided copies of e-mails sent to the account of Juan Bernardo Delgado in November of 2004 signed by “relatives and friends of Carrera” stating that he was “the attorney of the cheap prostitutes,” telling him to “die” and “learn to be proper, so poor and cheap, that’s what’s going to kill you, you bastard [...]”; “[name omitted] beat you with no tricks.”¹⁹⁷ The IACHR does not have any information as to whether these threats were brought to the attention of the authorities, and if so, if they were investigated.

F. Context: State response in cases of violence against women

142. The information available indicates that since before the time of the facts in this case and up through the present day, the Venezuelan State has called attention to the specific challenges with regard to the attention the authorities pay to the situation of violence against women in response to a worrying increase in the number of reports received on these types of cases, while also taking into account that the problem has been under-reported to a significant degree.

143. A study performed in 1999 by the United Nations Development Programme (hereinafter “the UNDP”) on the situation of gender-based violence in Venezuela found that the only recorded statistics were “the result of reports made to police bodies throughout the country” but that “due to multiple difficulties that women face in reporting the facts, a significant number decide not to take that initiative [...]” It also indicated that in cases of sexual crimes, the reports were not properly processed if there was no “physical evidence,” “thereby making the termination of the police investigation more likely, leading to the under-reporting.”¹⁹⁸

144. Likewise, in 2001, the level of violence against women in Venezuela was reason for concern for the Committee of the International Covenant on Civil and Political Rights (hereinafter “the Human Rights Committee”) and the Committee of the International Covenant on Economic, Social and Cultural Rights

¹⁹⁵ Annex 101. Documents found in Annex “Folder No. 0” to the initial petition of November 12, 2007.

¹⁹⁶ See: Annex 102. Complaint filed by Juan Bernardo Delgado before the Office of the Attorney General of the Republic, stamped as received on October 20, 2006. Annex “Folder No. 1, Office of the Attorney General” to the initial petition of November 12, 2007; and Annex 103. Official Letter No. DDC-SD-972-72460 of November 3, 2006, signed by Nerva Ramírez, director for common crimes, addressed to Juan Bernardo Delgado. Annex “Folder No. 1, Office of the Attorney General” to the initial petition of November 12, 2007.

¹⁹⁷ In the last phrase is mentioned the name of the attorney who represented Luis Carrera Almoina and his father in the two judicial processes. Annex 104. E-mails of November 19, 2004, sent to account juanbernardo777@yahoo.com. Annex “Folder No. 8, public communication” to the initial petition of November 12, 2007.

¹⁹⁸ See: Annex 105. United Nations Development Programme (UNDP). Venezuela country report on the situation of gender-based violence against women. May, 1999. Annex “00 Contexto 1999 05 01 PNUD Violencia Mujeres VZ” from the petitioners’ brief of June 20, 2014.

(hereinafter “the ESCR Committee”), with the former calling attention to the high rate of reported cases that had not resulted in the “arrests or prosecution of those responsible.”¹⁹⁹

145. In 2003, the United Nations Special Rapporteur on violence against women expressed concern at the statistics on the cases of homicides of women, and at the available information indicating that the agencies and authorities that received reports generally rejected the ones involving threats or psychological violence.²⁰⁰ For its part, the United Nations Committee for the Elimination of Discrimination against Women expressed concern in 2006 because Venezuela did not have “a centralized system to collect data on violence against women.”²⁰¹

146. Likewise, in its 2009 report entitled *Democracy and Human Rights in Venezuela*, the IACHR found that the laws and policies put in place by the State on the issue had not succeeded at guaranteeing the rights of the women who continued to be victims of violence in Venezuela.²⁰² Among other issues, the Commission highlighted the State’s failure to submit updated statistics on violence against women and domestic violence, which made it impossible for the Commission to properly assess whether the laws were effectively being applied by the authorities or whether the new programs were having any real effect on the validity of the right of women to a life free from violence.²⁰³ The IACHR also took into account that, in contrast with the limited statistics available from the government, organizations such as the Observatorio Venezolano de los Derechos de las Mujeres (Venezuelan Observatory on the Rights of Women) reported in 2007 that in Venezuela, around 100 cases involving gender-based violence took place every day. The Commission has also found that in recent years, and according to information received during public hearings, the situation of violence against women is not limited to “domestic” settings, but rather the number of homicides of women in Venezuela has increased.²⁰⁴

147. In the same 2009 report on Venezuela, the Commission found a pattern of impunity in cases of violence against women. The IACHR found it particularly concerning that in more than 98% of cases

¹⁹⁹ United Nations Human Rights Committee. Concluding Observations on Venezuela. CCPR/CO/71/VEN. April 26, 2001. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=60kG1d%2fPPRiCAqhKb7yhsmq1D%2b4Wvg6LhA1iuk%2bHo%2bWYkprGindOLf6iDvgpobWKR%2f6GLaB8Qgc4pwS0z5Wc4Y54f4kseh1%2f36lvOW10hQqZSBUWZwpK2z3jvtxzvzag>; United Nations Committee on Economic, Social, and Cultural Rights. Concluding observations on Venezuela. E/C.12/1/Add.56. May 21, 2001. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWzVCXkRUT2pEFOZi2eijYl61j9WtkulkSCOVxCsObstewbP9M8KuAXXaz13GA0XehfWZ64wP35GwYRqdCmlbn%2b75Xwb889JcqT0%2fUOuWnlf>

²⁰⁰ United Nations Economic and Social Council Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, for the period between 1994 and 2003. E/CN.4/2003/75/Add.1. February 27, 2003. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/2003/75/Add.1>

²⁰¹ Committee on the Elimination of Discrimination against Women Concluding observations of the Committee on the Bolivarian Republic of Venezuela. CEDAW/C/VEN/CO/6. January 31, 2006. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=CEDAW/C/VEN/CO/6>

²⁰² IACHR, *Democracy and Human Rights in Venezuela*. OEA/SER.L/V/II. Doc. 54. December 30, 2009, para. 915. Available at: <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

²⁰³ Based on the information provided by the State, the Commission found that for the year 2002, the Scientific, Criminal, and Forensic Investigations Unit had processed 8,411 cases of violence against women; the 0-800Mujeres hotline received 3,119 calls reporting different forms of violence (most of them acts of physical violence against a woman); and the Civil Police Forces of the Capital District responded to 30,671 reports of different forms of domestic violence. Also, without indicating the time frame, the State reported that the Violence against Women Tribunals had received 66,000 complaints. IACHR, *Democracy and Human Rights in Venezuela*. OEA/SER.L/V/II. Doc. 54. December 30, 2009, para. 938-939, 946. Available at: <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

²⁰⁴ See: IACHR, *Democracy and Human Rights in Venezuela*. OEA/SER.L/V/II. Doc. 54. December 30, 2009, para. 943. Available at: <http://www.oas.org/en/iachr/docs/annual/2013/TOC.asp>; IACHR, Annual Report 2013. Chapter IV on Venezuela, para. 716; and IACHR, Annual Report 2014. Chapter IV on Venezuela, para. 632. Available at: <http://www.oas.org/en/iachr/docs/annual/2014/TOC.asp>

involving violence against a woman, no trial had been started, and in at least 70% of the cases, the women struggling against impunity were faced with harassment and threats.²⁰⁵

148. Effectively, even taking into account the difficulties involved in collecting and accessing statistics on the issue, a joint analysis of the available information leads to the conclusion that since the 90s, a large and growing number of reports of violence against women have been received, mainly by the Venezuelan Office of the Public Prosecutor, among other entities, but a very limited number of them go to trial and/or end in judgments issued by a court.²⁰⁶

149. The Inter-American Commission also indicated in 2009 that:

[...] the information from the Office of the Human Rights Ombudsperson regarding the agencies responsible for receiving complaints is also discouraging. According to information from that agency, “there are numerous complaints from victims alleging a reluctance to receive them, and even cases of mistreatment, because of insensitivity or apathy in the attention given, which is often the result of particular considerations. This takes place both in the administrative agencies and in the prosecutors’ offices of the Attorney General’s Office.” This violates the victims’ right to have their complaints heard and investigated but, in addition, it has the effect of discouraging or even intimidating other victims from reporting acts of violence to the authorities.²⁰⁷

150. Despite the recommendations issued in this report, the Commission continued to receive information on the high rates of impunity in cases of violence against women Venezuela.²⁰⁸

151. Civil society organizations have documented in detail a variety of other factors that also prevent women who are victims of violence from accessing to justice in Venezuela. For example, the Observatorio Venezolano de los Derechos de las Mujeres (Venezuelan Observatory on the Rights of Women) has indicated that “Venezuelan women lack the most basic resources to guarantee them access to justice,” and “do not have adequate, efficient, impartial, [and] nondiscriminatory judicial resources available to them.” Furthermore, oversight and monitoring of the readiness and budgets of the agencies that receive complaints is sorely lacking. Specifically, the Observatory has called the lack of continuity in the training of officials and justice system officials in general on gender-based violence insufficient and grave. It has also pointed to “the temporary status of judges and the shortage and rotation of personnel, equipment, and materials necessary to pursue processes to try and to punish attackers.” This situation leads to “procedural delays, both in the

²⁰⁵ IACHR, Democracy and Human Rights in Venezuela. OEA/SER.L/V/II. Doc. 54. December 30, 2009, para. 948. Available at: <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

²⁰⁶ See: Brief of the petitioners of June 20, 2014, pgs. 5-6; Annex 105. United Nations Development Programme (UNDP). Venezuela country report on the situation of gender-based violence against women. May 1999. Annex “00 Contexto 1999 05 01 PNUD Violencia Mujeres VZ” of the brief of the petitioners of June 20, 2014; Annex 106. Inter-American Commission of Women of the Organization of American States. Follow Up Mechanism of the Convention of Belém do Pará (MESECVI). Response of Venezuela to the questionnaire regarding the country report. OEA/Ser.L/II.7.10 MESECVI-II/doc.46/08. June 25, 2008. Annex 00 Contexto 2008 06 25 CIM VZ Evaluacion Implementación Belem Do Pará” of the brief of the petitioners of June 20, 2014; Annex 107. Office of the Attorney General of the Bolivarian Republic of Venezuela. Annual Report 2008. Annex “00 Contexto 2008 12 30 VZ Fiscalia Informe Anual” of the brief of the petitioners of June 20, 2014; Committee on the Elimination of Discrimination against Women of the United Nations. Combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela. CEDAW/C/VEN/7-8. January 7, 2013. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FVEN%2F7-8&Lang=es; Office of the Attorney General of the Bolivarian Republic of Venezuela. Annual Reports 2010 and 2011. Available in Spanish at: <http://www.mp.gob.ve/web/guest/informe-anual.jsessionid=016743E4D624C7DA2CC65428BDDBE855>; IACHR, Democracy and Human Rights in Venezuela. OEA/SER.L/V/II. Doc. 54. December 30, 2009, paras. 946-947. Available at: <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>; and IACHR, Access to justice for women who are Victims of Violence in the Americas. OEA/SER.L/V/II. Doc. 68, January 20, 2007, para. 15. Available at: <https://www.cidh.oas.org/women/Access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf>

²⁰⁷ IACHR, Democracy and Human Rights in Venezuela. OEA/SER.L/V/II. Doc. 54. December 30, 2009, para. 948. Available at: <https://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

²⁰⁸ See: IACHR, Annual Report 2014. Chapter IV on Venezuela, para. 632. Available at: <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-chap4A.pdf>

investigation and in the corresponding administrative proceedings, leading to the dismissal of the charges in a large percentage of cases,” as well as the “unjustified postponement of hearings [...] and the loss of prosecutorial and judicial files.” Another constant irregularity that has been indicated is that during the procedure for receiving reports, women are required to submit psychological, psychiatric, and social reports on their personal status as a requirement for following up on the complaint. They may also be subjected to “invasive, accusatory and improper investigation in an environment that is neither safe nor confidential,” and they encounter officials who “ignore the complaints because they consider them trivial and outside of their authority” and healthcare personnel “that do not fully understand their key role when providing necessary medical services such as documenting the consequences of the violence.”²⁰⁹

152. The Follow-up Mechanism of the Convention of Belém do Pará of the OAS has found a “lack of a state policy to educate and train the officials in charge of accepting and processing the complaints,” encouraging the State to make “a systematic effort for short and long term results, with an extended coverage that goes beyond awareness raising and training, is needed, including the design and enforcement of care protocols for women and girls who are victims of violence and thereby avoid a second victimization.”²¹⁰

153. More recently, a range of international agencies of the United Nations have continued to express concern over the worsening situation of violence against women in Venezuela and impunity rates. In 2014, both the United Nations Committee on the Elimination of Discrimination against Women²¹¹ and the United Nations Committee against Torture made observations on this matter.²¹² In 2015, the ESCR Committee also reiterated its concern over this situation, in particular due to “the low number of investigations and convictions in cases of violence against women,” indicating that the country still does not have a “national strategy for preventing domestic violence and gender-based violence.”²¹³

154. The Commission will take into account this information at the time to formulate the recommendations in this report.

²⁰⁹ Observatorio Venezolano de los Derechos Humanos de las Mujeres. Alternative report in response to the list of questions from the CEDAW Committee regarding the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela. Caracas, August 15, 2014, pg. 5. Available at: http://issuu.com/ddhhcofavic/docs/informe_sombra_2014_observatorio_ve/1; Annex 108. Observatorio Venezolano de los Derechos Humanos de las Mujeres. CEDAW Shadow Report 2009. Evaluation of the situation of violence against women in light of the concluding observations of the Committee for the Elimination of Violence against Women on the Bolivarian Republic of Venezuela in its 34th period of sessions. July 2009; Observatorio Venezolano sobre los derechos de las mujeres. Informe sobre violencia contra las mujeres en Venezuela. 2010; and Observatorio Venezolano sobre los derechos de las mujeres. Report on the Bolivarian Republic of Venezuela - Twelfth Universal Periodic Exam Session - October 2011 (2007-2010). Documents in Annex “00 Contexto” of the brief from the petitioners, June 20, 2014.

²¹⁰ Annex 106. Commission of Women of the Organization of American States. Follow-up Mechanism. Convention of Belém do Pará (MESECVI). Second Conference of States Parties. OEA/Ser.L/II.7.10 MESECVI-II/doc.46/08. June 25, 2008, pg. 21. Annex “00 Contexto 2008 06 25 CIM VZ Evaluacion Implementación Belem Do Pará” of the brief from the petitioners, June 20, 2014.

²¹¹ United Nations Committee on the Elimination of Discrimination against Women Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela. CEDAW/C/VEN/CO/7-8. November 14, 2014. Available at: <http://acnudh.org/wp-content/uploads/2015/01/N1462775.pdf> The Committee expressed deep concern because it considered the situation of violence against women and girls in Venezuela to be “widespread and on the rise,” and due to the “the lack of effective access to justice for all women victims of violence throughout the territory [...] as a result of the insufficient structures and inadequate functioning of the justice system, in particular considering the low number of cases prosecuted [...]” and also “the lack of effective mechanisms in place to design, implement and monitor the relevant policies and programmes.” In that context, in its review of Venezuela this year, the Committee highlighted the persistent absence of a disaggregated database on this issue.

²¹² United Nations Committee against Torture Concluding observations on the third and fourth periodic reports of the Bolivarian Republic of Venezuela. Advanced unedited version. November 19, 2014, para. 17. Available in Spanish at: <http://acnudh.org/wp-content/uploads/2015/01/CAT-Venezuela.pdf> The Committee noted that “[...] despite a steady increase in the number of cases of violence against women, in particular femicide, and the large number of complaints, the percentage of cases in which charges are brought by the Public Prosecution Service is low and the application of protection measures insufficient. The Committee is also concerned about the small number of shelters and the lack of information on the provision of assistance and full redress to victims.”

²¹³ United Nations Committee on Economic, Social, and Cultural Rights. Concluding observations on the third periodic report of the Bolivarian Republic of Venezuela. E/C.12/VEN/CO/3. June 19, 2015. Available in Spanish at: http://acnudh.org/wp-content/uploads/2015/06/INT_CESCR_COC_VEN-.pdf

V. ANALYSIS OF LAW

155. Taking into account the chronology of the facts established and the pleadings of the parties, the Commission will perform an analysis, first, on whether the Venezuelan State had a duty to respond to the initial disappearance of Linda Loaiza López and, if appropriate, if such response was fulfilled properly. Based on this initial analysis, the IACHR will assess the available evidence on the facts of physical, psychological, and sexual violence against Linda Loaiza López, from the moment of her disappearance until her rescue. Given this assessment, the Commission will establish the international responsibility of the State, in light of the international law of human rights, including the prohibition on torture and cruel, inhuman and degrading treatment.

156. Subsequently, the Commission will decide on the domestic criminal investigation and process in light of the obligation to investigate with due diligence and in a reasonable period of time and with the gender perspective the case required. Additionally, the Commission will examine the pleadings to the effect that Linda Loaiza López Soto was re-victimized throughout the process and their implications under the American Convention. Finally, the Commission will determine if the facts of this case involved a violation of the psychological and moral integrity of Linda Loaiza López Soto's family members. In addition to the American Convention, the Commission's analysis will include the relevant provisions of the ICPPT,²¹⁴ the Convention of Belém do Pará, and the American Declaration of the Rights and Duties of Man.

²¹⁴ Preliminarily, the Commission notes that its report on admissibility did not explicitly include the ICPPT among the instruments that could be considered at the merits stage. However, considering the totality of the pleadings and evidence available at the merits stage, the IACHR considers an analysis of the facts according to that instrument to be pertinent. In this regard, the Inter-American Court has established that the addition of articles of the American Convention by the IACHR at the merits stage "does not violate [the State's] right to defense" in cases in which the State is aware of the facts on which the alleged violation is based. The Commission emphasizes that both during the admissibility proceeding and in the merits stage, the State was aware of the facts on which application of the ICPPT is based. The Commission will therefore include this instrument in its analysis. See: Inter-American Court, *Case of Furlan and relatives v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 50.

1. Rights to humane treatment, personal liberty, privacy, dignity and autonomy, equal protection and nondiscrimination, and to not be subject to torture or violence (articles 5(1), 5(2),²¹⁵ 7(1),²¹⁶ 11,²¹⁷ 24,²¹⁸ and 1(1)²¹⁹ of the American Convention; 7(a) and (b) of the Convention of Belem do Pará,²²⁰ and 1 and 6 of the ICPPT²²¹)

1.1. Analysis of the initial duty of the State to respond to the disappearance of Linda Loaiza López

1.1.1. General considerations on the duty to prevent in response to violations committed by non-State actors including acts of violence against women and sexual violence

157. The Inter-American Court has established that Article 1.1 of the American Convention “charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.”²²² Thus, “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”²²³

²¹⁵ Article 5 of the Convention establishes the following:

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 (...).

²¹⁶ Article 7 of the Convention establishes the following:

1. Every person has the right to personal liberty and security (...).

²¹⁷ Article 11 of the American Convention establishes that:

1. Everyone has the right to have his honor respected and his dignity recognized.

2. 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.

²¹⁸ Article 24 of the American Convention establishes that:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

²¹⁹ Article 1(1) of the American Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

²²⁰ Article 7 of the Convention of Belém do Pará establishes that:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; b. apply due diligence to prevent, investigate and impose penalties for violence against women (...).

²²¹ Article 1 of the ICPPT establishes:

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

Article 6 of the ICPPT establishes the following:

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

²²² Inter-American Court, *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 164.

²²³ Inter-American Court, *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 172.

158. Specifically with regard to the duty to prevent, the Inter-American Court has found that:

A State cannot be held responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds between individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or a group of individuals and by the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed by an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered.²²⁴

159. In cases of violence against women, the Inter-American Court has found that the obligations of the Convention of Belém do Pará “specify and complement the rights established in the American Convention, such as those established in Articles 4, 5, and 7.”²²⁵ Thus with regard to the duty to prevent, the Court found that:

The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against women. Furthermore, the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence.²²⁶

160. The Commission has also cited the international recognition that States’ duty to protect women and prevent violence against them with due diligence has special connotations due to the discrimination this group has suffered historically.²²⁷ Thus, both bodies of the inter-American system indicated that cases of violence against women, the duty to act with due diligence takes on a special and strict connotation “in response to the fact or the mere possibility of their vulnerability in the presence of acts that actually or potentially involve gender-based violence or could result in this type of violence.”²²⁸

161. Specifically in response to reports of disappeared women, the State has a duty to respond immediately and effectively, especially in the search conducted during the initial hours and days after receiving the report.²²⁹ Because it is more strict, this obligation of means demands an immediate and effective

²²⁴ Inter-American Court, *Case of Luna López v. Honduras*. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, para. 120; Inter-American Court, *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 280; Inter-American Court, *Case of the “Pueblo Bello Massacre” v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 123.

²²⁵ Inter-American Court, *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 133; Inter-American Court, *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations, and Costs. Judgment of November 20, 2012. Series C No. 253, para. 275; and Inter-American Court, *Case of Penal Miguel Castro Castro v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 346. See also: IACHR, Report No. 170/11, Case 12.578, María Isabel Véliz Franco et al, Merits, Guatemala, November 3, 2011, para. 84.

²²⁶ Inter-American Court, *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

²²⁷ IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.*, (United States), July 21, 2011. para. 129.

²²⁸ Inter-American Court, *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 134. See also: IACHR, Report No. 53/13, Case 12.777, Claudina Isabel Velásquez Paiz et al, Merits, Guatemala, November 4, 2013, para. 88.

²²⁹ Inter-American Court, *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

response from government authorities in response to disappearance reports to adequately prevent violence against women.²³⁰ This includes performing an exhaustive search. It also means that the officials responsible for receiving the reports must have the capacity and sensitivity to understand the gravity of the phenomenon of violence against women and the willingness to take immediate action.²³¹ In particular, it is crucial that prompt and immediate action be taken by prosecutorial and judicial authorities to order timely and necessary measures aimed at determining the whereabouts of the victim or the place where the victim might be found deprived of liberty.²³² Also, adequate procedures must be in place for these reports that include launching an effective investigation within hours. Authorities must assume that the disappeared person is deprived of liberty and still alive until any uncertainty about what took place has been eliminated.²³³ This is what the Court has found in cases in which deprivations of liberty of the victims were committed by non-State actors.

162. The IACHR has found that when, in response to complaints of violence against women victims who are reported disappeared, the authorities do not launch a search immediately, discredit the victim, blame her, and thus consider her not deserving of State action to locate and protect her (all of which result consciously or unconsciously from gender stereotypes), a grave violation has been committed that delays or prevents effective State response.²³⁴

1.1.2. Application of the above obligations to the facts of the case

163. Based on the aforementioned standards, the Commission will analyze whether in this case, the Venezuelan State had a duty to respond and whether such obligation was properly fulfilled, taking into account whether: i) Linda Loaiza López faced a situation of real and imminent risk; ii) the State was or should have been aware of that situation of risk; and iii) the State acted with the due diligence to reasonably prevent that risk from happening.

164. With regard to the first point, the Commission understands that from the moment of the disappearance of Linda Loaiza López, she was in a situation of real and imminent risk.

165. On the second point, Ana Secilia López has stated that after Linda Loaiza López did not return home and after receiving an anonymous phone call saying that her sister would not be back, she went to the local police to file a report. She stated that she also reported the information of the call she had received and the identification of the person to which she believed that phone number belonged. In her testimony, however, she indicated that the officials did not record the complaint, telling her that she had to wait because it was probably a “domestic problem.” The petitioners stated that Ana Secilia López tried to file the report six more times and that it was finally taken, but as a death threat against her and not connected with Linda Loaiza López’s disappearance. During the first oral trial, Ana Secilia López also stated that she had turned over a copy of the complaint to be included in the criminal case file.

166. The Commission finds that the testimony of Ana Secilia López and the pleadings of the petitioners are consistent with the context described in this report with regard to the insufficient action taken by the authorities in charge of receiving reports and investigating these types of cases. As established in the proven facts, international and nongovernmental organizations have repeatedly called for removal of the

²³⁰ Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 285.

²³¹ Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 285.

²³² Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

²³³ Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 283.

²³⁴ IACHR, *Access to Justice for women who are Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68. January 20, 2007, para. 135.

barriers that women who are victims of violence in Venezuela face accessing the justice system—including when filing complaints—and that they receive proper attention, not only in order to try and punish those responsible but also in the interest of directly improving victim protection and preventing further violence against victims. One of these barriers that is especially concerning is the discriminatory stereotypes employed by authorities at the time of the facts of the case among which, as indicated in other cases, the Commission has found lead to a failure to respond to the complaints.²³⁵ Specifically, the information analyzed reveals a context of failures to act on the part of the authorities in charge of receiving reports of violence against women, including a lack of training for officials, mistreatment of the victims and their relatives, apathetic response, and a general lack of sensitivity toward the issue.

167. In addition to the consistency of the allegations that the report was turned away and the context of the moment at which the facts took place, the State has neither challenged the allegations nor provided any evidence to discredit them. So for example, the State has not launched any investigation into the circumstances and potential responsibility for the refusal to receive the report, despite being aware of it. Neither has the State provided information to contradict Ana Secilia López's testimony, such as for example the complaints records from the days on which she said she tried to file one. With regard to the context, the State did not submit information enabling the IACHR to conclude that State authorities effectively receive these types of complaints on the disappearances of women in a timely fashion and respond to them immediately and effectively as required and described in this report. The Venezuelan State also did not contradict the allegation that while Linda Loaiza López was being held, the complaint filed by her sister was in the end recorded as a report of threats against her herself. In addition to not challenging this, the State has not offered any explanation of this situation nor indicated the reasons as to why as of that moment it still did not take any measures to determine the whereabouts of Linda Loaiza López.

168. For its part, Linda Loaiza López's family had no way beyond their own testimonies to prove the State had failed to accept the complaint.²³⁶ The Inter-American Court has already ruled on such situations, specifically with regard to weighing of evidence in situations in which it is alleged that the corresponding authority refused to receive a report of a woman's disappearance in a timely manner and in a certain context. The Inter-American Court has found that in this situation, in the absence of evidence to the contrary from the State, the testimony of the relatives is enough to prove what happened.²³⁷ In the Commission's view, this manner of weighing the evidence is further justified when, as indicated in the foregoing paragraphs, the testimony on the obstacles to presenting the complaint is consistent with a more generalized context characterized precisely by such omissions.

169. Under these circumstances, the Commission does not find any elements to call into question the credibility of the facts described by Ana Secilia López and therefore finds it that the State knew or should have known of the situation of real or imminent risk faced by Linda Loaiza López starting two months before her rescue.²³⁸

170. Finally, regarding the third element, it is not in dispute that the State's first action with regard to Linda Loaiza López took place on July 19, 2001, when she was rescued. Consequently, from the moment her sister tried to file the complaint almost immediately after Linda Loaiza López was deprived of liberty to her rescue almost 4 months later, the State did not take any measures to determine her whereabouts and prevent the continuation of the violence against her.

²³⁵ IACHR. Report No. 53/13. Case 12,777. *Claudina Isabel Velásquez Paiz et al. (Guatemala)*. Merits. November 4, 2013, para. 109.

²³⁶ See: *Mutatis mutandis*. Inter-American Court. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Para. 73.

²³⁷ Inter-American Court. *Claudina Isabel Velásquez Paiz et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307. Para. 53 and 54.

²³⁸ See: IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.*, (United States), July 21, 2011, paras. 141-142.

171. In sum, the Commission concludes that the Venezuelan State was or should have been aware that Linda Loaiza López faced a real and imminent situation of risk yet it did not take any measures –starting from when it should have been aware to the moment of her rescue- to protect her from the risk she was facing or prevent it from materializing. Through this absolute omission, the Venezuelan State exposed Linda Loaiza López to be victim of grave violations of her personal integrity, personal liberty, privacy, dignity and autonomy, and her right to live a life free of violence and discrimination. This conclusion is directly related to the attribution of the responsibility of the Venezuelan State in this case. Now, the Commission will assess the evidence and the legal categorization of the violations that took place against Linda Loaiza López, and then will conclude on the international responsibility of the State for such violations.

1.2. Analysis on the violations suffered by Linda Loaiza López and conclusion on the attribution of responsibility

1.2.1. General considerations on the rights involved, violence against women, and sexual violence

172. Article 5(1) of the Convention enshrines in general terms the right to humane treatment, both physical and moral; meanwhile, in its first subparagraph, Article 5(2) specifically enshrines the nonrevocable right of all individuals to not be subjected to any form of torture. The case law of the inter-American system has repeatedly found that torture and cruel, inhuman, or degrading punishment or treatment are strictly prohibited under international human rights law.²³⁹

173. Article 7 of the American Convention establishes as a general rule²⁴⁰ that “every person has the right to personal liberty and security,” meaning that States have a duty to “prevent the liberty of the individual being violated by the actions of public officials and private third parties, and must also investigate and punish acts that violate this right.”²⁴¹

174. Also, Article 11 of the Convention establishes that all people have the right to have their honor respected and their dignity recognized, which includes protection of privacy.²⁴² Regarding this, the Commission and the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) have established that this right includes recognition of the existence of a personal realm that should be exempt and immune from abusive or arbitrary invasions or attacks from third parties or government authorities.²⁴³ It has also found that the concept of personal life “is a wide-ranging term, which cannot be defined exhaustively, but includes, among other protected forums, sexual life, and the right to establish and develop relationships with other human beings”²⁴⁴

²³⁹ Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 304; *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits, and Reparations. Judgment of May 14, 2013. Judgment C No. 260, para. 173, and Inter-American Court, *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 95.

²⁴⁰ Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 125.

²⁴¹ Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 247.

²⁴² Inter-American Court, *Case of the Ituango Massacres v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2006, Series C No. 148, para. 193, and Inter-American Court. *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment dated January 27, 2009. Series C No. 193. para. 55.

²⁴³ IACHR. Report 5/96. Case 10,970. Peru. Raquel Martín de Mejía. March 1, 1996; Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 127, and Inter-American Court. *Case of Escué Zapata v. Colombia*, Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 95.

²⁴⁴ Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 129 citing: ECHR, *Case of Niemietz v. Germany*, Judgment of 16 December 1992, Series A no. No. 13710/88. para. 29, and *Case of Peck v. United Kingdom*, Judgment of 28 January 2003, App. No. 44647/98. para. 57; ECHR, *Case of Dudgeon v. the United Kingdom*, Judgment of 22 October 1981, App. No. 7525/76. para. 41, and ECHR, *Case of X and Y v. the Netherlands*, Judgment of 26 March 1985, App. No. 8978/80. para. 22.

175. Specifically on cases of violence and rape, the bodies of the Inter-American system have approached from a comprehensive understanding of the severe effect such acts have on victims of this type of violence, especially women, in the sense that a variety of substantial rights are violated to their detriment. Thus, both the Commission and the Inter-American Court have found that sexual violence, including rape, represents a violation of the rights to humane treatment, privacy, autonomy and dignity, and equal protection and nondiscrimination.²⁴⁵

176. The Inter-American Court indicated that rape involved “an intrusion in her sexual life, and annulled her right to decide freely with whom to have intimate relations, causing her to lose total control over these most personal and intimate decisions, and over her basic bodily functions.”²⁴⁶The Commission has indicated that sexual violence involves severe and lasting physical and mental suffering due to its nonconsensual and invasive nature, with devastating consequences for the victim, the victim’s family, and the community.²⁴⁷The Court has also found that rape is a paradigmatic form of violence against women, the consequences of which extend beyond the victim herself.²⁴⁸

177. The Inter-American Court has also found that sexual violence “is constituted by acts of a sexual nature that, in addition to encompassing the physical invasion of the human body, may include acts that do not involve penetration or even any physical contact.”²⁴⁹With regard to rape—a form of sexual violence—the Court has found it includes “act[s] of vaginal or anal penetration, without the victim’s consent, through the use of other parts of the aggressor’s body or objects, as well as oral penetration with the virile member.”²⁵⁰In the case of *J. v. Peru*, the Court also found that in order for an act to be considered rape, “any type of penetration, however slight, is sufficient for an act to be considered rape.”²⁵¹

178. Regarding violence against women, the Inter-American Court has taken into account the international *corpus juris* on the subject of protecting the personal integrity of women, of which the American Convention, the Convention of Belém do Pará, and the Convention on the Elimination of All Forms of

²⁴⁵ See, among others: IACHR, Report 76/11, Case 11,769, Merits, J., Peru, July 20, 2011; and Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215.

²⁴⁶ Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 129. Also see: Inter-American Court, *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 31, 2010. Series C No. 216, para. 119.

²⁴⁷ IACHR. Report 53/01. Case 11,565. Ana, Beatriz, and Celia González Pérez. Mexico. April 4, 2001. Para. 45; IACHR. Application before the Inter-American Court of Human Rights Case 12,579, Valentina Rosendo Cantú et al., Mexico, August 2, 2009, para. 90, Application before the Inter-American Court of Human Rights Case 12,580. Inés Fernández Ortega, Mexico, May 7, 2009, para. 117.

²⁴⁸ Inter-American Court, *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 226; Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 119; and Inter-American Court, *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations, and Costs. Judgment of October 25, 2012. Series C No. 252, para. 165.

²⁴⁹ Inter-American Court, *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 191; Inter-American Court. *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, para. 109; Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 119; Inter-American Court, *Case of Penal Miguel Castro Castro v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 306. For its part, the IACHR has also referred to the definitions of international organizations such as the World Health Organization, which defines sexual violence as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic women’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work.” See: IACHR, Access to Justice for Women who are Victims of Sexual Violence: Health and Education. OEA/SER.L/V/II. Doc. 65. December 28, 2011, para. 132.

²⁵⁰ Inter-American Court, *Case of Miguel Castro Castro Prison*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 310, and Inter-American Court. *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 359.

²⁵¹ Inter-American Court. *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 359.

Discrimination against Women form part.²⁵² Specifically, the Convention of Belem do Pará defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”²⁵³

179. Also, based on this *corpus juris*, the Court has found that violence against women is a form of discrimination²⁵⁴ that gravely affects the enjoyment of the rights and freedoms on equal footing with men.²⁵⁵ Among other definitions, the Court has taken into account the position of the CEDAW that discrimination against women “includes gender-based violence, that is, violence that it directed against a woman because she is a woman or that affects women disproportionately.”²⁵⁶

180. In that framework, the Court has highlighted that violence against women constitutes not only a human rights violation but “an offense against human dignity and a manifestation of the historically unequal power relations between women and men,” that “pervades every sector of society, regardless of class, race, or ethnic group, income, culture, level of education, age or religion, and strikes at its very foundation.”²⁵⁷

181. Next, the Commission will assess the available evidence about what happened to Linda Loaiza López.

1.2.2. Weighing of available evidence and analysis of what happened to Linda Loaiza López

182. Inter-American case law has repeatedly found that in the realm of international human rights law, authority to weigh the body of evidence should not be subject to weighted evidence rules. Instead, international institutions have significant flexibility in how they assess the evidence brought before them on the pertinent facts, in accordance with rules of logic and based on experience.²⁵⁸ It is also found that “it is legitimate to use circumstantial evidence, indications, and presumptions as grounds for a judgment, provided that consistent conclusions with regard to the facts can be inferred from them.”²⁵⁹

²⁵² Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 225.

²⁵³ Article 1 of the Convention of Belém do Pará.

²⁵⁴ See: Inter-American Court, *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 221; Inter-American Court. *Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 207; Inter-American Court, *Case of Penal Miguel Castro Castro v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 303.

²⁵⁵ Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 130; and Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 395 citing: Committee on the Elimination of Discrimination against Women, General Recommendation 19 Violence against Women, 11th period of sessions, 1992, UN Doc. HRI\GEN\1\Rev.1 at 84 (1994), paras. 1 and 6.

²⁵⁶ See: Inter-American Court, *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 221; Inter-American Court. *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 207; and Inter-American Court, *Case of Penal Miguel Castro Castro v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 303.

²⁵⁷ Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 118, citing the Inter-American Convention on the Prevention, Punishment, and Eradication Of Violence against Women. Preamble.

²⁵⁸ Inter-American Court, *Case of Miguel Castro Castro Prison. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 184; and Inter-American Court, *Case of Anzulado Castro v. Peru*, Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 29, and *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 51.

²⁵⁹ Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 306; and Inter-American Court, *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 130.

183. With regard to the weighing of evidence in cases of sexual violence and rape, the Court has established that rape is a unique type of assault that, in general, is characterized by the fact that it takes place in the absence of other people apart from the victim and the attacker or attackers.²⁶⁰ Given the nature of this form of violence, one cannot expect photographic or documentary evidence to exist, and therefore, the testimony of the victim constitutes fundamental evidence of the fact.²⁶¹ Regarding the credibility of the statement of the victim, the Rules of Procedure and Evidence of the International Criminal Court ban the victim's prior or subsequent sexual behavior from being taken into consideration to establish it.²⁶²

184. Recently, in the case of *J. v. Peru*, the court ruled that without prejudice to how any given acts of sexual violence may be classified under the law, these standards are "applicable to sexual violence in general."²⁶³

185. The Commission will later analyze the grave failures confirmed to have taken place during evidence collection, as well as the loss of fundamental evidence in the case. However, it highlights with regard to this point that the Inter-American Court has found that a State's failure to resolve facts can be considered part of the evidence to be analyzed for certain kinds of attacks, sexual violence included.²⁶⁴ Effectively, the Court has found that this element, among others, is enough to establish that it has occurred, given that "this Court observes that reaching another conclusion, would mean allowing the State to shield itself behind the negligence and ineffectiveness of the investigation and the situation of impunity in which the facts of the case remain, in order to extract itself from its responsibility."²⁶⁵

186. The Commission has also found that one of the main obstacles facing women who are victims of violence is that the authorities' efforts tend to focus on finding physical evidence and taking testimony, "neglecting other types of evidence that can be crucial to establishing the facts, such as that of a scientific and psychological nature."²⁶⁶ In this sense, the IACHR has verified the need to assess evidence that goes beyond testimony and medical verification of physical injuries in order to make cases of violence against women, especially cases of sexual violence.²⁶⁷

187. Regarding evidence on lack of consent, the Commission has use the guidelines established in the International Criminal Court's Rules of Procedure and Evidence as a reference.²⁶⁸ These rules outline factors of coercion that could prevent a victim from physically resisting a sexual assault and that diminish the victim's capacity to give consent.²⁶⁹ Also with regard to this point, the United Nation's Special Rapporteur on

²⁶⁰ Inter-American Court. *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, para. 89.

²⁶¹ Inter-American Court. *Case of Rosendo Cantú et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, para. 89.

²⁶² United Nations, International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1 (2000), rule 70.

²⁶³ Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 323.

²⁶⁴ Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 354.

²⁶⁵ Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 356.

²⁶⁶ IACHR, Access to Justice for women who are Victims of Violence in the Americas. OEA/SER.L/V/II. Doc. 68. January 20, 2007, para. 136.

²⁶⁷ IACHR, Access to Justice for Women who are Victims of Violence in the Americas. OEA/SER.L/V/II. Doc. 68. January 20, 2007, para. 138.

²⁶⁸ IACHR, Access to Justice for Women who are Victims of Violence in the Americas. OEA/SER.L/V/II. Doc. 68. January 20, 2007, para. 54.

²⁶⁹ United Nations, International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1 (2000), rule 70.

torture has highlighted that “in situations where the perpetrator has complete control over the victim the issue of consent becomes irrelevant.”²⁷⁰ Along these lines, the Commission underscores that the lack of direct evidence of an absence of consent in a particular case does not preclude a finding that sexual violence or rape took place.

188. In this case, it is an unchallenged fact that on July 19, 2001, Linda Loaiza López was rescued from a situation of deprivation of liberty with obvious and extremely serious physical injuries. During domestic investigations, in addition to the physical injuries, “gynecological injuries” were also found. However, no criminal responsibility was assigned for crimes related to sexual violence.²⁷¹ Before beginning its analysis of the available evidence on what happened to Linda Loaiza López, the Commission takes note of these minimal findings made in the context of the domestic criminal process. However, the Commission notes that these findings were incompatible with the standards of the duty to investigate with due diligence as it will be analyzed below.

189. Hereinafter, the Commission will weigh the evidence on what happened to Linda Loaiza López.

190. First, the Commission takes into account the detailed and consistent description of the facts that Linda Loaiza López herself has said she suffered from while deprived of liberty. Both the victim’s testimony during the public hearing in the case and her testimony to domestic authorities are consistent in identifying her attacker; in describing the way in which she was detained with violence and death threats on March 27, 2001, when leaving her residence; in explaining in detail the initial acts of violence to which she was subjected; and in indicating she had been raped from the first day and “every day” she remained kidnapped by her attacker, penetrated both by parts of her attacker’s body and objects such as bottles and broomsticks. She also described the severe blows she received from her attacker all over her body and with all manner of objects, as well as cigarette burns.

191. Linda Loaiza López has also consistently described the conditions she faced for four months. They included being deprived of food, always handcuffed or tied in some way, without free access to personal and intimate hygiene; she was forced to remain naked, to cook for her attacker, to clean the apartment that was covered in blood, to drink alcohol and take drugs, and to watch pornography and perform the depicted acts with her aggressor. She also stated that despite her poor physical condition resulting from the injuries, she did not have access to medical treatment, which worsened certain injuries—such as the ones in her ears, which her attacker drained by “jabbing” them with a syringe.

192. Linda Loaiza López also consistently indicated that she was kept deprived of liberty and faced death threats against both her and her family, for whom the attacker had contact information. Linda Loaiza López stated that she was taken to a number of locations—even outside the city of Caracas—against her will, and that any attempt to alert the public to her situation was useless due to both her attacker’s coercion and to his claims that they were a couple and/or were having problems that they were working out.

193. Second, a significant portion of the sexual and psychological violence described by Linda López is supported by elements of the body of evidence in this case.

194. On one hand, and as detailed in the section on the facts, both the forensic medical examinations and multiple medical reports reveal the injuries and severe impact that Linda Loaiza López suffered to her physical and mental health. Specifically, after being rescued and despite the delay in performing essential examinations, Linda Loaiza López had a “full and healed tearing extending to the

²⁷⁰ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 63.

²⁷¹ Without prejudice to this, during the public hearing in the case, the representatives of the State noted that although the facts were not classified as rape, they could have fallen under other substantive criminal laws related to Linda Loaiza López’s sexual autonomy, although they clarified that such classification was the responsibility of the justice system.

adjacent vulval and vaginal mucosa” and “old deflowering and signs of genital trauma caused more than eight days previously.” Other injuries included multiple facial, thoracic, abdominal, and cranioencephalic trauma, as well as bite marks on her breasts and burns. The severity of the injuries was also evident in wounds such as the torn inner labia, the “cauliflower ears” resulting from severe beatings over a long period of time, and the damage to her vision. Her medical history also indicates she was given nutritional treatment after being rescued because she was suffering from “severe anemia.” The number of times Linda Loaiza López had to have surgery and reconstructive surgery also reflect per se the existence of the injuries she described and the brutality with which they were inflicted.

195. Additionally, the reports on Linda Loaiza López’s mental health indicate conditions consistent with the violence she describes. The IACHR therefore finds that it is establish fact that Linda Loaiza López has suffered serious impacts on her mental health and was diagnosed with posttraumatic stress syndrome, depression, and “being a victim of rape or terrorism,” among other things. The degree to which the mental health reports on a victim and the victim’s testimony coincide has been considered relevant in other cases as an additional piece of evidence on what happened, especially with regard to sexual issues.²⁷²

196. Third, in addition to Linda Loaiza López’s testimony and the medical and psychological evidence, the Commission has testimony from officials who participated in her rescue and specialists who gave her medical attention. As indicated in the proven facts, both the officials and the medical personnel agreed on the gravity and severity of the injuries they could see, even stating that if she remained there one more day she probably would have died. It was also stated that the injuries were caused with “extreme brutality and cruelty” and that they looked as if they had been caused by firearms.

197. Fourth, the Commission takes into consideration the State’s response at both in her rescue and medical examination and in the investigations carried out domestically. In this regard, the Commission highlights that signs of many of the acts of sexual violence described by Linda Loaiza López could have been immediately documented if comprehensive examinations have been carried out in keeping with international standards on cases of reports of sexual violence. Yet despite awareness of the descriptions of acts of sexual violence and rape provided by Linda Loaiza López immediately upon being rescued, no immediate or adequate investigative steps were taken to collect the corresponding evidence.

198. The Commission thus notes that the State did not respond immediately with an investigation employing comprehensive medical examinations appropriate to the sexual violence described by Linda Loaiza López. Likewise, throughout the investigation, essential steps for collecting evidence on the sexual violence described and who committed it were omitted. Thus for example, the semen found in the place of rescue was not tested in any way to see if it matched the individual identified by Linda Loaiza López as her attacker. These omissions will be analyzed in more detail in the section on judicial guarantees and judicial protection. What is relevant for this point is that regarding the acts of sexual violence and rape described that could have left some physical evidence as to their occurrence or perpetrator, it was the State’s omission that prevented collecting that evidence in a timely manner. This circumstance provides evidentiary weight to the elements described in the previous paragraphs. As the Court has indicated on a number of occasions, “reaching another conclusion, would mean allowing the State to shield itself behind the negligence and ineffectiveness of the investigation.”

199. In consideration of these elements taken together, the IACHR has reached the conclusion that Linda Loaiza López was held in a situation of deprivation of liberty against her will and that during that time she was subjected to severe and extreme acts of physical, sexual, and psychological violence, which were committed with special cruelty by her womanhood. This includes the conclusion that Linda Loaiza López was raped repeatedly and in different ways while she was being held. These facts constituted grave violations of her rights to personal integrity, private life, autonomy and dignity, personal liberty, to equality and non-discrimination and to live a life free of violence. The Commission also concludes that these facts constituted a

²⁷² Inter-American Court, Case of Rosendo Cantú et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216, para. 99.

serious form of gender violence under the provisions of the American Convention and the Convention of Belém do Pará.

1.2.3. Analysis of the physical, psychological, and sexual violence based on the absolute ban on and cruel, inhuman, and degrading treatment and punishments

1.2.3.1. General considerations

200. The Inter-American Commission dealt with sexual violence as torture in the cases of *Raquel Martín de Mejía v. Perú*²⁷³ and *Ana, Beatriz, and Celia González Pérez v. Mexico*.²⁷⁴ In the first case, the Commission analyzed this categorization based on the elements detailed in the Inter-American Convention to Prevent and Punish Torture, to wit: i) that it is an act “by which physical and mental pain or suffering is inflicted on a person;” ii) committed “with a purpose;” and iii) “by a public official or by a private person acting at the instigation of the former.”²⁷⁵

201. For its part, the Inter-American Court has referred to the precedent of *Aydin v. Turkey* from the European human right system to establish the extent of the damage caused to victims of sexual violence. In that decision, acts of sexual violence against the victim, including rape, were categorized as torture.²⁷⁶ Specifically, in the cases *Fernández Ortega et al.* and *Rosendo Cantú*, both against Mexico, sexual violence committed by a state agent was analyzed by the Inter-American Court based on the elements comprising torture, to wit: i) intent, ii) severity of the suffering caused, and iii) the existence of a goal or purpose.²⁷⁷

202. The Court has also found that some of these elements can be found in cases of sexual violence, especially cases of rape, as it is:

[...] an exceedingly traumatic experience that has severe consequences and causes great psychological and physical damage that leaves the victim “physically and emotionally humiliated,” a situation that is difficult to overcome over the passage of time, in contrast to what takes place with other traumatic experiences. It can be derived from this that severe suffering of the victim is inherent to rape, even when there is no evidence of injuries or physical illness. Effectively, not all cases of rape will result in illness or bodily injury. Women who are victims of rape also experience severe psychological and even social damage and consequences.²⁷⁸

203. Under the Istanbul Protocol, a number of acts of sexual violence can be qualified as torture. For example, the Protocol indicates that sexual torture starts at forced nudity, and that a person is most vulnerable when he or she is naked and helpless. Nudity increases the psychological terror of all aspects of torture, as it raises the possibility of mistreatment, rape, or sodomy. Also, verbal threats, insults, and sexual jokes are part of sexual torture because they increase the humiliation and its degrading aspects, all of which are part of the process. For a woman, groping is traumatic in all cases and considered to be torture.²⁷⁹

²⁷³ IACHR, Report No. 5/96. Case 10,970. *Raquel Martín de Mejía* (Peru), March 1, 1996.

²⁷⁴ IACHR, Report No. 53/01. Case 11,565. *Ana, Beatriz, and Celia González Pérez*. Mexico. April 4, 2001.

²⁷⁵ IACHR, Report No. 5/96. Case 10,970. *Raquel Martín de Mejía* (Peru), March 1, 1996. Section V. General Considerations, B. Considerations on the merits of the matter. 3. Analysis.

²⁷⁶ See: ECHR. *Case of Aydin v. Turkey* (GC), Judgment of 25 September 1997, App. No. 57/1996/676/866, para. 86.

²⁷⁷ See: Inter-American Court, *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 31, 2010. Series C No. 216, para. 110.

²⁷⁸ Inter-American Court, *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 31, 2010. Series C No. 216, para. 114.

²⁷⁹ United Nations, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Istanbul Protocol, December 2001. Para. 215.

204. The Court has also found that rape “pursues the objective of intimidating, degrading, humiliating, punishing or controlling the victim.”²⁸⁰

205. For its part, the European Court ruled in the case of *Aydin v. Turkey* on the categorization of sexual violence as torture. The European Court looked at the distinction drawn between certain types of abuse that could be categorized as torture in the context of acts that are committed deliberately and cause grave suffering, along with aspects such as the sex of the victim and the fact that she was a young woman. The Court found that “the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected” constituted torture.²⁸¹

206. In that same sense, in the framework of international criminal law, the International Criminal Tribunal for the former Yugoslavia (the “ICTY”) has indicated that:

[...] the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity. The condemnation and punishment of rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official. Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting. Furthermore, it is difficult to envisage circumstances in which rape, by, or at the instigation of a public official, or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination or intimidation.

[...] Accordingly, whenever rape and other forms of sexual violence meet the aforementioned criteria, then they shall constitute torture, in the same manner as any other acts that meet this criteria.²⁸²

207. Similarly, the United Nations Special Rapporteur on Torture, Manfred Nowak, discussed in detail the need for the “the torture protection framework [to be] applied in a gender-inclusive manner with a view to strengthening the protection of women from torture.” Along these lines, he indicated that the implications of classifying an act of sexual violence against a woman or rape as “torture” results in strengthened “legal implications, which include the strong obligation to criminalize acts of torture, to bring perpetrators to justice and to provide reparation to victims.”²⁸³ He also stated that “other forms of sexual violence, whether defined as rape or not, may constitute torture or ill-treatment¹⁸ and must not be dealt with as minor offences.”²⁸⁴ The Rapporteur stated that in situations of violence against women, “the purpose element is always fulfilled, if the acts can be shown to be gender-specific,” taking into account that discrimination is one of the elements included under the definition found in the Convention against Torture.²⁸⁵

²⁸⁰ Inter-American Court, *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 31, 2010. Series C No. 216, para. 117.

²⁸¹ ECHR. *Case of Aydin v. Turkey* (GC), Judgment of 25 September 1997, App. No. 57/1996/676/866, para. 82-86.

²⁸² Case No. IT-96-21-T, Judgment, paras. 495 – 496, November 16, 1998. Also see: ICTY, *Prosecutor v. Anto Furundzija*, judgment of December 10, 1998, para. 163. This judicial decision was upheld by the ICTY Appeals Chamber in a judgment issued July 21, 2000.

²⁸³ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 26.

²⁸⁴ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 35.

²⁸⁵ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 27.

1.2.3.2. Specific considerations on acts committed by non-State actors

208. Regarding the ban on torture and participation of non-State actors in cases such as this one, the Committee against Torture has found that when the State does not act with due diligence and/or does not intervene “to stop, sanction and provide remedies to victims of [gender-based violence such as rape, failure to protect victims, etc.] and enables non-State actors to commit acts impermissible under the Convention with impunity,” then its “indifference or inaction provides a form of encouragement and/or de facto permission.”²⁸⁶

209. Likewise, the Committee against Torture

[...] has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.²⁸⁷

210. The Human Rights Committee has indicated that States have an obligation to adopt whatever positive measures may be necessary to provide protection to all individuals from acts prohibited by Article 7 of the International Covenant on Civil and Political Rights, including when they are perpetrated “in a private capacity.”²⁸⁸

211. For his part, the United Nations special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment has found violence against women that takes place “outside direct State control” should not be excluded from the protection the Convention provides from torture. Thus:

[...] the language used in article 1 of the Convention concerning consent and acquiescence by a public official clearly extends State obligations into the private sphere and should be interpreted to include State failure to protect persons within its jurisdiction from torture and ill-treatment committed by private individuals. Also, article 1 of CAT should be seen as reinforcing - and reinforced by - the Declaration on the Elimination of Violence against Women adopted by the General Assembly in resolution 48/104.²⁸⁹

212. For its part, regarding responsibility for the crime, the Inter-American Convention to Prevent and Punish Torture establishes elements such as complicity of officials or public employees with such acts or failure to prevent them when able to.²⁹⁰

²⁸⁶ United Nations. Committee against Torture. General Comment No. 2. Implementation of article 2 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment or Treatment by States parties. CAT/C/GC/2. January 24, 2008, para. 18.

²⁸⁷ United Nations. Committee against Torture. General Comment No. 2. Implementation of article 2 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment or Treatment by States parties. CAT/C/GC/2. January 24, 2008, para. 18.

²⁸⁸ United Nations. *General Comment No. 20*, General comments adopted by the Human Rights Committee, Article 7 - Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, 44th period of sessions, U.N. Doc. HRI/GEN/1/Rev.7 at 173 (1992), para. 2.

²⁸⁹ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 31.

²⁹⁰ Article 3 of that instrument establishes that: “The following shall be held guilty of the crime of torture: a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so. b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.” This Convention’s *travaux préparatoires* indicates that in its drafting, Article 3 was the subject of a number of discussions and submitted for consideration of the States with essentially two proposals: one that required the State to be an active participant in the crime; and another that would not draw the line at State officials but rather include all potential perpetrators of torture. The minutes of the debates indicate that the wording that was in the

[continues ...]

213. Regarding acts committed in “private,” the United Nations Special Rapporteur on Torture and other cruel, inhuman, or degrading treatment or punishment indicated that another element must be taken into account in addition to those established in the Convention against Torture to classify them as such, to wit, the “powerlessness criterion.”²⁹¹ For example, he characterized cases of rape as “an extreme expression of this power relation, of one person treating another person as merely an object.”²⁹² Also, to illustrate the possible “parallels” between torture and acts of violence against women “in private,” the Rapporteur noted that: i) the violence can “escalate,” “sometimes resulting in death or leaving women’s bodies mutilated or permanently disfigured;” ii) in these situations, the intention is often to “keep the victim in a permanent state of fear based on unpredictable violence by seeking to reduce the person to submission and destroy his/her capacity for resistance and autonomy with the ultimate aim of achieving total control;” and iii) factors such as the victim’s resulting trauma, the stigma that goes along with cases of sexual violence as an obstacle to the search for justice and “a crucial element at all stages, starting from its humiliating intention as well as its impacts,” both physical and mental, exclusion from the family and community, etc.²⁹³

214. Along the same lines, the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, noted that if violence against women in private realms such as the home “is a form of torture, States are obliged to adopt legal and other measures to stop” it. She indicated that international human rights laws such as the ban on torture and inhumane treatment can apply to situations including violence in the home when States fail to take positive measures to prevent it and punish violence against women in this realm.²⁹⁴ The Rapporteur also indicated that this type of violence, like torture: i) includes physical and/or psychological suffering, and the nature and seriousness of the assault may be severe enough to make them comparable to “official torture;” ii) is intentional and has a specific end, such as “punishment, intimidation and the diminution of the woman’s personality;” and is also related with “assertion of supremacy and possession over the victim;” iii) rape—as a form of “devastating” violence—is common in the context of “official torture” and “violence in the home;” and iv) “battered women, like official torture victims, may be explicitly punished for infraction of constantly changing and impossible to meet rules.”²⁹⁵

215. For its part, the European Court has established that protecting the substantive rights that are affected by acts of sexual violence (humane treatment and privacy) is part of the State’s obligation to ensure that no person is subject to the conduct prohibited under Article 3 of the European Convention, including acts committed by private parties.²⁹⁶

[... continuation]

end adopted addressed the need to find a consensus between the two positions, which was accomplished by including aspects such as complicity with the acts or failure to prevent them given the capacity to do so. See: Organization of American States. Permanent Council. *Report of the Committee on juridical and political affairs on the study of alternatives to the articles of the draft Inter-American Convention to prevent and punish torture*. OEA/Ser.G.CP/doc.1622/85. 20 November 1985; and *Report of the Committee on juridical and political affairs on the draft Convention defining torture as an international crime*. OAS/Ser. G.CP/doc.1524/84. 18 October 1984.

²⁹¹ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 27.

²⁹² The Rapporteur highlighted that this element also allows for taking into consideration “allows the specific status of the victim to be taken into consideration, such as sex, age and physical and mental health, in some cases also religion, which might render a specific person powerless in a given context.” United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 28-29. Also see: United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. A/HRC/13/39. February 9, 2010. 60.

²⁹³ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 45, 70.

²⁹⁴ United Nations. Report of the Special Rapporteur on violence against women, its causes and consequences. Ms. Radhika Coomaraswamy, presented pursuant to resolution 1995/85 of the Human Rights Commission. E/CN.4/1996/53. February 6, 1996, para. 49.

²⁹⁵ United Nations. Report of the Special Rapporteur on violence against women, its causes and consequences. Ms. Radhika Coomaraswamy, presented pursuant to resolution 1995/85 of the Human Rights Commission. E/CN.4/1996/53. February 6, 1996, para. 44-47.

²⁹⁶ See for example: ECHR. *Case of M.C. v. Bulgaria*. Judgment of 4 December 2003. Application no. 39272/98, para. 149.

216. The general principle applied by the European Court in cases like *A v. United Kingdom* is that the general obligations to respect and guarantee, together with the prohibition established in Article 3 of the European Convention, impose on the State the obligation to ensure that “individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.”²⁹⁷ In this case, the European Court analyzed the State’s international responsibility for the abuse suffered by A. at the hands of his stepfather when he was a boy. The Court took into account that “Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity.”²⁹⁸ Based on this, the Court concluded that the State did not provide adequate protection for the victim from the acts prohibited by Article 3 of the Convention.

217. Later, in the case of *Opuz v. Turkey*, the European Court took up this standard once again and specified that the victim in the case, a woman who was victimized by serious acts of violence committed by her former partner, including the murder of her mother, formed part of “other vulnerable groups” that deserve special protection from the State.²⁹⁹ The Court also addressed the criteria that must be met for certain facts to fall under the conduct established in Article 3 of the European Convention, such as the degree of gravity of the abuse inflicted. According to the Court, this should be analyzed according to the circumstances of each case and taking into account aspects such as their nature and context, duration, physical and mental harm caused, and “in some instances, the sex, age and state of health of the victim.”³⁰⁰

218. In this case, the European Court took into account that situations of violence against women, such as domestic violence, are not limited to a single specific case and are not limited to interpersonal relationships or “private matters.” Rather they are a general issue that is of concern to all States and whose gravity must be taken into account when analyzing incidents such as the one in this case.³⁰¹ Thus, the Court analyzed both the specific situation of the victim and the general context of the situation of violence against women in Turkey and found that the abuse she suffered must be examined under the States’ obligations derived from Article 3 of the Convention. In the end, the European Court found that the State was internationally responsible for these acts insofar as being fully aware of the situation, it did not take effective measures with a true “preventive or deterrent effect [on the perpetrator]” to stop the attacks from reoccurring. The Court also established that the States inaction reflected certain degree of tolerance.”³⁰²

219. The Commission agrees with these developments under other protection systems, which, upon analyzing elements that would constitute conduct prohibited under Article 5(2) of the American Convention, have found that acts of physical, psychological, and sexual violence committed by non-State actors can be classified as such prohibited conduct, with emphasis on the characteristics of this type of violence and the serious effects it has on its victims. As far as the elements of State participation, the cited standards are consistent in considering failure in the duty to prevent and protect can be understood as a form of State tolerance and acquiescence with the corresponding legal implications of the ban on torture in a case like this one.

220. With regard to the arguments presented so far, the Commission considers certain acts of violence against women, including sexual violence and rape, can be categorized as torture or other conduct prohibited under Article 5(2) of the Convention, as it has the elements of that grave human rights violation. This includes acts committed by non-State actors in the private realm when it has been established that the

²⁹⁷ ECHR. *Case of A. v. The United Kingdom*. (100/1997/884/1096). Judgment Strasbourg of 23 September 1998, para. 22.

²⁹⁸ ECHR. *Case of A. v. The United Kingdom*. (100/1997/884/1096). Judgment Strasbourg of 23 September 1998, para. 22.

²⁹⁹ ECHR. *Case of Opuz v. Turkey*. Application No. 33401/02. Judgment Strasbourg of 9 June 2009, para. 160.

³⁰⁰ ECHR. *Case of Opuz v. Turkey*. Application No. 33401/02. Judgment Strasbourg of 9 June 2009, para. 158.

³⁰¹ ECHR. *Case of Opuz v. Turkey*. Application No. 33401/02. Judgment Strasbourg of 9 June 2009, paras. 132, 144.

³⁰² ECHR. *Case of Opuz v. Turkey*. Application No. 33401/02. Judgment Strasbourg of 9 June 2009, para. 170.

State failed to comply with its obligation to protect, a failure that can take the form of acquiescence or tolerance in these cases.

1.2.3.3. Application to the facts of the case

221. Taking the foregoing into account, and with regard to the first element, the Commission finds that due to its characteristics, it is clear that the violence perpetrated against Linda Loaiza López from the moment she was deprived of liberty was intentional. Regarding the second element—that is, severity—the Commission has already found it proven that these acts of extreme cruelty took place and intensified over the passage of time, with devastating consequences for Linda Loaiza López that persist to this day. As was established, more than 14 years after the facts took place, Linda Loaiza López continues to deal with their physical and psychological effects. The Commission also reiterates that the victim's severe suffering is inherent to sexual violence.

222. Likewise, and with regard to the third element, the Commission finds that these facts were intended to humiliate the victim and totally dominate her to establish a relationship defined by the power exercised by her attacker. This is reflected in the tone of the physical assaults and taunting to which she was subjected, as well as the psychological assaults that included constant threats against her and her family. Linda Loaiza López's testimony is revealing when she describes how she had to take drugs, drink alcohol, and do a variety of things that she was forced to do "in order to survive." The IACHR highlights that her testimony also reveals aspects of the submission her attacker sought in order to achieve his objectives.

223. The IACHR finds that determination of this end is applicable both to the purpose of discrimination mentioned in the United Nations Convention against Torture and to the obliteration of personality or diminishment of physical or mental capacity established in the Inter-American Convention to Prevent and Punish Torture. All these criteria are met in the gender violence verified in this case as a result of the absolute power exercised by the victim. In addition, as established in the Convention of Belém do Pará, violence against women is "an offense against human dignity and a manifestation of the historically unequal power relations between women and men."³⁰³

224. As far as the element of State participation or acquiescence, as indicated in the previous section, taking into account the extreme risk to which a woman who was reported missing is exposed, especially in more general contexts of gender violence and impunity for that violence that puts the victim in a special situation of vulnerability and qualifies her for increased protection, failure to fulfill these duties has not only a legal effect of incurring State responsibility for what happened to the victim but can also be understood as a form of acquiescence in the framework of the concept of torture. In this case, the Commission has already established that the grave acts of physical, psychological, and sexual violence—including rape—suffered by Linda Loaiza López were committed by a non-State actor in the context of the State's failure to comply with its duty to prevent and protect once it became aware or should have known about the situation of risk she faced. With this omission, the Venezuelan State was acquiescent and tolerant of the torture to which Linda Loaiza López was victim while she was being held.

1.3. Conclusion

225. Given the considerations set forth in this section, the Commission concludes that Linda Loaiza López was the victims of acts of terrible violence for more than four months, involving physical and psychological injuries inflicted with extreme cruelty and various and repeated forms of sexual violence and rape, all of which had a profound and irreversible impact on her life. All this violence was motivated by and an expression of an acute cruelty toward Linda Loaiza López as a woman, which makes it possible to categorize it as gender-based violence, in this case of an extreme intensity. All these facts gravely affected her rights to humane treatment, personal liberty, privacy, autonomy and dignity, and equality and non-discrimination.

³⁰³ Preamble of the Convention of Belém do Pará.

Also, taking into account the analysis on paragraphs 163-174, the Commission concludes that the violations suffered by Linda Loaiza López are attributable to the Venezuelan State because it failed to comply with its duty to protect on having failed to adopt any search and rescue measures once it learned or should have known about the situation of real or imminent risk she faced. Finally, the Commission concludes that this failure to comply emerges from a situation of State acquiescence. Therefore, the grave acts of physical, psychological, and sexual violence suffered by Linda Loaiza López are also covered by the absolute ban on torture and cruel, inhuman, and degrading treatment.

226. Consequently, the Commission concludes that the Venezuelan State is responsible for the violations of the rights established in articles 5(1), 5(2), 7(1), 11(1), 11(2), and 24 of the American Convention with regard to the obligations established in Article 1(1), to the detriment of Linda Loaiza López. The Commission also concludes that the Venezuelan State is responsible for the violation of articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, as well as failure to comply with Article 7(a) and (b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women to the detriment of Linda Loaiza López.

2. The rights to judicial guarantees and judicial protection, and the duty to investigate acts of torture and violence against women (Articles 8(1)³⁰⁴ and 25(1)³⁰⁵ of the American Convention, Articles 1,³⁰⁶ 6,³⁰⁷ and 8³⁰⁸ of the ICPPT, Article 7³⁰⁹ of the Convention of Belém do Pará and Article XVIII³¹⁰ of the American Declaration)

2.1. General considerations on the rights to judicial guarantees and judicial protection specific considerations on the duty to investigate cases of violence against women and sexual violence

227. Pursuant to the settled case law of the bodies of the Inter-American system, by virtue of the protection granted by articles 8 and 25 of the Convention and the general obligations of its Article 1(1), States have the duty to provide effective judicial remedies to victims of human rights violations that meet the requirements of the rules of legal due process.³¹¹ Likewise, the right to access to justice must ensure, within a

³⁰⁴ Article 8(1) of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

³⁰⁵ Article 25(1) of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

³⁰⁶ Article 1 of the ICPPT: The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

³⁰⁷ Article 6 of the ICPPT: 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.

³⁰⁸ Article 8 of the ICPPT: 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.

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.

³⁰⁹ Article 7 of the Convention of Belém do Pará establishes that: The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; b. apply due diligence to prevent, investigate and impose penalties for violence against women; 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; 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.

³¹⁰ Article XVIII of the American Declaration. Every persona may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

³¹¹ Inter-American Court. *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287. Para. 435 citing: *Case of Velásquez Rodríguez* [continues ...]

reasonable time period, the right of the alleged victims or their relatives to know the truth about what happened and investigate what happened to try and punish those eventually found responsible.³¹² This obligation, which is one of means and not ends, must be assumed by the State as its own juridical duty and not a simple formality condemned beforehand to failure.³¹³

228. Likewise, pursuant to Article 25 of the American Convention, the duty of States to provide judicial remedies is not limited to making them formally available to the victims. Rather, the remedies must be suitable and effective to redress the human rights violations reported.³¹⁴ In this regard, the Inter-American Court has indicated:

the absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.³¹⁵

229. The Court has also specified that the State can be responsible for failure to “order[...], practice[...], or evaluate[...]” evidence that could be fundamental for solving the facts, and the investigation must be aimed at exploring all possible lines of investigation to enable the identification of the perpetrators of the crime so they can be tried and punished.³¹⁶

230. To comply with this duty to investigate and punish, States must combat impunity in human rights violations “using all the legal means at its disposal to [...] since impunity fosters chronic recidivism [...] and total defenseless of victims and their relatives “³¹⁷ States therefore must remove all obstacles and mechanisms of fact and law that maintain impunity; grant appropriate security guarantees to witnesses, court

[... continuation]

v. Honduras. Preliminary Objections Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, para. 199.

³¹² Inter-American Court. *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287. Para. 435. Citing *Case of Bulacio v. Argentina*. Merits, Reparations, and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, para. 199.

³¹³ Inter-American Court, *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; Inter-American Court, *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

³¹⁴ IACHR, Report No. 28/07. *Case 12,496 Claudia Ivette González; Case 12,497 Laura Berenice Ramos Monárrez, Case 12,498 Esmeralda Herrera Monreal (Mexico)*, Merits, March 9, 2007, para. 210.

³¹⁵ *Case of the “Street Children” (Villagrán-Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 235 citing Inter-American Court, *Case of Cesti Hurtado*. Judgment of September 29, 1999. Series C No. 56, para. 121; Inter-American Court. *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 185; Inter-American Court., *Judicial Guarantees in States of Emergency* (arts. 27(2) and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

³¹⁶ Inter-American Court, *Case of the “Street Children” (Villagrán-Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 230. In general, the Court has established certain “guiding principles” that must be observed in criminal investigations into human rights violations, for example: collecting and preserving evidence that may help with any potential criminal investigation of those responsible; identifying potential witnesses and collecting statements; and determining the cause, place, and time of the incident being investigated. It is also necessary to investigate the scene of the crime exhaustively, with rigorous analysis carried out by competent professionals using the most appropriate procedures. Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 344, citing the Inter-American Court, *Juan Humberto Sánchez v. Honduras*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 128.

³¹⁷ Inter-American Court, *Case of Loayza Tamayo v. Peru*. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 176, and Inter-American Court, *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C No. 37, para. 173.

authorities, prosecutors, other operators of Justice, and relatives of the victims; and use all measures at its disposal to move the process forward.³¹⁸

231. The Convention of Belém do Pará establishes specific obligations that complement the general obligations of States regarding compliance with the rights enshrined in the American Convention. The Inter-American Court has referred to the State's enhanced obligation to act with due diligence "when dealing with the case of a woman who is killed or, ill-treated or, whose personal liberty is affected within the framework of a general context of violence against women"³¹⁹ Thus the Court has indicated that:

[...] the general obligations established in Articles 8 and 25 of the American Convention are complemented and enhanced for States Parties by the obligations arising from the specific obligations of the Inter-American treaty of the Convention of Belém do Pará. Article 7(b) of this Convention specifically requires the States Parties to apply due diligence to prevent, punish and eradicate violence against women. Thus, when an act of violence is committed against a woman, it is particularly important that the authorities in charge of the investigation conduct it in a resolute and effective manner, taking into account society's obligation to reject violence against women and the State's obligation to eliminate it and secure the victims' trust in the State institutions for their protection.³²⁰

232. In this way, given the special connotation of the due diligence duty in cases of violence against women, the State obligation to effectively investigate these facts has additional scope that includes, among other aspects, a requirement that processes be carried out from a gender perspective.³²¹ The Inter-American Court has established that the State has an obligation to investigate, *ex officio*, "the possible gender-based discriminatory connotations of an act of violence perpetrated against a woman," taking into account not only the possible existence of a context of violence against women in a specific country but "especially when there are specific indications of sexual violence or some type of evidence of cruelty towards the body of the woman."³²²

233. Specifically for cases of sexual violence, authorities must weigh the different crucial elements of evidence to establish the facts, beyond the physical indications of injury and witness testimony.³²³ Also, pursuant to the Rules of Procedure and Evidence of the International Criminal Court, investigations and court processes must take into account the various factors that could inhibit the victim from physically resisting a sexual attack, even when the victim has not consented.³²⁴

³¹⁸ Inter-American Court, *Case of Carpio Nicolle et al. Guatemala*. Merits, Reparations, and Costs. Judgment of November 22, 2004. Series C No. 117, para. 134.

³¹⁹ Inter-American Court. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 293.

³²⁰ Inter-American Court, *Case of Rosendo Cantú et al. v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgement of August 31, 2010. Series C No. 216, para. 177.

³²¹ See: Inter-American Court. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 293, 455. Also see: IACHR. Report No. 53/13. Case 12,777. *Claudina Isabel Velásquez Paiz et al. (Guatemala)*. Merits. November 4, 2013, para. 117; and IACHR, *Access to Justice for women who are Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68. January 20, 2007, para. 32.

³²² Inter-American Court. *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, para. 187.

³²³ IACHR, *Access to Justice for Women who are Victims of Violence in the Americas*. OEA/SER.L/V/II. Doc. 68. January 20, 2007, para. 136.

³²⁴ Specifically, Rule 70 establishes that: a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent; (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent; (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence; (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness. United Nations, Rule 70, Principles of Evidence in Cases of Sexual Violence, International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1(2000).

234. Based on international instruments such as the Istanbul Protocol³²⁵ and the guidelines of the World Health Organization,³²⁶ the Inter-American Court has indicated in several cases which guiding principles should be observed in a criminal investigation into sexual violence, including: i) that “the statement should be made in a safe and secure environment that provides privacy and instils confidence;”³²⁷ ii) “the statement should be recorded in order to avoid or limit the need for its repetition;” iii) “provide both emergency and, if necessary, continuing medical, prophylactic and psychological care to the victim, using a treatment protocol aimed at lessening the consequences of the offense.”³²⁸; iv) “a complete and detailed medical and psychological appraisal should be made [...] by suitable trained personnel, if possible of the sex indicated by the victim, advising the latter that she may be accompanied by someone she trusts if she so wishes;”³²⁹ v) “the investigative actions are documented and coordinated and the evidence is handled diligently, taking sufficient samples, conducting tests to determine the possible authorship of the act, securing other evidence such as the victim’s clothes, investigating promptly the site of the facts, and ensuring the proper chain of custody;” and vi) “access to free legal assistance is provided to the victim during all stages of the proceedings.”³³⁰

235. For its part, the Inter-American Commission has identified the following omissions and irregularities that can also affect the investigation in cases such as this one: i) failure to collect evidence fundamental for duly resolving the facts, causing the case to stall due to lack of evidence; ii) authorities do not have protocols to deal with the complexity of the evidence in these cases or the minimum amount of evidence that needs to be collected to establish adequate evidentiary grounds; iii) the delay in the collection of evidence following the attack and the key challenges involved as a result of the difficulty in obtaining certain evidence that is lost with the passage of time; iv) incomplete collection and processing of the evidence; v) lack of trained, specialized personal to collect the evidence and prepare the necessary expert reports for these cases; and vi) the failure to incorporate evidence offered by the victims or the families of the victims into the case files³³¹

³²⁵ United Nations, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Istanbul Protocol, December 2001.

³²⁶ World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003.

³²⁷ The Court has indicated that with the victim’s consent, her statement must also include: (i) the date, time and location of the assault, including a description of the type of surface on which it occurred; (ii) the name, identity and number of assailants; (iii) the nature of the physical contacts perpetrated; (iv) whether weapons or restraints were used; (v) use of medication, drugs, alcohol or other substances; (vi) how clothing was removed, if applicable; (vii) details of actual or attempted sexual activity against the presumed victim; (viii) whether condoms or lubricants were used; (ix) whether there were any subsequent activities by the patient that could alter evidence, and (x) details of any symptoms that the presumed victim has developed since that time. See: Inter-American Court, *Case of Espinoza González v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 249, citing World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, *inter alia*, pgs. 36 and 37.

³²⁸ The Inter-American Court indicated in the case of *Espinoza González* that “the State is obliged to provide, with the consent of the victims, treatment for the consequences to their health of the sexual violence, including the possibility of access to prophylactic treatment and treatment to prevent pregnancy.” See: Inter-American Court, *Case of Espinoza González v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, footnote 408, citing, among others, World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, *inter alia*, pg. 63.

³²⁹ In this regard, the Court has specified that “this appraisal must be performed in keeping with protocols designed specifically for documenting evidence in cases of gender-based violence.” See: Inter-American Court, *Case of Espinoza González v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 252, citing World Health Organization, *Guidelines for medico-legal care for victims of sexual violence*, Geneva, 2003, *inter alia*, pgs. 28 and 29. Also regarding cases that include allegations of alleged torture or abuse, the Inter-American Court has established that “the time that has passed before the corresponding medical appraisals are made is determinant in order to conclude without doubt the existence of the harm, especially when there are no witnesses other than the perpetrators and the victims themselves and, consequently, the evidence may be very limited;” Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 333.

³³⁰ Inter-American Court, *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 344; Inter-American Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 194.

³³¹ IACHR, *Access to Justice for Women who are Victims of Violence in the Americas*. OEA/SER.L/V/II. Doc. 68. January 20, 2007, paras. 136-140. Also see: United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 61-62.

236. The Commission will now analyze whether the investigation and criminal proceeding carried out domestically resulting in a conviction for the crimes of illegitimate deprivation of liberty and serious personal injury met the standards set forth in this section. The Commission recalls that it is not responsible for determining the criminal responsibility resulting from the facts of this case, for which reason its analysis will focus on the State's actions and omissions in the framework of the investigation and the criminal process in light of its international obligations on access to justice.

2.2. Analysis of the investigation and criminal process carried out domestically

2.2.1. On the duty to investigate with due diligence

Omissions in initial identification and steps taken given that the case was one of violence against a woman, including sexual violence

237. The Commission observes that from Linda Loaiza López's first contact with State authorities, she expressed that she had been the victim of violence, including sexual violence. Likewise, although she herself would not have stated as much, the nature of her injuries were enough for the corresponding authorities to be able to identify the case as a case of violence against women. Therefore, the reinforced duties to investigate derived from the American Convention and Article 7 of the Convention of Belém do Pará would be activated.³³² Despite this, the Commission observes that in the moments and days immediately following Linda Loaiza López's rescue, these duties were not fulfilled.

238. For example, the Commission highlights that the reports on the rescue and the intake forms at the public hospital where she was taken make no mention that Linda Loaiza López had stated—and her wounds themselves and evidence collected at the scene of the rescue showed—that she was the victim of sexual violence.

239. The Commission also observes that the superficiality of the initial examinations of Linda Loaiza López is clear from the fact that in her medical record from her admission to the hospital indicates that her gynecological exam found that her "genitals show[ed] no sign of injury [...] nonpalpable adnexal tumors. Tactile rectal exam, no evidence of bleeding or tumors." In contrast with this finding, the forensic medical examination performed days later found "full and healed tearing extending to the adjacent vulval and vaginal mucosa" and "old deflowering and signs of genital trauma caused more than eight days previously." This inconsistency reveals that no order was immediately given to make a "meticulous record" of the assault³³³ taking into account the duty to establish whether gender-based violence had occurred.³³⁴

240. Without prejudice to the previous paragraph on the content of the findings of the forensic medical exams, the Commission highlights that it was performed only eight days after Linda Loaiza López's rescue and that it had to be requested formally by the Office of the Public Prosecutor from the Medical Forensic Unit of the Technical Judicial Police Force. This delay has not been justified by the State, and pursuant to the standards outlined, constitutes a failure to comply with the duty to investigate with due diligence in these types of cases.

³³² Likewise, see: Inter-American Court. *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, para. 178.

³³³ See: United Nations, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Istanbul Protocol, December 2001. 218.

³³⁴ The IACHR also points to the testimony of Dr. José Alfredo Saldeño, who stated that the gynecological exam at the time of admission to the University Hospital of Caracas found no injuries in the genital area but that she was also given laboratory tests, including a pregnancy test, "given the situation". See: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004, Testimony of the Dr. José Alfredo Saldeño. pg. 174. Annex D of the brief from the petitioners, July 14, 2009.

241. Likewise, the information available indicates that neither upon admission to the hospital nor in subsequent days were examinations carried out to collect relevant scientific evidence—for example, to determine if any seminal liquid or other relevant genetic material remained in her body. Nor is there any indication that the examination included a detailed, in-depth physical check to adequately and meticulously document not only injuries in her genital area but in her anal area, as well as the other injuries on her body like the bite marks³³⁵ that were also evidence of the brutal cruelty and an indication of the gender-based and sexual nature of the violence against her. As indicated, this type of due diligence carried out in a timely fashion would have enabled collection of evidence of sexual violence and rape and detection of the possible presence of genetic material for eventually performing an analysis of its DNA against that of the person identified by the victim as her attacker.

Actions and omissions of the corresponding authorities throughout the investigation

242. In addition to the initial above-indicated omissions, the Commission observes that there was a lack of due diligence throughout the investigation. The Commission notes that although it does not have all the procedural pieces of the domestic criminal case file, it is possible from the content of the main judicial decisions making up the body of evidence of this case to establish the investigation's definitive steps from its initial stage. Likewise, the authorities' actions can be reconstructed based on the witness testimony in the case cited in the decisions.

243. First is noteworthy that at the same time omissions described in the previous section were taking place, the Office of the Public Prosecutor was focusing on collecting repeated statements from Linda Loaiza López without any justification despite the significant risk of re-victimization from repeatedly describing the acts of violence against her.

244. Second, and with regard to the handling and preservation of the apartment where Linda Loaiza López was found, the Commission established that the scene was not duly protected despite an order from the Office of the Public Prosecutor ordering that it remain closed off. Also, it appeared the scene was not adequately protected while the initial forensic examinations were conducted. This is reflected in the lack of clarity as far as which authority was in charge there, as well as by the presence of a variety of people seen in the photographs and with no indication that minimal guarantees had been put in place to prevent the scene from becoming contaminated.

245. The Commission observes that a review of the evidence collected at the scene, the visual inspection and crime scene photography, and the testimony of the officials who carried out these procedures—all described in detail in the section on proven facts—reveals serious inconsistencies indicative of the negligence with which this part of the investigation was conducted. Likewise, this evidence reveals important omissions, such as the absence of measures to identify fingerprints at the scene. Also, the description of the scene found in the visual inspection report does not include all elements that would be of interest to a criminal investigation, elements whose existence was noted by officials who were on the scene. The Commission also notes that the rigorousness required for collecting evidence at the scene was absent, leading to the loss of important evidence such as the bedroom mattress.

246. Second, the Commission observes that although evidence containing traces of blood, semen, and even hair was collected, no forensic tests were conducted on it, not even DNA tests to determine whose it was. As established, the only forensic comparison examination that was ordered—though in any case it was never conducted—was a Luminol test in Linda Loaiza López's residence to search for traces of blood to be matched against that of the victim. Neither in its briefs nor in the hearing has the State been able to explain its reasons for ordering this examination to compare results with the blood of the victim while failing to take any steps toward identifying the attacker. The Commission finds this to be the most serious omission yet, as the

³³⁵ See: United Nations, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Istanbul Protocol, December 2001, pgs. 80-84.

State explained its actions by indicating that these tests were either never requested or the necessary instruments to carry them out were not available.

247. Third, an analysis of the entirety of the investigation finds that the investigation was not conducted based on the information and specific details provided by the victim, despite the fact that, as indicated, Linda Loaiza López testified on multiple occasions, in detail and consistently. For example, there was no investigation into the alleged existence of other criminal case files against the attacker for cases of violence against women. Also, no follow-up was conducted in the form of collecting evidence on the stay the victim described in the hotel in the state of Sucre. This same omission was identified in conjunction with Linda Loaiza López's stay with her attacker in a hotel in the city of Caracas for a number of days. On this latter point, no steps were taken to establish what happened based on relevant forensic evidence: for example, the sheets from the room that the victim stated were stained with blood. Likewise, the case file gives no indication that substantive steps were ordered taken or potential evidence collected at the other scene in the state of Sucre where the victim stated she had stayed.

248. The IACHR notes that no lines of investigation were open into possible cover-ups by the father of the alleged attacker and the use of State property for such purpose. This determination is specifically related to the incidents described by Linda Loaiza López when she was taken in a vehicle together with Luis Carrera Almoina's father (at the time the rector of a public university) and his driver to a public event at the Teresa Carreño Theater. As established in the section on the facts, the judicial process launched against these persons had to do with Luis Carrera Almoina's escape from house arrest but not the other facts alleged by Linda Loaiza López.

249. Also, as was established, although a report was recorded over threats to Ana Secilia López instead of the report of her sister's disappearance, at least in this case file there is no indication that it was included in the investigation into the facts committed against Linda Loaiza López.

250. The Commission observes that the Office of the Public Prosecutor did perform detailed follow-up and ordered a number of steps be taken to look into the hypothesis put forward by the alleged attacker.

251. Specifically with regard to the Luminol test, the Commission established that it was ordered by the Office of the Public Prosecutor to be conducted at the residence of Linda Loaiza López and her sister, not at the apartment where she was rescued. The reason for this request was the version provided by Luis Carrera Almoina to the effect that the victim's injuries were caused somewhere else and not in the apartment where she was found. In addition, it was established that additional collection and evaluation of complementary evidence as requested by the defense of the accused was also ordered, including evidence on the newspaper advertisement and the phone calls to Ana Secilia's cellular phone. A forensic handwriting analysis was also ordered of several notes that Linda Loaiza López said she wrote in response to coercion and threats but that the accused said were "love letters" she had written him.

252. The Commission notes that pursuant to the principle of presumption of innocence, authorities are indeed responsible to investigate the possible lines of investigation suggested by the defense of a person being criminally prosecuted. Nevertheless, what the Commission found after a comprehensive review of the available case file is a clear contrast between failure to collect basic evidence in a case such as this one and collection of evidence based on the defense's version of the story. The Commission finds that Linda Loaiza López's narrative was treated differently than that of Mr. Carrera Almoina in terms of follow-up through lines of investigation.

Failure to investigate alleged irregularities throughout the investigation and criminal process, as well as the threats and harassment reported by Linda Loaiza López and her family

253. The case file before the Commission includes abundant documentary evidence on all the complaints filed by Linda Loaiza López and her attorney, before various bodies alleging multiple irregularities during the judicial processes. According to the information available in the case file, the Commission observes

that these complaints were not responded to in a timely or effective manner. This is despite laws that specifically establish penalties for failure to adhere to the provisions of the law on violence against women in force at that time.

254. Given that this case also takes place in the context of impunity in cases of violence against women in Venezuela, the fact that no serious and effective processes were launched in response to alleged irregularities at the hands of a number of State agents ranging from refusal to accept complaints to the omissions already described in this report contributes to perpetuating and aggravating the aforementioned context of impunity, sending a message that violence against women is tolerated.³³⁶ Effectively, the analysis of the situation of violence against women performed more recently by international bodies reveals exactly this situation

255. Finally, the Commission finds that the threats and harassment that Linda Loaiza López and her relatives reported receiving during the judicial process were also not investigated. Specifically, the threats that Ana Secilia López reported she and her father received from Luis Carrera Almoína were not investigated. Complaints of alleged retaliation and threats aimed at some of the judicial officials who participated in the process were also not resolved. The IACHR hence finds that the State, having failed to investigate reports of a variety of obstructive actions throughout the process, failed to comply with its duty to provide the necessary guarantees to prevent the creation of a climate of intimidation during the process.³³⁷

2.2.2. On the duty to investigate within a reasonable period of time

256. The IACHR recalls that the analysis of the reasonable period of time as part of the right to judicial guarantees must be measured on a case-by-case basis, pursuant to the relevant standards applied to a specific situation. Those elements are: a) the complexity of the matter, b) the conduct of the authorities, and c) the procedural activity of the interested party.³³⁸ The Inter-American Court has also established that the following must be taken into account: “the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements the matter in dispute.”³³⁹ In this sense, the reasonableness of judicial processes has to do with the right to access to justice, which “means that the resolution of the controversy should take place within a reasonable period of time.” That is, evaluation of the time period must be conducted in conjunction with “the total duration of the proceedings until a final judgment is handed down.”³⁴⁰

257. In that sense, the Commission takes into account that the criminal investigation was launched on July 19, 2001, the same day on which Linda Loaiza López was rescued, and the judicial process concluded definitively—after a single repetition of its initial phase—on May 11, 2007, with the decision of the Criminal Cassation Chamber of the Supreme Court of Justice, which dismissed the cassation writ filed by Linda Loaiza López’s attorney.

³³⁶ Likewise, see: Inter-American Court. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 377.

³³⁷ See: Inter-American Court, *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009, Series C No. 196, para. 106; *Case of Luna López v. Honduras*. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, para. 173.

³³⁸ Inter-American Court, *Case of López Álvarez v. Honduras*. Merits, Reparations, and Costs. Judgment of February 1, 2006. Series C No. 141, para. 132; *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 166; and Inter-American Court, *Case of Acosta Calderón v. Ecuador*. Merits, Reparations, and Costs. Judgment of June 24, 2005. Series C No. 129, para. 105.

³³⁹ Inter-American Court, *Case of Valle Jaramillo v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 155.

³⁴⁰ Inter-American Court, *Case of Valle Jaramillo v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 154.

258. The Commission first observes that the State has not offered any pleadings as to the way in which this case could have involved a degree of complexity to justify the process lasting for more than six years, including two criminal trials, when the investigation phase concluded only months after opening and the rest of the process took place in the courts.

259. As far as the authorities' actions, the Commission stands by the findings of the previous section as far as the failure to comply with the duty to investigate with due diligence. Likewise, the Commission highlights that once the investigation ran its course, the court activity was notably slow, causing an unjustified delay in the final resolution of the case on the domestic level. As has been established, the criminal case file was examined by multiple judges, and the corresponding trial hearings were deferred multiple times. Contrary to the State's argument and as indicated in the proven facts, these delays were not due to Linda Loaiza López's health situation but largely owing to circumstances attributable to the State.

260. With regard to the procedural activity of the affected party and its impact on the duration of the proceeding, the Commission reiterates the considerations on the scope of the State's reinforced duty in response to the facts perpetrated against Linda Loaiza López and in light of her special situation of vulnerability as a woman victim of violence, including sexual violence. Likewise, Linda Loaiza López's participation at all stages of the process has been consistent, as has her determination to move the case forward and take every action available to her to obtain justice.

261. Taking these elements into account, the Commission finds that the State failed to comply with its obligation to investigate within a reasonable period of time.

2.2.3. Conclusion

262. Based on everything noted thus far, the Commission concludes that the Venezuelan State failed to comply with its obligation to investigate with due diligence in: i) the omissions in the initial identification and execution of steps taken given that the case was one of violence against women, including sexual violence; ; ii) the authorities' actions and omissions throughout the investigation; and iii) the failure to investigate alleged irregularities throughout the investigation and criminal process, as well as the threats and harassment reported by Linda Loaiza López and her family. The Commission thus concludes that the Venezuelan State failed to comply with its obligation to investigate within a reasonable period of time.

263. Consequently, the Commission finds that the State is responsible for the violation of the rights to judicial guarantees and judicial protection established in articles 8(1) and 25(1) of the American Convention, with regard to Article 1(1) of the Convention, as well as for the violation of its duty to investigate acts of torture and violence against women, established respectively in articles 1, 6, and 8 of the ICPPT and Article 7 of the Convention of Belém do Pará, all to the detriment of Linda Loaiza López.

264. Likewise, taking into account the denunciation of the American Convention by the Venezuelan State, which came into force on September 10, 2013, and given the continuity of the situation of impunity in regards to the sexual violence suffered by Linda Loaiza López, the IACHR also declares that the State of Venezuela continues to violate the right to a fair trial enshrined in Article XVIII of the American Declaration to the detriment of Ms. López.

3. Rights to judicial guarantees, judicial protection, humane treatment, privacy, equal protection and non-discrimination, and duty to adopt domestic legal provisions (Articles 8(1),³⁴¹ 25(1),³⁴² 5(1),³⁴³ 11,³⁴⁴ 24,³⁴⁵ and 2³⁴⁶ of the American Convention:

265. In this section, the Commission will examine other aspects of the investigation connected with the pleadings of the petitioners on the re-victimization and discrimination that took place through the process, to the detriment of Linda Loaiza López. Hereinafter, the Commission will review some standards developed by both bodies of the Inter-American system on specific elements and parameters that must be observed in an investigation of this nature to ensure it is not discriminatory and does not cause re-victimization. Several aspects of the investigation will then be examined based on these standards.

3.1. General considerations on re-victimization and discrimination in the context of the investigation of cases of violence against women

266. In the case of *María Da Penha v. Brazil*, the Inter-American Commission examined how when domestic violence suffered by the victim was accepted by State officials, it had a negative influence on the investigation of the case, as clear and decisive evidentiary elements revealed in the police investigation were not taken into account during the legal process, delaying without justification the punishment of the attacker.

267. In this regard, the Commission has also concluded that “lack of due diligence with respect to a case of violence against women is a form of discrimination, a failure on the State’s part to comply with its obligation not to discriminate, and a violation of the right to equal protection.”³⁴⁷ Effectively, the IACHR has found that the obstacles women face to access suitable and effective judicial remedies to the violations suffered can be particularly critical because victims suffer from a combination of forms of discrimination—because they are women, because of their ethnic or racial background, and/or because of their socioeconomic condition.³⁴⁸

268. With regard to this, the IACHR has also indicated that:

³⁴¹ Article 8(1) of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

³⁴² Article 25(1) of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

³⁴³ Article 25(1) of the American Convention: Every person has the right to have his physical, mental, and moral integrity respected.

³⁴⁴ Article 11 of the American Convention: Everyone has the right to have his honor respected and his dignity recognized. 2. 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. 3. Everyone has the right to the protection of the law against such interference or attacks.

³⁴⁵ Article 24 of the American Convention: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

³⁴⁶ Article 2 of the American Convention: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

³⁴⁷ IACHR. Report No. 53/13. Case 12,777. *Claudina Isabel Velásquez Paiz et al. (Guatemala)*. Merits. November 4, 2013, para. 166.

³⁴⁸ IACHR, *Access to Justice for women who are Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68. January 20, 2007, para. 195.

The influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence. These biased discriminatory patterns can also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.³⁴⁹

269. Regarding the concept of gender stereotypes, the Inter-American Court has indicated that:

(...) gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. (...) the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities, as in this case. The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.³⁵⁰

270. The IACHR considers it relevant to address the factors of re-victimization that women who are victims of violence could suffer as they seek justice, associated with the lack of sensitivity to the situation of victims, their sex and the seriousness of the facts alleged, the lack of sufficient protection of their dignity and privacy during the judicial processes, the multiple interrogations to which they are subjected at the hands of different officials and sometimes in public, and other factors.³⁵¹

3.2. Analysis of the investigations and criminal processes pursued in this case

3.2.1. On the initial care received by Linda Loaiza López

271. The Commission has already established that Linda Loaiza López was subjected to an extreme and prolonged situation of gender violence—including sexual violence and rape—that gravely affected her human rights. This situation is evident due to the situation in which the victim was found, her injuries, and her statements to the effect that she had been the victim of sexual violence. Under these circumstances, from the moment the authorities responded to the victim's call for rescue and accessed the place where she was, they were obliged to provide her with immediate and comprehensive care that took into consideration her special situation of vulnerability as a victim of this type of violence. The Commission finds that given the condition in which she was found, it was particularly essential for Linda Loaiza López to be removed as soon as possible from her place of captivity and receive the medical care that her grave physical and health status demanded.

272. Nevertheless, the Commission observes that due to the lack of coordination among the authorities at the moment of Linda Loaiza López's rescue, she had to stay for a number of hours in the apartment where she had been held, surrounded by a significant number of people, including officials, medical personnel, the public prosecutor, and even the owner of the apartment, without any clarity as far as how to move forward as quickly as possible. Both her testimony and that of the officials who attended her indicate that she was highly fearful and desperate to leave that place, afraid her attacker would return.

³⁴⁹ IACHR, *Access to Justice for Women who are Victims of Violence in the Americas*. OEA/SER.L/V/II. Doc. 68. January 20, 2007, para. 155.

³⁵⁰ Inter-American Court. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 401.

³⁵¹ IACHR, *Access to Justice for Women who are Victims of Violence in the Americas*. OEA/SER.L/V/II. Doc. 68. January 20, 2007, paras. 141-142.

However, as was established, her transfer to the hospital was delayed by about five hours with no clear explanation to justify the delay.

273. Specifically with regard to the care Linda Loaiza López received as a victim of sexual violence and rape, the Commission observes that the forensic medical examinations, the visual inspections made to establish her physical status while she was hospitalized, and the forensic psychiatric evaluation were performed by male officials, with no indication that the victim was provided with an environment of privacy for carrying out these procedures. The petitioners also stated that although she was later assigned a woman clinical psychologist,³⁵² a significant portion of the psychological and psychiatric care received by Linda Loaiza López during her hospitalization was provided by male personnel even though she had been identified as “a person who is fearful of the male figure.”

274. Finally, the Commission highlights the ban on visitors imposed during the initial days of her hospitalization and after being rescued. The Commission finds that the State has not explained how contact with her relatives could have put her in danger. The Commission finds that this situation, which has not been justified by the State with any specific pleadings, was a source of additional and unnecessary suffering, both for her and her family.

3.2.2. On the legal framework applicable to cases of sexual violence and rape

275. The Inter-American Commission has indicated that the codification of sexual crimes as protective of values such as honor, social modesty, and good customs represents a failure of the State to provide due legal protection to the victims of these crimes.³⁵³ Along these lines, the Inter-American Court has also established that “a guarantee of access to justice for women victims of sexual violence must be the establishment of rules for the assessment of the evidence that avoid stereotyped affirmations, insinuations and allusions.”³⁵⁴ Likewise, the UN system has found that when there is no regulation on collection of evidence that takes into account the specific needs of women victims, they are exposed to factors that could worsen the trauma suffered and the stigma that accompanies sexual violence.³⁵⁵ Elements such as a requirement to prove the victim resisted physically and the analysis of the victim’s prior sexual conduct are factors that leave victims unprotected and constitute discrimination in regard to their right to access to justice

276. In this regard, the European Court has indicated that:

(...) while in practice it may sometimes be difficult to prove lack of consent in the absence of ‘direct’ proof of rape, [...] the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances.³⁵⁶

277. The Commission has already described how the provisions of the Criminal Code in force at the time of the facts did not protect aspects such as the liberty or sexual autonomy of persons. Rather, crimes such as rape were considered a violation of legal rights that do not meet the standard, such as “good customs and the good order of families.” These laws likewise contain mentions of discriminatory stereotypes and

³⁵² See, among others: Annex 4. Decision of the Twentieth First Instance Trial Tribunal of the Caracas Metropolitan Area. Case No. 20.-253. November 5, 2004. Statement of clinical psychologist María Valentina Ramírez Izarra of the Dr. Carlos Arvelo Military Hospital of Caracas, pgs. 184-187. Annex D of the brief from the petitioners, July 14, 2009.

³⁵³ IACHR, Access to Justice for Women who are Victims of Sexual Violence: Health and Education. OEA/SER.L/V/II. Doc. 65. December 28, 2011, para. 59.

³⁵⁴ Inter-American Court, *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 278.

³⁵⁵ United Nations. Second Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, before the Human Rights Council. A/HRC/7/3. January 15, 2008, para. 62.

³⁵⁶ ECHR. *Case of M.C. v. Bulgaria*. Judgment of 4 December 2003. Application no. 39272/98, para. 181.

prejudices that have consequences for the classification of the offense and even establish mitigating circumstances based on the personal circumstances of the victim: for example, if she is a “prostitute,” “single,” “widow,” or an “honest” woman.

278. These laws comprise the legal framework in which the investigation and criminal processes in this case took place. The Commission finds that independent of the criminal offense applied in the end, the way in which crimes related to sexual violence or rape were governed by law was inappropriate and established certain elements that could affect the investigation as indeed it was affected, with emphasis on aspects that were not only irrelevant but in violation of victim’s privacy, autonomy, and dignity. This situation is often linked to diversion of investigations and failure to collect truly relevant evidence, including failure to consider all existing clues. As established in the relevant section on the duty to investigate with due diligence, this is effectively what happened in this case.

279. Specifically, the Commission observes that the failure of the domestic court processes to recognize the sexual violence suffered by Linda Loaiza López and the absence of criminal responsibility for that violence was not only due to the aforementioned omissions but also took place in a legal context favoring the use of discriminatory stereotypes to her detriment. This legal framework had concrete implications in this case, particularly in the fact that a significant portion of the trial revolved around the allegations of sex work made by the defense of Mr. Carrera Almoína and that steps were even taken to collect evidence on the alleged newspaper advertisement that according to the defense proved such activities, even while at the same time, the same authorities failed to collect such essential evidence as the evidence already mentioned in this report, among which the failures to test the DNA and the semen that were found stand out.

3.2.3. On the way in which the criminal investigation and process were conducted

280. From its review of the available case file, the Commission has already established in this report that the lines of investigation and collection of evidence mainly followed the version of the facts given by Mr. Carrera Almoína. In contrast, no specific steps were taken to follow up on and, where applicable, corroborate the testimony of Linda Loaiza López. Despite this situation, the Commission highlights that the reasoning of the judicial decisions did not assign criminal responsibility for the facts of violence and sexual violence due to the lack of legal evidence, witnesses, and the impossibility of confirming the offense using other evidence outside the testimony of Linda Loaiza López. In this sense, although the victim’s testimony was given practically zero probative weight, the verification of negligence during the investigative stage was not complemented by an analysis of other relevant evidence presented during the two oral trials. However, the defense’s requests for the gathering of evidence were indeed granted.

281. Additionally, the Commission highlights the following elements as indicative of the slim credibility granted to the testimony of the victim in contrast to the credibility granted to the statements of the defense of Mr. Carrera Almoína:

- a. The evaluation of the supervisory Tribunal to grant a measure in lieu of deprivation of liberty for the accused contained no considerations on the procedural merits of this type of measure; rather, the precautionary measure was based on a subjective assessment related with the argument that it was unusual for a person accused of these types of crimes to appear voluntarily for the proceedings.
- b. The reasoning based on which the judgments of November 5, 2004, and May 22, 2006, were made does not make reference to the content of the medical examinations performed on Linda Loaiza López indicating the nature of the assaults she suffered and their physical and psychological impact. The decisions do not take into account that the findings of these expert examinations supported the severity of the injuries as described by the victim and even, although insufficiently, the existence of sexual violence. On the contrary, the judgment of May 22, 2006, did take into account the content of the expert psychiatric examinations performed on Mr. Luis Carrera Almoína, including the

examination performed by his personal physician describing the anxiety and depression he suffered due to the death of his mother.

c. The decisions used an analytical methodology that pitted the victim's word against that of the attacker rather than a comprehensive analysis from a gender perspective that took into account the other elements contained in the judicial case file, including the evidence that tended to corroborate Linda Loaiza López's testimony. For example, during both oral trials, issues were debated such as whether a forearm could actually enter a vagina. Forensic medical experts were questioned as to whether the trauma identified could have been consensual or not, and on if the vaginal tear could have been caused by a penis or another object.

d. The supplementary evidence put forward by the defense on the victim's alleged sex work and on the romantic relationship she had allegedly had with Mr. Carrera Almoína were used to discredit Linda Loaiza López's testimony and attribute certain prior sexual conduct to her that, pursuant to the applicable criminal statute itself, made her less valuable or implicitly deserving of her assault. This evidence was not only not relevant but constituted a form of stigmatization and discrimination, as well as interference in the victim's private life. In addition, this evidence was used to order a case file opened to investigate Linda Loaiza and Ana Secilia López's alleged connection to a prostitution ring, which constituted an additional element of re-victimization. The Commission finds it especially concerning that, to this day, and according to reports from the petitioners, it is still not certain whether that case file was actually opened by the Office of the Public Prosecutor and what its current status might be. The State has not provided information on this.

e. During the testimony given in the oral trials, the judicial authorities permitted the victim to be constantly questioned and stigmatized, both by the defendants' defense and by the very person she had identified as her attacker. The IACHR finds that although the right to defense is an essential aspect of judicial guarantees, it cannot be to the detriment of the due protection that the State must provide to the victims of facts of this nature. In this sense, the allowance of certain humiliating, rude, and evidently discriminatory expressions against the victim during the trials makes clear the defenselessness of Linda Loaiza López and the situation of re-victimization she faced throughout the judicial processes.

3.2.4. Conclusion

282. Based on the considerations put forth in this section, the Commission concludes that Linda Loaiza López did not enjoy equal protection of access to justice. On the contrary, Linda Loaiza López did not receive care and treatment appropriate to her status as the victim of violence against women, including sexual violence and rape, from the moment she was rescued and subsequently. Likewise, the grave facts of violence she suffered were investigated and brought to trial in a legal framework that was discriminatory and therefore not compatible with the American Convention for the reasons described. In addition, the Commission has already described the almost total lack of merit granted Linda Loaiza López's testimony, as well as the various indications of bias with regard to following up lines of investigation and collecting and weighing evidence. Not only did all these situations affect her right to access to justice, but they constituted forms of additional re-victimization that affected both her privacy and dignity, as well as her psychological and moral integrity.

283. Consequently, the Commission concludes that the Venezuelan State is responsible for the violations of the rights established in articles 5(1), 8(1), 11, 24, and 25 of the American Convention with regard to articles 1(1) and 2 of that instrument; as well as the violation of Article 7 of the Convention of Belém do Pará, all to the detriment of Linda Loaiza López.

4. Right to humane treatment with regard to the relatives (Article 5 of the American Convention)

284. The right to humane treatment in Article 5(1) of the American Convention establishes that “Every person has the right to have his physical, mental, and moral integrity respected.”

285. The case law of the Inter-American Court has established that the relatives of victims can, for their part, be affected by the violation of their right to psychological and moral integrity.³⁵⁷ Thus, the Inter-American Court has found the right to the psychological and moral integrity of the relatives of the victims to have been violated based on the additional suffering they experienced due to the specific circumstances of the violations perpetrated against their loved ones³⁵⁸ and due to the actions or omissions of State authorities with regard to the facts.³⁵⁹

286. The Commission has found it establish that in this case, the acts of violence suffered by Linda Loaiza López directly affected her family starting at the moment she was deprived of liberty on March 27, 2001. This suffering was aggravated as a result of the authorities’ failure to act in response to the report that Ana Secilia López tried to file starting on the day after her sister’s disappearance to locate her. The testimony of Linda Loaiza López’s parents and her siblings reveals the anguish they experienced on not knowing her whereabouts and not being able to do anything to find her. Also, as was established, the López Soto family reported having been subjected to threats and harassment by the person allegedly responsible for the facts of violence suffered by Linda Loaiza. The authorities failed to respond to these, which increased their situation of vulnerability.

287. Likewise, the IACHR takes into account the testimony of Linda Loaiza López’s parents on the impact they suffered when they saw her for the first time following her rescue. At that time, her mother, Mrs. Paulina Soto de López,, was pregnant, and as family, her perception is that the months of suffering over Linda Loaiza López’s disappearance, plus finally finding her in such terrible condition, affected her health and pregnancy. In that context, the IACHR notes the poor treatment given by the Venezuelan authorities when Mr. Nelson López and Mrs. Paulina Soto arrived in Caracas to see their daughter: They were not initially allowed to see her, and they had to do legal procedures to demonstrate they were her parents.

288. Finally, the Commission finds that the denial of justice in this case has likewise affected the members of the López Soto family, altered the family dynamic, and had an impact on their financial situation that was aggravated by the various expenditures they had to make to travel to the city of Caracas and do the necessary paperwork for the criminal process so they themselves could lobby for justice for the violence suffered by Linda Loaiza López. There is a latent sense in their story of the desperation experienced on failing to be treated properly by the authorities who participated in the investigation of the facts, having been subjected to acts of violence during the judicial process, and having the conviction that they did not have equal access to justice in that justice system.

289. Based on these considerations, the IACHR finds it establish that the effects of the gravity of the facts that took place, plus the absence of a timely and adequate judicial response extend beyond the direct victim to the victim’s relatives. In this sense, the Commission concludes that the State is responsible for the

³⁵⁷ Inter-American Court. Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 101; Case of the “Dos Erres” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 206 and Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment dated August 12, 2008. Series C No. 186, para. 163.

³⁵⁸ Inter-American Court. Case of Penal Miguel Castro Castro v. Peru. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 335; Case of Vargas Areco v. Paraguay. Merits, Reparations, and Costs. Judgment of September 26, 2006. Series C No. 155, para. 96; and Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153, para. 96.

³⁵⁹ Inter-American Court. Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, and Reparations. Judgment dated May 26, 2010. Series C No. 213, para. 195.

violation of the right to psychological and moral integrity established in Article 5(1) of the American Convention to the detriment of the relatives of Linda Loaiza López identified in paragraph 48 of this report.

VI. CONCLUSIONS

290. Based on the considerations of fact and law set forth throughout this report, the Inter-American Commission that the State of Venezuela is responsible for:

- The violation of the rights established in articles 5(1), 5(2), 7(1), 11(1), 11(2), and 24 of the American Convention with regard to the obligations established in Article 1(1) of the same treaty, to the detriment of Linda Loaiza López.
- The violation of articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, as well as failure to comply with the duty established in Article 7(a) and (b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Linda Loaiza López.
- The violation of the rights to judicial guarantees and judicial protection established in articles 8(1) and 25(1) of the American Convention, with regard to Article 1(1) of the Convention, as well as for the violation of its duty to investigate acts of torture and violence against women, established respectively in articles 1, 6, and 8 of the ICPPT and Article 7 of the Convention of Belém do Pará, and the right established in article XVIII of the American Declaration, all to the detriment of Linda Loaiza López.
- The violations of the rights established in articles 5(1), 8(1), 11, 24, and 25 of the American Convention with regard to articles 1(1) and 2 of that instrument; as well as the violation of Article 7 of the Convention of Belém do Pará, all to the detriment of Linda Loaiza López.
- The violation of the right to psychological and moral integrity established in Article 5(1) of the American Convention to the detriment of the relatives of Linda Loaiza López identified in paragraph 48 of this report.

VII. RECOMMENDATIONS

291. By virtue of the foregoing conclusions,

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

1. Investigate effectively, with due diligence and within a reasonable time, the sexual violence suffered by Linda Loaiza López. The corresponding investigations and judicial processes must be carried out according to the standards described in this report.
2. Order the corresponding administrative, disciplinary, or criminal measures that correspond to the actions or omissions of the State officials who contributed to the different factors involved in denial of justice identified in this report.
3. Provide for reparations to Linda Loaiza López and her relatives for the human rights violations found to her detriment. This reparation must include measures of pecuniary compensation and measures of satisfaction to redress both the material and the moral damage. Measures of satisfaction could include: i) an act of public apology to Linda Loaiza López and her relatives for the denial of justice represented by the facts of this case; ii) dissemination of the standards developed in this report through campaigns to raise awareness in the community on violence against women; and iii) coordinating with Linda Loaiza López to provide her with a scholarship for her professional development.

4. Provide free and immediate medical and psychological or psychiatric care (as needed) for as long as necessary to the victims of this case according to their requests and in coordination with them.

5. Provide mechanisms of non-repetition that include: i) adopting legislative, administrative, or other measures to guarantee access to justice for women who are victims of violence in Venezuela; ii) designing and implementing a national policy on prevention of violence against women and gender-based violence that includes effective supervision and oversight mechanisms; iii) strengthening the institutional capacity for responding to the structural problems identified in this case as factors of impunity in cases of violence against women; iv) designing and implementing adequate and accessible reporting mechanisms for women who are victims of violence, including sexual violence, in Venezuela, pursuant to the standards established in this report; v) designing and implementing multidisciplinary healthcare services for women who are victims of sexual violence that address the specific needs of victims of this type of violence for recovery and rehabilitation; vi) designing protocols to facilitate and foster effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence that includes a description of the complexity of the evidence and details the minimum evidence that must be collected to have an adequate evidentiary basis, taking into account the international standards set forth in the Istanbul Protocol; and vii) designing training programs for all justice system officials who come in contact with and/or are in charge of investigating cases of violence against women, including sexual violence.

6. Reimburse the Victims' Legal Assistance Fund of the Inter-American Commission on Human Rights for the funds expended during the processing of this case.