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## **REPORT No. 141/19**

### **CASE 13.080**

REPORT ON MERITS

BRISA LILIANA DE ANGULO LOZADA  
BOLIVIA

Approved by the Commission at its session No. 2154 held on September 28, 2019  
173 Regular Period of Sessions

**Cite as:** IACHR, Report No. 141/19. Case 13.080. Merits. NAME. Brisa Liliana De Angulo Lozada.  
September 28, 2019.



## I. INTRODUCTION

1. On January 20, 2012, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition presented by the Child and Family Advocacy Clinic of Rutgers University, the International Human Rights Law Clinic of American University, the Oficina Jurídica para la Mujer, and Maria Leonor Oviedo Bellott (hereinafter "the petitioner")<sup>1</sup> alleging that the Plurinational State of Bolivia (hereinafter "the Bolivian State," "the State," or "Bolivia") was internationally responsible to the detriment of Brisa Liliana De Angulo Losada (hereinafter "the alleged victim") due to its failure to protect her, investigate, and punish the sexual violence she suffered as a child.

2. The Commission approved the admissibility report number 25/17 on March 18, 2017.<sup>2</sup> On April 7, 2017, the Commission notified the parties of the report and gave them the time provided for in the Rules of Procedure to submit additional comments on the merits. The Commission made itself available to the parties to help them reach a friendly settlement, but the conditions were not met for launching that process. Both parties submitted comments on the merits, and all the information received was duly transferred between the parties.

## II. POSITIONS OF THE PARTIES

### A. Petitioner:

3. The petitioner alleges that Brisa Liliana De Angulo was the victim of sexual violence as an adolescent and was later re-victimized by the State when she sought redress and protection, which violated her human rights by (i) not protecting her from the cruel and inhuman sexual violence she suffered as an adolescent, causing harm to her dignity; (ii) maintaining a justice system that treated her cruelly, inhumanly, and without regard for her dignity, while failing to investigate, try, or punish her rapist; and (iii) discriminating against her as an adolescent and a woman.

4. Regarding the facts, the petitioner states that Brisa is a U.S. and Colombian citizen who was living with her family in the city of Cochabamba, Bolivia. It states that between September 2001 and May 2002, when she was 16 years old, she was sexually assaulted and raped repeatedly by her cousin, Eduardo Gutiérrez Angulo, a Colombian citizen, who is 10 years older than she is. She said she was also abused and beaten by her attacker, which she originally hid from her family because she was afraid of his threats. The petitioner states that in May 2002, on noticing Brisa's dramatic physical and psychological decline, her parents took her on a trip to the United States, and there they learned about what had happened. After the girl tried to commit suicide, her parents returned with her to Bolivia to report the crime to State authorities.

5. From that moment on, the alleged victim claims having experienced a process of revictimization at the hands of the police, prosecutors, judges, medical and judicial staff, which she described as skepticism, insensitivity, and abuse. Specifically, the petitioner alleges that Brisa was subjected to two cruel physical examinations, with those in charge of conducting a forensic examination being all men, who acted without any care or consideration despite Brisa crying throughout the procedure. During the course of the investigations, the girl had to describe what happened to her repeatedly to a prosecutor, who did not take the necessary measures for the interviews to be conducted with the required privacy and without interruption, and the prosecutor frequently tried to blame her for provoking the sexual assault, pressured her to stay quiet and retract her accusation, and threatened to imprison her if it turned out she was lying. The petitioner also alleges she was subjected to multiple psychological evaluations and trials during which she felt like she was the one on trial, not her attacker.

<sup>1</sup> On May 8, 2015, the IACHR received a communication from Brisa De Angulo informing it that the International Human Rights Law Clinic of American University would no longer be representing her. The communication added that Hughes Hubbard & Reed LLP and Equality Now would join the petitioners in this case.

<sup>2</sup> IACHR. IACHR. 25/17. Petition 86-12. Admissibility. Brisa Liliana De Angulo Losada. Bolivia. March 18, 2017. The petition was found admissible in relation to Articles 5, 8, 11, 19, 24, and 25 of the American Convention, in conjunction with the obligations established in Articles 1(1) and 2 of the Convention, as well as Article 7 of the Convention of Belém do Pará.

6. It also states that the judicial authorities did not take the necessary measures to hold the attacker in provisional detention, putting at risk the personal integrity of the alleged victim, who was threatened and persecuted, to the point that there were two arson attacks on her house. It adds that after long and multiple criminal processes with no result, the accused fled to Colombia, from where he continues to threaten the alleged victim through phone calls. Likewise, it alleges an irrational and unjustified delay by the justice system and an ineffective and chaotic legal proceeding, in the framework of which the attacker still has not been criminally convicted. After two full trials were annulled, the third has not been able to take place because the accused took advantage of the repeated overturning of the judgments to flee to Colombia. It states that the Bolivian government has done little to recapture the attacker after he fled the country; the Court and the police have taken no measures to ensure that the third trial moves forward.

7. Lastly, it states that Brisa's story is not an isolated case, but rather a part of the context of sexual violence suffered by women and girls in Bolivia, a country with the highest rates of sexual violence in Latin America and in which 70% of women have been victims of sexual violence, with a third of all girls suffering some form of sexual violence before turning 18. It alleges that the revictimization by the Bolivian judicial system, to which Brisa was a victim, is also not an isolated incident, as this is how victims of sexual violence in Bolivia are commonly treated. Very few reports of sexual violence move forward: 77% of the cases reported are lost or abandoned between the filing of a report with the Family Protection Brigade and its registration before the judiciary; only 11.04% of those cases receive a response from the courts, the vast majority through family courts; only a tiny percentage, 0.04%, are criminally prosecuted.

8. The petitioner also argues that Brisa's case made considerable progress only because of private efforts and pressure that Brisa's parents brought to bear on the authorities, and that otherwise, the case would have been dropped at an early stage. Additionally, the accused acted within an environment of impunity that the Bolivian justice system has created for those guilty of sexual violence against teens. Although it should be noted that a series of laws have been passed in Bolivia to protect women, girls, and adolescents from violence—including the Code on Children and Adolescents (Law 548) and Law 348 on the protection of women, which mark an important development in Bolivia's efforts to eradicate sexual violence against children and women—the country still lacks the capacity to guarantee that protection. It also states that in order to protect the best interest of children, the *estupro* law—which establishes less penalties for abusers who violate children between the ages of 14 and 18—must be repealed, adding that "the Bolivian authorities assume that adolescent victims consent to their rapes, giving the rapists a way of avoiding appropriate punishment."

9. Therefore, the petitioner alleges that Bolivia is responsible for violating the girl's right to special protection, the right to not suffer sexual and gender-based violence, the right to dignity, the right to freedom from cruel, inhuman, and degrading treatment, the right to equal protection under the law, and the right to judicial protection from the State, all set forth in articles 5(1), 5(2), 8, 11, 19, 24, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"); articles 7 and 9 of the Convention of Belém do Pará; and other international instruments. It also argues that pursuant to articles 1.1 and 2 of the Convention, a State Party that tolerates the violation of rights protected under the Convention is responsible for the actions of the citizens who violate those rights. It notes that Bolivia has a long history of accepting sexual and gender-based violence against teen girls and not preventing it or punishing those responsible, thus permitting them to continue victimizing girls with impunity. Therefore, the petitioner asked the Commission to intervene to remedy Bolivia's acts and omissions, as the State did not provide effective internal remedies in keeping with its international obligations.

## **B. State**

10. Bolivia argues that the acts of sexual violence against Brisa De Angulo are not attributable to the State, as they were not carried out, organized, directed, consented to, or permitted by the State or by any of its agents. It likewise notes that the facts were not foreseeable by the State, as they took place within the privacy of a family home, where the reach of the State is limited by respect for the right to privacy.

11. It also argues that the authorities, officials, staff, agents, and institutions of the Bolivian State performed in compliance with the obligation to refrain from any action or practice of violence against women, and rejected

the claim that Brisa was re-victimized by the judicial system. It states that during the criminal process, the rights and guarantees of both parties were respected, due process was provided, and measures were taken to respect human rights. It adds that the forensic medical and psychological exams and the collection of statements from the alleged victim and potential witnesses were carried out with proper respect for the rights of Brisa De Angulo, and that the steps taken were necessary for and pertinent to investigating the incident and context.

12. Likewise, Bolivia argues that it acted with due diligence to prevent, investigate and impose penalties for violence against women and did not fail to provide protection. It explains that it has taken all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that sustain the persistence and tolerance of violence against women. The State also rejects the accusation of an unjustified delay, arguing that it has put in place the domestic legislation and administrative provisions necessary to prevent, punish, and eradicate violence against women. It notes that the State did not have an opportunity to implement measures to prevent the attacker from harassing, intimidating, threatening, harming, or endangering the life or integrity of the victim, her family, or their property, as these facts were not communicated to the police or to any other State authority. The State also argues that it has established fair and effective legal procedures to protect women who have been subjected to violence which include, among other things, protective measures, a timely hearing, and effective access to such procedures. Lastly, Bolivia says it has the necessary legal mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective measures of compensation.

### III. ESTABLISHED FACTS

#### A. Information on Brisa Liliana De Angulo and the facts between 2001 and 2002

13. Brisa Liliana De Angulo was born in Baltimore, the United States, on September 14, 1985.<sup>3</sup> She was the third of five siblings and grew up in a family formed by her parents, two Colombian professionals who worked in social assistance. Brisa's father was in charge of the Bolivian office of MAP International (MAP), a Christian organization that provides medical care to low income people. Because her parents worked in rural areas, Brisa and her siblings got their education through distance learning in the US education system. In September 2001, Brisa turned 16 and was living in Chilimarca, Cochabamba, Bolivia, with her parents and two younger sisters. In addition to studying, Brisa did social and educational work with children and older persons in programs related to MAP. Her two older brothers—with whom Brisa had a very close relationship—had moved to the United States to continue studying. On August 21, 2001, a Colombian cousin, Eduardo Gutiérrez Angulo, 26 years old, came to live with the family. He had been studying veterinary medicine and was to intern in one of the MAP programs in Chilimarca. According to Brisa's account and to a social report attached to the case file, Eduardo quickly filled the space of affection and trust that had been left open by the two older brothers in the family when they left for the United States.<sup>4</sup>

14. The account of the alleged victim and a psychological report indicate that between October 2001 and May 2002, taking advantage of the trust that the family placed in him and Brisa's fraternal affection toward him, Eduardo Gutiérrez Angulo had sexual relations with his adolescent cousin on multiple occasions.<sup>5</sup> During a trip to the United States in May 2002, Brisa's older brothers read her diary and discovered what was happening. She tried to commit suicide when her parents found out.<sup>6</sup>

<sup>3</sup> Certification of Vital Record. State of Maryland. State File Number: 1985-41571. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 5 – evidence provided by the Office of the Public Prosecutor, pages 1-4.

<sup>4</sup> Social report by Judith Romero C. Defensa de Niños y Niñas Internacional, Bolivia office, August 21, 2008. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 5 – evidence provided by the Office of the Public Prosecutor, pages 58-59; Statement of Brisa Liliana De Angulo, December 9, 2011, document attached to the petition before the IACHR of January 20, 2012, Annex 1, pgs. 1-2; Statement from young Brisa de Angulo Losada, August 1, 2002. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 1 – Criminal proceedings, page 6.

<sup>5</sup> Psychological report, Sandra Muñoz, psychologist, Defensa de Niños y Niñas Internacional, Bolivia office, August 7, 2002. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 5 – evidence provided by the Office of the Public Prosecutor, page 6; Statement of Brisa Liliana De Angulo, December 9, 2011, document attached to the petition before the IACHR of January 20, 2012, Annex 1, pgs. 2-7.

<sup>6</sup> Statement of Brisa Liliana De Angulo, December 9, 2011, document attached to the petition before the IACHR of January 20, 2012, Annex 1, pg. 7.

15. On July 24 and 25, 2002, Brisa was taken by her mother in the United States to seek medical care for sexual abuse. The doctor who conducted the forensic examination indicated that the appointment was because Brisa "was having sexual relations with a 26-year-old man [...] She did not wish to talk about it much today and was depressed. She was seduced into this situation for an extensive period of time [...] She was confused and very frustrated. Her parents were very upset and depressed." From the general examination, the professional confirmed that Brisa was "well-nourished, well-developed, with no signs of severe decline." With regard to the gynecological exam, she found "no discharge, no injuries, Hymen not intact," concluding that she was a "16-year-old woman who had experienced sexual abuse."<sup>7</sup> The psychologist who examined her, who said she had "20 years of experience basically in sexual abuse and its treatment," indicated that, based on Brisa's statements, the relationship was one of "a minor being seduced by an adult man with the purpose of exploiting her sexually. Eduardo developed a relationship with Brisa based on trust, family connections, and service to God, and used these things to exploit Brisa sexually and manipulate her, making her believe that she had done something wrong." She also stated that Brisa had a "high risk of mental health [problems] [...] Especially if she does not receive the appropriate support or if the response of the legal system is to in some way accuse the victim rather than recognize a crime."<sup>8</sup>

16. On July 15, 2002, Brisa's father reported to the Cochabamba office of "Defensa de Niñas y Niños Internacional" that his daughter had been the victim of rape and sexual abuse.<sup>9</sup> On August 1, 2002, Brisa's father made his complaint before the competent judicial authorities,<sup>10</sup> which triggered the three criminal proceedings that are described hereinafter.

## B. Domestic proceedings

17. The documents provided by the parties include copies of three criminal processes brought against Eduardo Gutiérrez Angulo for the above-described facts. These case files include, among other, the following steps and evidence:

### 1. First criminal proceeding

- a. Forensic medical report of July 31, 2002, indicating that Brisa had an old tear in her hymen at five o'clock.<sup>11</sup> According to the alleged victim's description, that exam was a repulsive and traumatic experience. Five medical students accompanied the examining doctor—a man—who ordered Brisa to take off her clothes, telling her to hurry up because they did not have "all day." When Brisa asked that the students leave, they laughed at her and called her ridiculous. Brisa described this exam as being conducted by force and in spite of her crying throughout the procedure;<sup>12</sup>
- b. Psychological report of August 7, 2002, concluding that Brisa was sexually abused and that the attacker used mechanisms of psychological manipulation based on emotional persuasion;<sup>13</sup>

<sup>7</sup> Report of Lourdes de Armas, M.D., June 25, 2002. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 5 – evidence provided by the Office of the Public Prosecutor, pages 46-51.

<sup>8</sup> Report of Terri S. Gilsson, L.P.C., August 8, 2002. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 5 – evidence provided by the Office of the Public Prosecutor, pages 32-39.

<sup>9</sup> Psychological report, Sandra Muñoz, psychologist, Defensa de Niños y Niñas Internacional, Bolivia office, August 7, 2002. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 5 – evidence provided by the Office of the Public Prosecutor, page 6.

<sup>10</sup> National Police, Technical Judicial Police, Bolivia, Information and Reporting Form and ONAMFA Request Form, both dated August 1, 2002. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 1 – criminal process pursued by the Office of the Public Prosecutor and private prosecution of José Miguel de Angulo, Luz Stella Losada de Angulo, and Brisa Liliana de Angulo Losada against Eduardo Gutiérrez Angulo for the crime of aggravated rape ("**first criminal proceeding**"), pages 4-5vta.

<sup>11</sup> Report of Dr. Miriam Rocabando Carvajar, forensic doctor, Office of the Public Prosecutor, Cochabamba, Bolivia, July 31, 2002. First criminal proceeding, page 2.

<sup>12</sup> Additional Comments on the Merits, Brisa Liliana de Angulo, August 7, 2017, pg. 9 Statement of Brisa Liliana De Angulo, December 9, 2011, document attached to the petition before the IACHR of January 20, 2012, Annex 1, pgs. 8-9.

<sup>13</sup> Psychological report, Sandra Muñoz, psychologist, Defensa de Niños y Niñas Internacional, Bolivia office, August 7, 2002. First criminal proceeding, pages 3-3vta.

- c. Complaint and request forms, which show the complaint for rape brought by Brisa's father before the Technical Judicial Police (TJP) on August 1, 2002;<sup>14</sup>
- d. Statement given by Brisa to the Office on Child and Adolescent Protection and Adoptions of the Departmental Social Management Service of August 1, 2002, in which she describes the sexual abuse. Therein, Brisa describes her refusal during the first rape in October 2001, stating that "he tried to put his penis in me, but I told him to stop, I told him that I did not want more, it was difficult for me to get him off me." Later, she described what happened next, stating that "at no time when I had relations with him was not in agreement. I stayed quiet. He asked me if I wanted to, sometimes I said no, and other times I did not say anything." She explained that she said nothing because "I was afraid of how he was going to react," stating that Eduardo behaved erratically, even violently, and she was afraid that her parents would suffer much and felt that she had betrayed them. Finally, she said that when he was angry, several times her cousin had physically assaulted her.<sup>15</sup> According to the alleged victim, after the complaint was filed, the prosecutor in charge of the case subjected her to traumatic interviews, which were not conducted in a private place or in a way so as to guarantee her confidentiality. The prosecutor accused her of being selfish and expressed skepticism regarding her story, threatening her with prison if she discovered she was lying;<sup>16</sup>
- e. Certifications from the TJP reporting the search as of August 3, 2002, and the subsequent arrest of Eduardo Gutiérrez Angulo on August 7, 2002, indicating that: "there was awareness that he could escape to his country of origin, in this case the Republic of Colombia." A report also indicates that once the suspect was arrested, "he refers to and fully admits the incident alleged;"<sup>17</sup>
- f. Record of interview with Eduardo Gutiérrez Angulo by the TJP on August 7, 2002, stating that starting in October 2001, he had consensual sexual relations with his cousin, Brisa, insisting that "it was all by mutual agreement and I never used physical violence." He also states that he wanted to inform Brisa's parents about the situation, but "she did not want anyone to know, as she was very afraid of her parents and that it would be humiliating for her." He also states that she was not his "lover," rather just his cousin and nothing more. Lastly, he says "I want to serve my time for what happened;"<sup>18</sup>
- g. Record of the opening of a case by the District Prosecutor brought before the Criminal Trial Judge for the crime of rape (article 308 of the Criminal Code), against Eduardo Gutiérrez Angulo, indicating that he had committed rape, "abusing the trust of the girl by psychologically manipulating her on multiple occasions." Also, as a precautionary measure, it requests the detention of the suspect, as "he has no known domicile and there are sufficient indications that he will not submit himself to the process and will flee, as he is of Colombian nationality;"<sup>19</sup>
- h. Record of a hearing on a request for precautionary measure, dated August 8, 2002, held before the Preliminary Investigation Court of Tiquipaya, in which the court ordered the accused placed in pretrial detention in the public jail in Quillacollo, as the corresponding legal requirements were met, specifically, that "the victim was forced through psychological manipulation to have sex with the accused," who was of Colombia nationality and his domicile was in the victim's domicile, and therefore there was a risk of flight;<sup>20</sup>
- i. Records of hearing on an application for a precautionary measure in lieu of detention, dated August 31, 2002, which indicates that, taking into account the submission of a lease agreement and labor contract by

<sup>14</sup> National Police, Technical Judicial Police, Bolivia, Information and Reporting Form and ONAMFA Request Form, both dated August 1, 2002. First criminal proceeding, pages 4-5vta.

<sup>15</sup> Statement from young Brisa de Angulo Losada, August 1, 2002. First criminal proceeding, pages 6-6vta.

<sup>16</sup> Additional Comments on the Merits, Brisa Liliana de Angulo, August 7, 2017, pg. 10; Statement of Brisa Liliana De Angulo, December 9, 2011, document attached to the petition before the IACHR of January 20, 2012, Annex 1, pg. 9.

<sup>17</sup> Summonses and arrest warrant with certifications of execution in TJP Preliminary Report, dated August 3, 5, and 7, 2002. First criminal proceeding, pages 8-11vta.

<sup>18</sup> Record of interview, Quillacollo District Office of the TJP, August 7, 2002, Eduardo Gutiérrez Angulo. First criminal proceeding, pages 12-12vta.

<sup>19</sup> Record of formal charges, August 7, 2002. First criminal proceeding, page 13.

<sup>20</sup> Record of a hearing on a request for precautionary measure, Preliminary Investigation Court of Tiquipaya, August 8, 2002. First criminal proceeding, pages 19-20.

the suspect, the Court found that "one of the requirements set forth for pretrial detention—the risk of flight—is no longer present," and decided to end the pretrial detention, applying other precautionary measures to ensure that the accused was present during the trial proceedings, including prohibiting him from leaving the country and the department of Cochabamba or communicating with the victim and her family.<sup>21</sup> That resolution was appealed,<sup>22</sup> and the appeal was granted<sup>23</sup> on September 3, 2002.

- j. Record of hearing on ending pretrial detention, dated October 23, 2002, indicating that the request was rejected.<sup>24</sup> This resolution was later overturned on appeal in November 1, 2002, based on the "principle that everyone has the right to defend themselves in freedom." Consequently, the pretrial detention was replaced with precautionary measures requiring the accused to present himself weekly to the Prosecutor investigating the case,<sup>25</sup> banning him from leaving the department and the country (*arraigo*), and requiring payment of a bond.<sup>26</sup> The suspect was finally released on November 15, 2002;<sup>27</sup>
- k. On November 5, 2002, the Office of the Public Prosecutor filed formal charges against Eduardo Gutiérrez Angulo for the crime of rape, under articles 308 and 310, subparagraph 1 and 2 of the Criminal Code.<sup>28</sup> Likewise, on November 15, 2002, Brisa and her parents brought a private prosecution for the crime of aggravated rape, as defined in articles 308 and 310, subparagraph 1, 2, 4, and 7 of the Criminal Code;<sup>29</sup>
- l. In a resolution dated March 13, 2003, in consideration of the fact that Brisa had been offered as a witness by both, the prosecution and the defense, the Court ordered her testimony to be taken in private, with support from family members or a psychologist.<sup>30</sup> Also, in a resolution dated March 14, 2003, in view of the nature of the crime in question, the age of the victim, the family relationship between them, and to protect Brisa's identity and dignity, all the proceedings of the oral trial were ordered to be kept confidential;<sup>31</sup>
- m. According to the corresponding record,<sup>32</sup> the oral trial took place between March 17 and 25, 2003. At the start of the trial, the Office of the Public Prosecutor indicated that the charges were not for the crime of *estupro*, as there was no seduction or trickery, but rather intimidation, which "nullifies the freedom to act and individual will, making people incapable [...] of resisting the attack," for which reason there was no consent.<sup>33</sup> In their final statement, the defense attorneys indicated that "the intimidation must be real and the threat sufficient to affect the willingness of the individual," which they argued did not occur in this case.<sup>34</sup>

The record shows that the testimony given during the oral trial cannot be analyzed by the IACHR, as the corresponding transcript only shows the questions asked to each of the witnesses and not their responses. With regard to additional relevant information in the record of the oral trial, it can be noted that: (i) in view of the previous ruling and the fact that both parties proposed Brisa as a witness, it was ordered that neither of the parties be present during the victim's testimony, "noting for the record that she will not be called to testify further in order to not re-victimize her," and the parties were ordered to leave the courtroom during her testimony;<sup>35</sup> (ii) although the prosecutor had asked for the accused to submit to a psychosocial

<sup>21</sup> Record of a hearing on a request for measures in lieu of detention, Preliminary Investigation Court of Tiquipaya, August 31, 2002. First criminal proceeding, pages 24-25.

<sup>22</sup> Appeal filed by the representative of the Office of the Public Prosecutor. First criminal proceeding, pages 26-26vta; and appeal filed by Luz Stella Losada de Angulo. First criminal proceeding, pages 32vta-33vta.

<sup>23</sup> Resolution of the Preliminary Inquiry Court of Tiquipaya, September 3, 2002. First criminal proceeding, page 27.

<sup>24</sup> Resolution of the Preliminary Inquiry Court of Tiquipaya, October 23, 2002. First criminal proceeding, pages 36-37.

<sup>25</sup> On February 3, 2003, the location for complying with this precautionary measure was changed because the case would no longer be processed before the Trial Court of Quillacollo but before Trial Court No. 4 of Cochabamba. First criminal proceeding, pages 140-140vta.

<sup>26</sup> Record of hearing of precautionary measure and ruling on appeal, Second Superior Criminal Court of Justice, November 1, 2002. First criminal proceeding, pages 39-40vta.

<sup>27</sup> Order of release, November 15, 2002. First criminal proceeding, page 70.

<sup>28</sup> Record of formal charges, November 5, 2002. First criminal proceeding, pages 41-44.

<sup>29</sup> Brief of private prosecution, November 15, 2002. First criminal proceeding, pages 78-80vta.

<sup>30</sup> Resolution of Trial Court No. 4, Cochabamba, Bolivia, March 12, 2003, pages 173vta.

<sup>31</sup> Resolution of Trial Court No. 4, Cochabamba, Bolivia, March 12, 2003. First criminal proceeding, page 184vta.

<sup>32</sup> Record of oral trial hearing, Trial Court 4, Cochabamba, Bolivia ("first oral trial"). First criminal proceeding, pages 223-244.

<sup>33</sup> First oral trial. First criminal proceeding, page 223vta-224.

<sup>34</sup> First oral trial. First criminal proceeding, pages 242-243.

<sup>35</sup> First oral trial. First criminal proceeding, page 228vta.

examination, he refused to do so;<sup>36</sup> (ii) at the end of the hearing, the accused asked forgiveness for the abuse of the complainants' trust, but insisted that there was never any rape or threats.<sup>37</sup>

According to the alleged victim's description, during the time she had to wait to testify—one week, every day from 8 a.m. to 6 p.m.—she was kept in a small office in which she had to sit on the floor and was surrounded by other witnesses for the accused, who made comments about her, insulted her, harassed her, and threatened her.<sup>38</sup> The State did not dispute this fact.

- n. At the end of the trial, the Court ruled unanimously, applying the principle of *iura novit curia*, that the accused was guilty of the crime of aggravated *estupro*, pursuant to articles 309 and 310 subparagraph 3, of the Bolivian Criminal Code in force at the time of the facts and sentenced him to seven years in prison.<sup>39</sup> The grounds of the judgment indicate that, based on the principle of immediacy, the Court reached the conclusion that the accused had sexual relations multiple times "with his minor cousin [...] taking advantage of the absence of the minor's parents from the home and that they had placed in him all the trust given to a close relative," and that to have the sexual relations, the accused "took advantage of his status as an adult to trick and seduce her to make the relationship appear consensual;"<sup>40</sup> It also indicated that "the sexual relations took place between an adult and an adolescent, and they therefore cannot be described as perfectly symmetrical in the sense that the minor's consent is valid," concluding that in this case, there was "an asymmetric power relationship that corrupts any consent by the victim" and that, in order to keep having sexual relations with his cousin, the accused made use of "an array of trickery and seduction."<sup>41</sup> Likewise, the judgment expressed its conviction "regarding the trickery and psychological manipulation" to which the teen was subjected and that the "dishonest psychological manipulation undermined Brisa De Angulo's capacity for volition to resist the sexual abuse of which she was the target;"<sup>42</sup> However, it stated that it had not been convincingly demonstrated that physical violence<sup>43</sup> or intimidation<sup>44</sup> were used, and considering the "strong personality"<sup>45</sup> of the victim, concluded that "it is not possible to imagine Brisa having been intimidated by Eduardo into having sexual relations, but rather those relations took place as a result of a systematic and sustained use of seduction and trickery [...] typically characteristic of *estupro*."<sup>46</sup> Although when it analyzed in detail the evidence provided, the Court concluded that the aggravating factors provided for in subparagraphs 1 and 2 of article 310 had not been demonstrated, it did find the factors set forth in subparagraph 3 had been demonstrated, as they were related to the 4th degree of consanguinity.<sup>47</sup>

<sup>36</sup> First oral trial. First criminal proceeding, page 230.

<sup>37</sup> First oral trial. First criminal proceeding, page 243vta.

<sup>38</sup> Additional Comments on the Merits, Brisa Liliana de Angulo, August 7, 2017, pg. 13; Statement of Brisa Liliana De Angulo, December 9, 2011, document attached to the petition before the IACHR of January 20, 2012, Annex 1, pg. 10.

<sup>39</sup> First oral trial. First criminal proceeding, page 243vta.

<sup>40</sup> Resolution No. 03/2003, Case No. 301199200300358. Trial Court No. 4 of the Capital Judicial District of Cochabamba. March 28, 2003 ("Judgment"). First criminal proceeding, page 246vta.

<sup>41</sup> Judgment. First criminal proceeding, page 247.

<sup>42</sup> Judgment. First criminal proceeding, page 247vta.

<sup>43</sup> The Court defined physical violence as "the use of material force as an effective measure for overcoming a victim's opposition to sexual intercourse, suppressing their will. This generally involves real resistance from the victim that is 'serious and ongoing' [...] because a simple refusal is not sufficient to allow that the alleged victim experienced coitus after being overcome by the force of the actor [...] This is different from the case of the woman who, after resisting as much as she can, understands the uselessness of her efforts and gives in, unquestionably a scenario of rape," Judgment. First criminal proceeding, page 248.

<sup>44</sup> The Court indicated that "intimidation involves the exercise of moral violence in the form of the threat of greater, serious, imminent, forthcoming, or actual harm to the victim or a third-party associated with her; the threat must be ideal, credible, and aimed at obtaining flawed consent from the passive victim for the subsequent defilement [...] However, it is necessary to assess in each case the possible effectiveness of the threat with regard to all the circumstances, especially regarding the personality of the victim," Judgment. First criminal proceeding, page 248.

<sup>45</sup> This determination was based both on the testimony of the girl during the trial, who described herself as a "free thinker" who enjoys knowledge very much and since a young age had received sex education from her parents," as well as the testimony from her father describing her as "a very autonomous person with a great aptitude for communication, sweet with anyone, and since she was very little, she did not allow herself to be pressured. Therefore, she has the capacity to react against any pressure," Judgment. First criminal proceeding, page 248.

<sup>46</sup> Judgment. First criminal proceeding, page 248.

<sup>47</sup> Judgment. First criminal proceeding, page 248vta.

o. The judgment was appealed by the private complainants on April 11, 2003,<sup>48</sup> and by the convicted person on April 14, 2003.<sup>49</sup> Ruling on the appeals on July 5, 2003, the First Criminal Chamber of the Superior Court of Justice of Cochabamba ruled to fully annul the judgments of Trial Court No. 4 on having received testimony from the victim in a private session without the intervention or attendance of the subjects involved—mainly the accused—thereby violating both the rights of the accused and the rights of the victim.<sup>50</sup> A cassation appeal was brought against the judgment by the private complainants on June 23, 2003,<sup>51</sup> and the Office of the Public Prosecutor joined the appeal on June 24, 2003.<sup>52</sup> In general terms, both argue that the judge respected the rights of the accused and acted in compliance with the Constitution, international treaties, and the law—in particular the provisions of article 203 of the Criminal Procedural Code—to prevent Brisa's revictimization. However, on July 24, 2003, the Criminal Chamber of the Supreme Court of Justice of the Nation ruled the cassation appeal inadmissible for having failed to invoke counterindicating precedents, as required under Bolivian law.<sup>53</sup>

## 2. Second criminal proceeding<sup>54</sup>

- a. With the case sent back following the annulment of the judgment of Trial Court No. 4, the proceeding was first brought before Trial Court No. 1<sup>55</sup> and then Trial Court No. 2 of Cochabamba.<sup>56</sup>
- b. On November 19, 2003, the private complainants filed a motion of constitutional protection (*amparo*), with the aim of nullifying the decision of the Supreme Court of Justice of Cochabamba annulling the judgment and recognize the procedural soundness of the hearing in which the witness testimony was taken confidentially by Trial Court No. 4.<sup>57</sup> On December 2, 2003, the Third Criminal Chamber of the Superior Court of Justice of Cochabamba found the interpretation of article 203 of the Criminal Procedural Code made by Trial Court No. 4 was correct, therefore admitting the motion and granting the *amparo*, striking down the decision of July 5, 2003, and ordering the First Criminal Chamber to issue a new ruling on the matters of form and merit raised in the appeal, sending review of the resolution before the Constitutional Court.<sup>58</sup> However, on March 3, 2004, the Constitutional Court reversed the resolution and denied the motion, arguing there were formal problems with the motion for constitutional *amparo* (as it had been filed against only one of the members of the chamber).<sup>59</sup>
- c. On March 22, 2004, the private complainants again submitted motions of constitutional *amparo*, this time against both signers of the ruling of July 5, 2003.<sup>60</sup> On April 2, 2004, the second Civil Chamber of the Superior Court of Justice found the motion of constitutional *amparo* to be inadmissible, concluding that there were other remedies for challenging the allegedly illegal act.<sup>61</sup> However, on July 2, 2004, finding, among other things, that nullification of the judgment meant a double victimization that could endanger the mental health of the victim, the Constitutional Court reversed the April 2 judgment and annulled its

<sup>48</sup> Appeal, José Miguel de Angulo and Luz Stella Losada de Angulo, April 11, 2003. First criminal proceeding, pages 266-273vta.

<sup>49</sup> Appeal, Eduardo Gutiérrez Angulo, April 14, 2003. First criminal proceeding, pages 302-306vta.

<sup>50</sup> Judgment on appeal, First Criminal Chamber, Superior Court of Justice, Cochabamba. Bolivia, June 5, 2003. First criminal proceeding, pages 330-331.

<sup>51</sup> Cassation appeal, First criminal proceeding, pages 338-342.

<sup>52</sup> First criminal proceeding, page 333.

<sup>53</sup> Judgment, Criminal Chamber of the Supreme Court of Justice. Sucre, July 24, 2003. First criminal proceeding, pages 360-363.

<sup>54</sup> Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 2 A – criminal proceeding pursued by the Office of the Public Prosecutor and private prosecution of José Miguel de Angulo, Luz Stella Losada de Angulo, and Brisa Liliana de Angulo Losada against Eduardo Gutiérrez Angulo for the crime of aggravated rape ("**second criminal proceeding**").

<sup>55</sup> Resolution of Trial Court No. 1, Cochabamba, Bolivia, October 29, 2003. Second criminal proceeding A, pages 4-4vta.

<sup>56</sup> Resolution of conflict of competence, First Criminal Chamber, Superior Court of Justice, Cochabamba, Bolivia, July 16, 2005. Second criminal proceeding A, pages 199-199vta.

<sup>57</sup> Motion of Constitutional *Amparo* against Judgment Execution, presented by the private complainants on November 19, 2003. Second criminal proceeding A, pages 19-33vta.

<sup>58</sup> *Amparo* judgment, Third Superior Criminal Court of Justice, Cochabamba, December 2, 2004. Second criminal proceeding A, pages 53-57vta.

<sup>59</sup> Constitutional Judgment 0295/2004-R. Sucre, March 3, 2004. Second criminal proceeding A, pages 68-74.

<sup>60</sup> Motion of Constitutional *Amparo* against Judgment Execution, presented by the private complainants on March 22, 2004. Second criminal proceeding A, pages 98-113.

<sup>61</sup> *Amparo* judgment, Civil Chamber of the Second Superior Court of Justice, Cochabamba, April 2, 2004. Second criminal proceeding A, pages 115-116vta.

effects until a new ruling could be issued to resolve the appeal, "which must take into consideration that at the hearing in which the victim gave her statement, only the defense attorney of the accused was present."<sup>62</sup>

- d. Following multiple refusals and excuses from a series of judges,<sup>63</sup> finally, on April 11, 2005, the appeal was ruled on by the First Chamber of the Superior Court of Justice, fully annulling the judgment of Trial Court No. 4 and ordering that the trial be repeated by another Court "with the warning that in the hearing in which the victim gives her testimony, only the defense attorney of the accused may be present."<sup>64</sup>
- e. After a series of recusals and incidents, the second oral trial was finally carried out on September 15-20, 2005.<sup>65</sup>

- During the trial, the accused testified. He stated, among other things, that he went to Bolivia to do an internship with MAP, and they never told him he would be in charge of the girls, as they were being cared for by the housekeeper; he said that Brisa had classes and a program with the elderly; he described the relationship between them as "very close, they wrote letters, they gave gifts, and they went to the movies."<sup>66</sup> Regarding the sexual relations, he described them as consensual and said they had discussed the possibility of her becoming pregnant and how to avoid it. He also said that in March, Brisa had said she was pregnant, and because of that, they even planned "the baby's name" and to leave Bolivia, but that after a few days, Brisa told him she had "lost the baby." He also described the trip by Brisa and her parents to the United States as a trip aimed at fundraising and to attend the graduation of the girls' two older brothers. He stated that during that time, he stayed in permanent contact with Brisa, who "sent him messages as often as twice a day" and told him about the incident with her brothers when they read her diary and her father punish her. Later, he described his relationship with his ex-girlfriend, Alison, who visited him in Bolivia during the time that Brisa was in the United States. Regarding this, he said that when he told Brisa he had decided to get back together with Alison, Brisa had responded, "no more, I gave you a chance." He also described Brisa's father's trip to Bolivia for several days on July 14, 2002, with several "Americans."<sup>67</sup> He later described an invitation to a camp with young people that had been used to remove things from his room—such as a card Brisa had given him—and his arrest, which he had been tricked into and at which Brisa's father had been present and told him that the family knew everything. He next described what he experienced in prison and concluded by stating that "what he wanted least was to do harm to Brisa; there was never any violence, threats, or intimidation between him and Brisa. All of this was made up by [Brisa's father] and his economic power. The things between them happened. He made mistakes, like any human."<sup>68</sup> On cross-examination, he insisted that he "never hit Brisa, never verbally intimidated her, never negatively influenced Brisa, and neither did she ask to stop having sexual relations, they did it with her consent."<sup>69</sup> At the end of the trial, he made a statement, saying that he had been "subjected to this process for three years, punctually complying with the requirements, and did not try to escape, even when his own family begged him to do so."<sup>70</sup> Summarizing his testimony in the judgment, the Court added that Eduardo also stated that "this whole problem was so José Miguel could found another NGO [...] called *una Brisa de Esperanza* [a breeze of hope]."<sup>71</sup>

- For her part, Brisa testified without the presence of the accused, but in the presence of his defense attorney, and accompanied by a psychologist. She said that Eduardo came to do an internship and she "was very happy that Eduardo was there. Even though he was 10 years older than she was, he was very close to them." She said that the night her parents traveled, her sisters and a girl cousin of five years old lay down

<sup>62</sup> Constitutional judgment 1015/2004-R. Sucre, July 2, 2004. Second criminal proceeding A, pages 119-124vta.

<sup>63</sup> Second criminal proceeding, pages 134-159.

<sup>64</sup> Judgment on appeal, First Criminal Chamber, Superior Court of Justice, Cochabamba. Bolivia, April 11, 2005. Second criminal proceeding A, pages 163-163vta.

<sup>65</sup> Record of oral trial hearing, Trial Court No. 2, Cochabamba, Bolivia ("second oral trial"). Second criminal proceeding A, pages 249-271vta.

<sup>66</sup> Testimony of Eduardo Gutiérrez Angulo, Second oral trial, second criminal proceeding A, page 257.

<sup>67</sup> Testimony of Eduardo Gutiérrez Angulo, Second oral trial, second criminal proceeding A, page 257vta.

<sup>68</sup> Testimony of Eduardo Gutiérrez Angulo, Second oral trial, second criminal proceeding A, page 252.

<sup>69</sup> Testimony of Eduardo Gutiérrez Angulo, Second oral trial, second criminal proceeding A, page 252vta.

<sup>70</sup> Testimony of Eduardo Gutiérrez Angulo, Second oral trial, second criminal proceeding A, page 271.

<sup>71</sup> Testimony of Eduardo Gutiérrez Angulo in Judgment No.: 25/2,005, Case No.:301188200300358. Trial Court No. 2, Department of Cochabamba. September 23, 2005 ("Judgment"). Second oral trial, second criminal proceeding A, pages 273vta-274.

their parents bed with Eduardo and she "laid between her sisters and him because she wanted to protect them." She explained that Eduardo hit her when she did not do the things that he wanted. "Sometimes he punched and kicked her. It was because of that deep gap left by her brothers that she wanted to have him." She described the sexual assaults, indicating that "he told her that she should go up to his room to assault her. He assaulted her" up to seven times in a row. "When Eduardo assaulted her, she said no more and he laughed and asked if she could become pregnant." Regarding the first time, she stated that it was a month and a half after he arrived. "It was in her room. She does not remember how he got there, only that he was on top of her. She told him no, she started to cry, and as soon as he finished abusing her, she told him she had become pregnant." She stated that "she had confusing feelings. On one hand, she loved him like a brother, and on the other, he disgusted her." Also "he did not mistreat her during the attacks but rather afterwards, mistreating the things she loved," like her cat. He was very aggressive. She said she did not tell anyone anything to avoid suffering and causing shame to her family. She said when she went to the United States, "her brothers read her diary and realized what was happening." She said that she went to the United States because her parents had a number of projects, and that there, she had had "at least 10 psychologists, and is going to begin with another one next month." She described her activities in universities and the media, where the message she promotes is that "the best way to seek justice is by breaking the silence," and explained that "Centro Una Brisa de Esperanza" (CUBE), is a center for supporting victims of sexual assault. She said "a campaign has been launched that overall is a movement. It consists of wearing a blue ribbon, which is a way of saying no more sexual assault."<sup>72</sup> She said that one time, after returning to Bolivia, she snuck into Eduardo's room to take several photos with his girlfriend. She said that when she went to Cuba, she found a coin that she liked a lot and brought it as a gift for everyone, and that she along with her sisters gave a shirt to Eduardo for his birthday. She described the reaction of her relatives and the support for Eduardo, and explained that they had a status to protect. "She knows that there has been a lot of incest in that family," and that their social image was important to them. She described Eduardo as kind and helpful to others, but aggressive and dominant with her. She described the messages between them as normal, discussing normal things, not like messages between lovers. She also described a card that she made for Eduardo out of cardboard. Next, she stated that "the first times I had a strong reaction, then later I reelected less; the first time it happened, the only thing I did was cry. At some point I said I did not want to."<sup>73</sup> She stated that "after three months, she said she was no longer pregnant and had had a miscarriage. He did not say anything. He left. During the three months of the pregnancy, they did not have sexual relations." She also stated that "she did not see Eduardo being aggressive in any way toward her sisters."<sup>74</sup> Summarizing her testimony in its judgment, the Court added that Brisa also stated that "she did not get pregnant because Clementina had taught her the rhythm method," and that "she leads a movements against sexual abuse."<sup>75</sup>

- Also testifying was the psychologist who examined Brisa after the complaint was filed on July 15, 2002, in Bolivia. She stated that "there was a lot of guilt. At one point she said there had been psychological violence. She feels responsible in some way because the way in which the person assaulted her has given rise to feelings of guilt; there is a lot of emotional confusion." Highlighting that the first interview is the most important, she explained that "what is clear is that she suffered sexual abuse and that it came from a very affectionate relationship. The first time it happened, she felt very uncomfortable. In order to put a stop to the situation, she invented a pregnancy. She said that when they could not have sexual relations, her cousin became angry." She notes that because of the age difference, "there is a psychoemotional difference. Sometimes the victim went and asked his forgiveness."<sup>76</sup> She also stated that Brisa had the common signs exhibited by victims of sexual assault, as "she isolated herself, tended toward depression, is unsure in her interpersonal relationships," adding that her testimony "is real, believable." She indicated that the psychological interviews with the teen and her parents she identified a "sexually abusive relationship," based on her change in personality, feelings of guilt, levels of anxiety, depression, and isolation. Additionally, the rationalization, justification, anxiety, nervousness, and "the fact that a girl feels affection

<sup>72</sup> Testimony of Brisa Liliana De Angulo Losada, Second oral trial, second criminal proceeding A, page 254vta-255.

<sup>73</sup> Testimony of Brisa Liliana De Angulo Losada, Second oral trial, second criminal proceeding A, page 255.

<sup>74</sup> Testimony of Brisa Liliana De Angulo Losada, Second oral trial, second criminal proceeding A, page 255vta.

<sup>75</sup> Testimony of Brisa de Angulo in judgment. Second oral trial, second criminal proceeding A, pages 274vta-275.

<sup>76</sup> Testimony of expert witness Sandra Muñoz Camacho, second oral trial, second criminal proceeding A, pages 255vta-256.

for the attacker are self-defense mechanism; this ambivalence between two feelings—of love and hate—is very common.<sup>77</sup>

- The housekeeper of the De Angulo family, for her part, highlighted the change in Brisa's attitude after the arrival of Eduardo, who was in charge of the girls in the absence of the De Angulo parents.<sup>78</sup> She said "one time, she saw Brisa with a bruise on her face, on her arm, and on her leg. She asked, and she said that it was Eduardo." Later, she clarified that the parents did not see the bruise on Brisa's face because she wore her hair down. She also said that "Eduardo treated her very well, they got along very well." She said she heard low voices in Brisa's room "and knocked on the door. When it was opened, she saw Eduardo in the room. They 'pretended to be asleep.'" She explained that she slept with the girls. She stated that "Eduardo was like he had two faces. When José Miguel was there, he was one way, and when he left, he started to hit the girls, he slept in everyone's room, he messed with the girls at play, and they complained that he was very rough."<sup>79</sup> Another witness who worked with the De Angulo parents at MAP and with Brisa's school confirmed her change in attitude after Eduardo arrived.<sup>80</sup> This was also corroborated by other witnesses who worked at MAP with Brisa's parents.<sup>81</sup>

- Another psychologist with experience in violence against children stated that, based on the examinations of Brisa, she showed signs that "indicate the existence of signs of sexual violence." Also, she stated that "at no time did Brisa say there was consent," but that there was "blockage of the incidents." She highlights that Brisa showed anxiety, with a significant amount of fear, as well as "signs of posttraumatic stress."<sup>82</sup> She indicates that "taking into account the details of potential lying and based on the evidence, it was established that no, that there was sexual assault." On being cross-examined, she stated that she had been appointed as an expert witness for legal purposes, but recognize that the De Angulo parents had attended courses together with her, although they were not within her circle of friends. Later, she indicated that "Brisa's parents talk to her on the phone and told her they had suffered a catastrophe in their family and that their daughter would see her."<sup>83</sup>

- Brisa's father, José Miguel De Angulo Angulo, also testified in the proceeding, stating that "Eduardo was in charge of the relational part of the house, Clementina was not." He described Eduardo's presence in his house as something that made his younger daughters happy "because he filled the space left by their brothers." However, he stated that "Brisa started to change, she became aggressive," and that "she had a series of problems." He thus sought help from the people in the program and from Eduardo to talk to her. He said that later, they decided to make a trip to the United States, and that that was where he got the diary and made a photocopy. There, they took Brisa to a psychologist, who told her that Brisa had been the victim of sexual assault: "a victim of systematic rape. The damage was not to her genitals but to her brain, in her mind, and they explained about the colonization and the entire process of harm." He also stated that "the psychologists told him that she would not be able to get better without seeking justice [...] That therapy cannot exist outside the law." However, he indicated that "his aim was conflict resolution" and that "he very much wanted a short proceeding." The testimony was interrupted because the witness was very nervous.<sup>84</sup>

- Eduardo's mother, María Cristina De Angulo Angulo, also testified and said that in May 2002, during a visit with her sister to Bolivia to the home of their brother, José Miguel, she noted "the special relationship between Brisa and Eduardo. She was always caressing him, she would hug him with much affection, and he paid special attention to her." She added that "it was very common to see Brisa paying attention to Eduardo, caressing him, putting her hand under his shirt, all in front of José Miguel, who said that Brisa was like that, very expressive." She also indicated that her sister Helena expressed her concern to José Miguel that Brisa could be in love with Eduardo, but that "he said that was impossible, that Brisa's personality was

<sup>77</sup> Testimony of expert witness Sandra Muñoz Camacho, second oral trial, second criminal proceeding A, pages 256vta.

<sup>78</sup> Testimony of Clementina Mamani Ríos, Second oral trial, second criminal proceeding A, page 258.

<sup>79</sup> Testimony of Clementina Mamani Ríos, Second oral trial, second criminal proceeding A, page 258vta.

<sup>80</sup> Testimony of Patricia Sánchez Saravia, Second oral trial, second criminal proceeding A, page 259.

<sup>81</sup> Testimony of Mary Juana Ríos Martínez, Second oral trial, second criminal proceeding A, pages 259-259vta.; Testimony of Emilio Sánchez González, Second oral trial, second criminal proceeding A, pages 264vta-265.

<sup>82</sup> Testimony of expert witness Ruth Miriam Quintanilla de Cardona, second oral trial, second criminal proceeding A, pages 260vta.

<sup>83</sup> Testimony of expert witness Ruth Miriam Quintanilla de Cardona, second oral trial, second criminal proceeding A, pages 261

<sup>84</sup> Testimony of José Miguel De Angulo Angulo, Second oral trial, second criminal proceeding A, page 261vta-262vta.

too strong to fall for the charms of a man." She also indicated that "in Colombia, marriages between cousins are normal, and their family has several of these types of marriages."<sup>85</sup>

At the end of the trial, the court unanimously ruled to acquit the accused.<sup>86</sup>

- f. On September 23, 2005, the judgment to acquit was read out. After dismissing the majority of the evidence, in most cases for lack of objectivity,<sup>87</sup> the Court concluded that "there was no efficient investigation. Jurisdictional control of the investigation was not exercised, leading to the exclusion of the evidence [...] The evidence was not pertinent to the aim of the investigation and was not useful for discovering the truth. The witness testimony offered, aside from its indirect character, was not convincing to the Court."<sup>88</sup> The most important grounds of the ruling include the fact that the Court determined that Brisa and Eduardo "had sexual relations, as their testimony given during the trial stated as much, without specifying the date. However, due to the evidentiary weakness of the public and private prosecutions, the Court cannot find whether these sexual relations were consensual or sexual assault, or even if sexual relations took place, because there is no forensic medical report to indicate such situation."<sup>89</sup> It also indicated that "the victim also failed to specify the intimidating conduct that bent her to her attacker's will," concluding that "the omissions in the investigation make it impossible for the Court to reach a conclusion based on the facts described, much less to find the accused guilty of the crime alleged," finding that the existence of seduction, violence, or psychological pressure was not proven.<sup>90</sup> It also concluded that it had not been possible to find culpability or criminal intent in the conduct of the accused "because the sexual relations between cousins cause discomfort in society but is not a crime," adding that the aggravating factor applicable in the rape between family members requires violence." But "this case did not involve violence or intimidation," and the judgment concludes that there was no criminal intent, as despite the allegations, "no planning or intent of a crime could be demonstrated to have existed." Lastly, it indicated that due to the "lack of evidence, the illegal action and its corresponding criminal offense cannot be proved beyond a reasonable doubt, and therefore the State must rule to acquit in order to protect the legal certainty of a society that must have the certainty that proper evidence is required for the punishment of crimes."<sup>91</sup>
- g. On September 28, 2005, Trial Court No. 2, in view of the acquittal of Eduardo Gutiérrez, ordered his travel restrictions lifted.<sup>92</sup>
- h. The judgment was appealed by Brisa on October 8, 2005,<sup>93</sup> and by the Office of the Public Prosecutor on October 11, 2005.<sup>94</sup> Eduardo responded to these appeals on October 24, 2005.<sup>95</sup> Oral arguments in support of the appeal were heard on March 1, 2006, in the presence of the representative of the Office of the Public

<sup>85</sup> Testimony of María Cristina De Angulo Angulo, second oral trial, second criminal proceeding A, page 267vta-268.

<sup>86</sup> Second oral trial, second criminal proceeding A, pages 271.

<sup>87</sup> Regarding the Brisa's testimony, the Court said it noted "a psychological state that prevented her from being objective and noted some contradictions in her statements that delegitimized her testimony, such as the fact of having said she avoided pregnancies using the rhythm method taught to her by Clementina, the domestic employee, the same one who, when testifying, denied having taught Brisa that contraception method. The testimony is influenced by negative pressure focused on discrediting the accused. Therefore, the only thing the trial proved with certainty is that Eduardo Gutiérrez is Brisa's cousin and that they lived in her parents house and had sexual relations with each other, confirmed by the testimony of the accused, Eduardo Gutiérrez." Other testimony was excluded or granted little probative weight because it was from the parents of the alleged victim or the accused (José Miguel De Angulo Angulo, María Cristina De Angulo); there was a dependency relationship with Brisa's parents (Clementina Mamani Ríos) or the MAP project (Marisol Sánchez Saravia); or a commitment to Brisa's movement, as they testified while wearing the blue ribbon (Clementina Mamani Ríos, Marisol Sánchez Saravia, Emilio Sánchez). Judgment, second oral trial, second criminal proceeding A, pages 275, 275vta, 276vta, and 277vta.

<sup>88</sup> Judgment, second oral trial, second criminal proceeding A, pages 278vta.

<sup>89</sup> Judgment, second oral trial, second criminal proceeding A, page 279.

<sup>90</sup> Judgment, second oral trial, second criminal proceeding A, page 279.

<sup>91</sup> Judgment, second oral trial, second criminal proceeding A, page 279vta.

<sup>92</sup> Ruling of September 28, 2005, Trial Court No. 5. Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 2 B – criminal process pursued by the Office of the Public Prosecutor and private prosecution of José Miguel de Angulo, Luz Stella Losada de Angulo, and Brisa Liliana de Angulo Losada against Eduardo Gutiérrez Angulo for the crime of aggravated rape ("second criminal proceeding B"), page 297.

<sup>93</sup> Second criminal proceeding B, pages 426-436vta.

<sup>94</sup> Second criminal proceeding B, pages 465-469.

<sup>95</sup> Second criminal proceeding B, pages 476-483vta.

prosecutor, the attorneys of the parties, and the accused.<sup>96</sup> Ruling on the appeals on March 6, 2006, the First Criminal Chamber of the Superior Court of Justice of Cochabamba decided to uphold the judgment under appeal, finding, among other things, that it was not demonstrated during the trial that Brisa had been the victim of intimidation or blackmail, and could "have been terrorized to the point of bending her will and capacity to resist, aspects that were not proven beyond a doubt throughout the trial." Therefore, there had been no violation of the law.<sup>97</sup> This ruling was subject to a cassation by the private complainant on March 22, 2006, alleging inconsistency, defective assessment of the evidence, and other things.<sup>98</sup> The cassation was declared admissible by resolution dated May 2, 2006.<sup>99</sup> On November 16, 2006, the First Criminal Chamber of the Supreme Court of Justice of the Nation found that the grounds of the judgment under appeal were "inconsistent and outside the bounds of the law." Specifically, it found that although a defendant cannot be convicted for facts or circumstances other than those set forth in the charges, "in this case, the fact is sexual relations with an individual over the age of 14 and under the age of 18 [...] a criminal offense classified under the *nomen juris* of a crime against sexual freedom." Commentators refer to the "conditional separation" that permits a judge to, "without modifying the facts [...] issue a judgment for a different legal classification." It found that "the Trial Court did not discharge the criminal offense of *estupro*," making the judgment "an improper ruling that must be reviewed by the Court *ad quem*," thus striking down the appeal."<sup>100</sup>

- i. With the case returned to the Superior Court of Justice of Cochabamba, the President and one of the Judges of the First Criminal Chamber recused themselves, indicating that it was their view that the application of the principle of *iura novit curia* was not apposite in the case, opinion they had expressed when issuing the judgment and extrajudicially after doing so. They therefore excused themselves from continuing to hear the case.<sup>101</sup> Their recusal was rejected by the Second Criminal Chamber on February 7, 2007, as there was no record of the extrajudicial statement.<sup>102</sup> However, on February 12, 2007, the President of the First Criminal Chamber ratified her recusal and maintained it, indicating that "there was no criminal offense in sexual relations between two young people who began a romance that led them to challenge the prejudices of a family and the principles it maintain" and that "individuals must have the freedom to make decisions and the courage to face the consequences of these decisions;"<sup>103</sup> another Judge of the Chamber also joined her reasoning, reiterating his recusal.<sup>104</sup> However, these recusal's were again rejected by the Second Criminal Chamber on the same grounds on February 21, 2007.<sup>105</sup>
- j. After rejecting a request for expiry of the criminal action for reaching the maximum length of such a proceeding,<sup>106</sup> on May 10, 2007, the First Criminal Chamber of the Superior Court of Justice of Cochabamba ruled again on the limited appeal, annulling the judgment under appeal and ordering the case sent back for a new trial before another trial court. However, that ruling was based exclusively on the cassation decision of the Supreme Court of Justice of the Nation, as the chamber insisted in its rationale that "both the complainant and the accused recognized having had sexual relations on not one but on several occasions" and that there was no evidence or allegation of physical violence, nor was sexual intimidation proven.<sup>107</sup>

<sup>96</sup> Record of oral arguments in hearing on the motion for limited appeal, First Criminal Chamber, Superior Court of Justice, Cochabamba, March 1, 2006. Second criminal proceeding B, pages 501-503vta

<sup>97</sup> Judgment on limited appeal, First Criminal Chamber, Superior Court of Justice, Cochabamba. Bolivia, March 6, 2006. Second criminal proceeding B, pages 504-506.

<sup>98</sup> Cassation appeal and complementary material. Second criminal proceeding B, pages 529-538, 540-541.

<sup>99</sup> Second criminal proceeding B, pages 546-548.

<sup>100</sup> Judgment, Criminal Chamber of the Supreme Court of Justice of the Nation. Sucre, November 16, 2006. Second criminal proceeding B, pages 561-565vta.

<sup>101</sup> Second criminal proceeding B, pages 570-571.

<sup>102</sup> Decision of the Second Criminal Chamber of the Superior Court of Justice of Cochabamba, February 7, 2007. Second criminal proceeding B, pages 575-575vta.

<sup>103</sup> Second criminal proceeding B, pages 578.

<sup>104</sup> Second criminal proceeding B, pages 585.

<sup>105</sup> Second criminal proceeding B, pages 587.

<sup>106</sup> Second criminal proceeding B, pages 592-617.

<sup>107</sup> Judgment, First Criminal Chamber of the Superior Court of Justice of Cochabamba, May 10, 2007. Second criminal proceeding B, pages 619-621.

This ruling was subject to a cassation by Eduardo Gutiérrez on June 22, 2007.<sup>108</sup> That remedy was declared inadmissible by the Second Criminal Chamber of the Supreme Court of Justice on December 3, 2007.<sup>109</sup>

### 3. Third criminal proceeding<sup>110</sup>

- a. With the case sent back following the annulment of the judgment of Trial Court No. 2, the process was first brought before Trial Court No. 1,<sup>111</sup> before which the accused appeared on January 25, 2008.<sup>112</sup> After the Trial Courts No. 1 and 2 recused themselves from the case for already having been involved in it,<sup>113</sup> the proceeding was finally placed before Trial Court No. 3 of Cochabamba on July 15, 2008,<sup>114</sup> before which Eduardo Gutiérrez's attorneys appeared with a power of attorney granted in Colombia.<sup>115</sup>
- b. On August 20, 2008, almost seven years after the facts took place, Brisa was subjected to a new forensic gynecological examination, in compliance with an order issued by the Trial Court No. 3 on August 1, 2008.<sup>116</sup>
- c. On September 22, the date scheduled for the beginning of the oral trial, it was suspended due to the absence of the accused, with the Court noting for the record that his attorneys could not act on his behalf, as he was accused of committing a crime.<sup>117</sup> However, it should be noted for the record that, through the Colombian Consul in La Paz, Bolivia, the accused sent a letter dated September 16, 2008, to the Court referring to the six years during which he had been subjected to two annulled trials. It noted the power of attorney granted to his lawyers to represent him, provided information on his domicile in Colombia, and included certifications from a travel agency attesting that it had not been possible to obtain tickets from Cali, Colombia to La Paz, Bolivia by September 22, 2008.<sup>118</sup>
- d. After publishing notifications to the accused in the form of edicts, appointing an attorney for him *ex officio*, and rejecting all the filings of the attorney who normally represented the accused and to whom he had granted the power of attorney,<sup>119</sup> on October 28, 2008, the Court found him to be in contempt of court, ordered a warrant be issued for his arrest and other precautionary measures against him, and also suspended the trial.<sup>120</sup> The arrest warrant was issued on November 6, 2008.<sup>121</sup>

## IV. ANALYSIS OF LAW

18. Preliminarily, the Commission highlights that there is no dispute among the parties regarding the fact that the alleged perpetrator of sexual violence and rape of which Brisa De Angulo alleges to have been the victim is not a State agent or an individual who acted with the State's acquiescence. According to the allegations of the petitioner, the State is responsible for these facts pursuant to the provisions of articles 1(1) and 2 of the American Convention for tolerating the violation of rights protected under the Convention. In effect, to comply

<sup>108</sup> Cassation appeal. Second criminal proceeding B, pages 668-674.

<sup>109</sup> Judgment, Second Criminal Chamber of the Supreme Court of Justice of the Nation. Sucre, December 3, 2007. Second criminal proceeding B, pages 688-688vta

<sup>110</sup> Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 3 A – criminal process pursued by the Office of the Public Prosecutor and private prosecution of José Miguel de Angulo, Luz Stella Losada de Angulo, and Brisa Liliana de Angulo Losada against Eduardo Gutiérrez Angulo for the crime of aggravated rape (“third criminal proceeding”).

<sup>111</sup> Resolution of Trial Court No. 1, Cochabamba, Bolivia, January 21, 2008. Third criminal proceeding A, page 1.

<sup>112</sup> Third criminal proceeding A, page 4.

<sup>113</sup> Third criminal proceeding A, page 28 and 34.

<sup>114</sup> Third criminal proceeding A, page 47.

<sup>115</sup> Third criminal proceeding A, page 98-100.

<sup>116</sup> Forensic medical report, Dr. Miriam Rocabado, August 20, 2008. Document attached to additional comments on the Merits, Brisa Liliana de Angulo, August 7, 2017, pg. 39.

<sup>117</sup> Record of suspension of the oral trial. Trial Court No. 3 of Cochabamba, September 22, 2008. Third criminal proceeding A, page 205.

<sup>118</sup> Third criminal proceeding A, page 206.

<sup>119</sup> Document attached to the comments on the merits of Bolivia, May 11, 2018, Annex 3 B – criminal process pursued by the Office of the Public Prosecutor and private prosecution of José Miguel de Angulo, Luz Stella Losada de Angulo, and Brisa Liliana de Angulo Losada against Eduardo Gutiérrez Angulo for the crime of aggravated rape (“third criminal proceeding B”), page 223-340.

<sup>120</sup> Record of suspension of the oral trial and contempt of court holding. Trial Court No. 3 of Cochabamba, October 28, 2008. Third criminal proceeding B, pages 346-347vta

<sup>121</sup> Third criminal proceeding B, page 408

with their general duty established in Article 1(1) of the Convention, States must not only respect the rights enshrined therein but adopt “all appropriate measures to guarantee them.”<sup>122</sup> The obligation to guarantee in fact extends beyond the relationship between State agents and the individuals subject to their jurisdiction: “it also encompasses the obligation to prevent, within the private sphere, third parties from violating protected juridical rights.”<sup>123</sup> However, as the settled caselaw of the Inter-American Court of Human Rights (“Court”) has found, “a State cannot be held responsible for all the human rights violations committed between individuals within its jurisdiction. [...] 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 [...] and by the reasonable possibilities of preventing or avoiding that danger.”<sup>124</sup>

19. Pursuant to this, there are no elements enabling analysis of this case from the point of view of the State’s duty to protect, as, according to the information submitted and available, the State first became aware of the facts through the complaint submitted by the father of the alleged victim when the alleged sexual abuse had already stopped. Consequently, the Commission’s analysis hereinafter will address the investigation and punishment component of the duty to guarantee, which is activated once the State becomes aware of what happened. That obligation entails launching a diligent and effective investigation to solve the facts and identify, prosecute, and punish those responsible.<sup>125</sup> As will be discussed later on, the obligation to investigate in cases of violence or rape must comply with a series of specific characteristics that have been developed through inter-American case law. Likewise, when the violence or rape is perpetrated against girls or teens, there is an additional series of special obligations. Both groups of obligations will be described and analyzed hereinafter.

**Enhanced due diligence and special protection in judicial investigations and criminal proceedings regarding sexual violence committed against an adolescent. Rights to humane treatment,<sup>126</sup> privacy,<sup>127</sup> the child,<sup>128</sup> equal protection,<sup>129</sup> fair trial,<sup>130</sup> and judicial protection,<sup>131</sup> in conjunction with Article 1(1)<sup>132</sup> of the American Convention, and articles 7(b) and 7(f)<sup>133</sup> of the Convention of Belém do Pará**

<sup>122</sup> Inter-American Court. *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of November 30, 2012. Series C No. 259 (Judgment, Santo Domingo Massacre), para. 188.

<sup>123</sup> Inter-American Court. *Case of Luna López v. Honduras*. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269 (Judgment, Luna López), para. 120.

<sup>124</sup> Inter-American Court. *Case of the “Pueblo Bello Massacre” v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 123; *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205 (Judgment, Cotton Field), para. 280; Judgment, Luna López, para. 120; *Case of Velásquez Paiz et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 19, 2015. Series C No. 307 (Judgment, Velásquez Paiz et al.), para. 137.

<sup>125</sup> In this regard, see IACHR, Report No. 4/16, case 12.690, Merits, V.R.P. and V.P.C., Nicaragua, April 13, 2016, para. 76.

<sup>126</sup> Article 5(1) of the American Convention establishes, in its pertinent part, as follows: “Every person has the right to have his physical, mental, and moral integrity respected.”

<sup>127</sup> Article 11(2) of the American Convention establishes as follows: “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.”

<sup>128</sup> Article 19 of the American Convention establishes, in its pertinent part, as follows: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

<sup>129</sup> Article 24 of the American Convention establishes, in its pertinent part, as follows: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”

<sup>130</sup> Article 8(1) of the American Convention establishes, in its pertinent part, as follows: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>131</sup> Article 25(1) of the American Convention establishes, in its pertinent part, as follows: “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.”

<sup>132</sup> Article 1(1) of the American Convention establishes, in its pertinent part, as follows: “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.”

<sup>133</sup> Article 7 of the Convention of Belém do Pará establishes, in its pertinent part, as follows: “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: [...] b. apply due diligence to prevent, investigate and impose penalties for 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.”

20. As the Court has found consistently, the Convention places on States Parties the obligation to provide effective judicial remedies to victims of human rights violations (Article 25), which should be in accordance with the rules of legal due process (Article 8(1)), pursuant to States' general obligation to guarantee the free and full exercise of rights recognized by the Convention for all persons subject to their jurisdiction (Article 1(1)).<sup>134</sup>

21. Likewise, the right to access to justice must ensure, within a reasonable time period, the right of the alleged victims or their relatives to know the truth about what happened and punish those eventually found responsible.<sup>135</sup> The caselaw has been clear in indicating that, under the duty to investigate, "Once they become aware of acts of violence against women, State authorities should initiate, *ex officio* and without delay, a serious, impartial and effective investigation using all available legal means, aimed at determining the truth."<sup>136</sup> Although the State's obligation is one of means and not ends, this does not mean that it can be discharged as a simple formality doomed from the start to failure or as a mere processing of private interests that depends on the procedural initiative of victims or their relatives or the submission of evidentiary elements by private parties.<sup>137</sup> Also, the duty to investigate remains, "whosoever the agent who may eventually be attributed with the violation, even private individuals, because, if their acts are not investigated seriously, they would, to a certain extent, be aided by the public authorities, which would involve the international responsibility of the State."<sup>138</sup>

22. In cases of violence against women, the general obligations established in Articles 8 and 25 of the Convention are complemented and enhanced by the obligations arising from the Convention of Belém do Pará. In articles 7(b) and 7(f), that Convention requires States to act with due diligence to, among other things, investigate and punish violence against women and establish fair and effective legal procedures for protecting women experiencing violence, including with a timely trial and effective access to such proceedings. States should take measures and establish strategies for comprehensive protection, anticipating risk factors and strengthening institutions to provide an effective response to cases of violence against women, as in addition to the general obligations established in the Convention, they have also had an enhanced obligation under the Convention of Belém do Pará since it came into force.<sup>139</sup> Therefore, when an act of violence against a woman is reported, 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.<sup>140</sup>

23. In cases of violence against adult women, the Inter-American Court has repeatedly found States have the following minimum obligations:

[...]. Among other things, a criminal investigation into sexual violence should include the following: i) the statement should be made in a safe and secure environment that provides privacy and instils confidence; 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; iv) a complete and detailed medical and psychological appraisal should be made by suitably-trained personnel, if possible of the sex indicated by the victim, advising the

<sup>134</sup> Inter-American Court. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections Judgment June 26, 1987. Series C No. 1, para. 91

<sup>135</sup> Inter-American Court. *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, para. 105; Case of Bulacio v. Argentina. Merits, Reparations, and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114.

<sup>136</sup> Inter-American Court. Case of García Prieto *et al.* v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101.

<sup>137</sup> Inter-American Court. Case of V.R.P., V.P.C. *et al.* v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350 (Judgment of V.R.P., V.P.C. *et al.*), para. 151; *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, para. 101; Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4 (Merits, Velásquez Rodríguez), para. 177; Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment dated August 12, 2008. Series C No. 186, para. 144; Case of Valle Jaramillo *et al.* v. Colombia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, para. 100.

<sup>138</sup> Inter-American Court. Merits, *Velásquez Rodríguez*, para. 177.

<sup>139</sup> Inter-American Court. Judgment, Cotton Field, para. 258.

<sup>140</sup> 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. 193.

latter that she may be accompanied by someone she trusts if she so wishes; v) investigation procedures are documented and coordinated and the evidence is processed diligently, taking sufficient samples, performing tests to determine the possible perpetrator of the act, preserving other evidence such as the victim's clothes, inspecting the scene of the incident immediately, and ensuring the proper chain of custody; vi) free legal assistance is provided to the victim during all stages of the proceedings, and (vii) both emergency and, if necessary, continuing medical, prophylactic and psychological care are provided to the victim, using a treatment protocol aimed at lessening the consequences of the offense. Likewise, in cases of allegations of violence against women, the criminal investigation must include a gender perspective and be conducted by officials who are trained in such cases and in dealing with victims of discrimination and gender-based violence.<sup>141</sup>

24. Below, the standards more specifically related to investigating reports of violence or rape of girls and adolescents will be reviewed.

25. Article 9 of the Convention of Belém do Pará requires States to take into account the situation of special vulnerability of certain women, including minors. As the Court has found, "In the case of girls, this vulnerability to human rights violations can be contextualized and enhanced by factors of historic discrimination that have contributed to women and girls suffering higher rates of sexual violence, especially domestically."<sup>142</sup>

26. Likewise, in cases of violence against girls and adolescents, pursuant to Article 19 of the Convention, States have an enhanced obligation to adopt targeted measures and special protection.<sup>143</sup> In this regard, it must be noted that, as the United Nations Committee on the Rights of the Child (CRC) stated in its General Comment 13 (2011)<sup>144</sup> the term "violence" includes not only physical or intentional forms of harm but all the forms of harm listed in Article 19(1)<sup>145</sup> of the Convention on the Rights of the Child.<sup>146</sup> Thus, violence and sexual abuse can exist even in the absence of force. As it has found, "[m]any children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic."<sup>147</sup> Therefore, authorities must take into account that their enhanced obligation is activated by any allegation of violence and sexual abuse. In response to such allegations, States must activate the necessary mechanisms to implement concrete measures toward applying the four guiding principles of the Convention on the Rights of the Child, those being "the principle of nondiscrimination, the principle of the best interest of the girl, the principle of respect for the right to life, livelihood, and development, and the principle of respect for the opinion of the girl in all proceedings that affect her, such that her participation is guaranteed."<sup>148</sup>

27. Although due process and its correlating guarantees are applicable to all individuals, in the case of girls and teens, they require "the adoption of certain specific measures with the aim of ensuring equal access to justice, guaranteeing an effective due process, and making sure that the best interest is a primary consideration in all administrative or judicial decisions adopted."<sup>149</sup> An essential component of enhanced due diligence and special protection in cases of girls who are victims of violence is the need to avoid revictimizing them or forcing them to reexperience the deeply traumatic events. They should thus be provided with specialized support and the proper conditions for preventing new harm and additional trauma that may arise as the result of their statements or during the examinations they undergo.<sup>150</sup> Otherwise, the State would not only be failing to

<sup>141</sup> Inter-American Court. Case of the Nova Brasília *favela v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 16, 2017. Series C No. 333, para. 254.

<sup>142</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 156.

<sup>143</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, paras. 155-157.

<sup>144</sup> CRC. General Comment No. 13 (2011). The right of the child to freedom from all forms of violence. CRC/C/GC/13, April 18, 2011 (*General Comment 13*).

<sup>145</sup> The pertinent part of Article 19 of the Convention on the Rights of the Child establishes the following: 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

<sup>146</sup> CRC. General Comment No. 13, para. 4.

<sup>147</sup> CRC. General Comment No. 13, para. 25(d).

<sup>148</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 155.

<sup>149</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 158.

<sup>150</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, paras. 163-171.

comply with its obligation of enhanced due diligence and special protection, but could also be responsible for the additional trauma and harm caused in violation of Article 5(1) of the Convention. Thus, “in cases of sexual violence, once it becomes aware of the facts, the State must provide immediate professional support—both medical and psychiatric and/or psychological—from professionals trained specifically in attending to victims of these types of crimes with a gender approach and an approach that takes childhood into account.”<sup>151</sup>

28. Additionally, on finding the testimony of girls who are victims of crimes is pertinent to criminal proceedings carried out in cases of alleged abuse, sexual violence, or rape, the Court has found that:

The interview must be conducted by a specialized psychologist or related professional who is duly trained in taking these types of statements. The professional will allow the child or teen to express themselves as they choose and adapted to their needs, and they shall not be directly interrogated by the court or the parties. The interview will seek to obtain a precise, trustworthy, and complete description of what took place through the victim's account. Therefore, the interview rooms must provide a safe environment that is not intimidating, hostile, insensitive, or inappropriate [...] to offer privacy and foster trust. Likewise, children and adolescents should not be questioned more times than strictly necessary, based on their best interest and to avoid revictimization or a traumatic impact. The Court underscores that several countries have adopted the good practice of using special tools such as a Gesell Chamber or closed-circuit television (CCTV) to enable the authorities and the parties to follow the testimony of the child or adolescent from outside in order to minimize any re-victimizing effect. [...] Likewise, it is recommended that the statements from children and teen victims be videotaped so as to avoid having to repeat the procedure. These technological tools not only prevent revictimization of the child or adolescent victim and the deterioration of the evidence, but also guarantee the accused's right to defense.<sup>152</sup>

29. Likewise, regarding the need to conduct physical examinations of girls who are victims of abuse, sexual violence, or rape:

The authorities shall avoid as much as possible subjecting them to more than one physical examination, as it can be revictimizing. The medical examination in these cases must be carried out by a professional with broad expertise and experience in cases of violence against children and adolescents who will seek to minimize and avoid causing them additional trauma or re-victimizing them. It is recommendable for the victim or their legal representative, as corresponds, to be able to choose the sex of the professional, and for the exam to be conducted by a health professional who is a specialist in child-youth gynecology, with specific training in conducting medical forensic examinations in cases of abuse and sexual assault. Likewise, the medical examination must be conducted with the informed consent of the victim or the victim's legal representative, depending on their level of maturity, taking into account the right of the child or adolescent to be heard in a suitable setting and for their right to privacy to be respected, allowing the victim to be accompanied by an individual they trust. Whether an expert gynecological report is necessary should be considered on a case-by-case basis, taking into account the time passed since the sexual violence took place. In view of this, the Court finds that the request for an expert gynecological report must provide a detailed rationale, and, if not necessary or the informed consent of the victim is not secured, the examination must be omitted. Under no circumstances shall this serve as an excuse for discrediting the victim and/or impeding an investigation.<sup>153</sup>

30. Also, as the Court has found in similar cases, the presence of multiple individuals during the gynecological examination of a girl victim of sexual violence runs contrary to the standards on the subject and constitutes a violation of the right guaranteed in article 11(2) of the American Convention, as it amounts to “arbitrary interference in their privacy. The Court finds that these types of examinations must be conducted a single time, by a physician trained in the subject and who is an expert in cases of girls who are victims of abuse and sexual assault, and in the presence only of those who strictly need to be there.”<sup>154</sup>

31. As far as a reasonable period of time, Article 8(1) of the American Convention establishes that one of the elements of due process is that courts must decide on cases brought before them within a reasonable period of

<sup>151</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 165.

<sup>152</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 168.

<sup>153</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 169.

<sup>154</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 176.

time. In this regard, an extensive delay could in itself constitute a violation of the right to a fair trial,<sup>155</sup> for which reason it is the State's responsibility to explain and demonstrate why it has needed more time than reasonable to issue a final judgment in a specific case.<sup>156</sup>

32. In this regard, the reasonableness of the period must be assessed in relation to the total duration of the criminal procedure.<sup>157</sup> Pursuant to the terms of Article 8 (1) of the American Convention and the specific circumstances of the case, the Commission will take into consideration, based on the specific circumstances of the case, the following four elements: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of judicial authorities; and iv) the effect the legal situation has had on the person involved in the process.<sup>158</sup>

33. Lastly, pursuant to the general obligation under Article 1(1) of the Convention, States must respect and guarantee, "without discrimination," the rights contained in the Convention; therefore, if a State discriminates in respecting or guaranteeing a rights set forth in the Convention, it violates Article 1(1) and the substantive right in question.<sup>159</sup> Additionally, Article 24 of the Convention protects the right to equal protection before the law, meaning that States have an obligation "to not include discriminatory regulations in their legal systems, eliminate discriminatory regulations, combat practices of this nature, and establish guidelines and other measures recognizing and ensuring the effective equal protection of all persons."<sup>160</sup> As the Court has found, violence against women is a form of discrimination.<sup>161</sup> Additionally, judicial ineffectiveness and inefficiency in cases of violence against women constitutes in itself discrimination against women with regard to access to justice.<sup>162</sup>

34. Based on the body of evidence, it can be concluded that no serious, impartial, and effective investigation using all legal measures available, with determination and effectiveness, and aimed at determining the truth with enhanced due diligence was conducted into the allegations of sexual violence committed against Brisa De Angulo. Effectively, as Trial Court No. 2 itself found in its ruling to acquit in the second criminal proceeding of September 23, 2005, "there was no efficient investigation. Jurisdictional control of the investigation was not exercised [...] The evidence was not pertinent to the aim of the investigation and was not useful for discovering the truth. The witness testimony offered, notwithstanding its indirect character, was not convincing to the Court." This led the Court to conclude that the "the omissions in the investigation make it impossible for the Court to reach a conclusion based on the facts described, much less to find the accused guilty of the crime alleged." The IACHR finds that, effectively, the Bolivian Office of the Public Prosecutor did not conduct an efficient investigation into the facts aimed at actively discovering the truth of what took place, nor did it properly pursue the criminal proceeding based on the available evidence.

35. The Commission reiterates the Court's settled case law to the effect that the bodies of the Inter-American System do not function as an instance for appeal or review of judgments issued in domestic proceedings, nor does it act as a criminal court that can judge the criminal responsibility of individuals, as domestic courts are responsible for applying criminal law.<sup>163</sup> Therefore, it does not fall to the IACHR to issue a ruling on Eduardo

<sup>155</sup> Inter-American Court. *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 15, 2005. Series C No. 124, para. 160; *Case of Gómez Palomino v. Peru*. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 136, para. 85; *Case of García Asto and Ramírez Rojas v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2005. Series C No. 137, para. 166.

<sup>156</sup> Inter-American Court. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111, para. 142.

<sup>157</sup> Inter-American Court. *Case of López Álvarez v. Honduras*. Merits, Reparations, and Costs. Judgment of February 1, 2006. Series C No. 141, para. 129; *Case of Acosta Calderón v. Ecuador*. Merits, Reparations, and Costs. Judgment of June 24, 2005. Series C No. 129, para. 104; *Case Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 7, 2004. Series C No. 114, para. 168.

<sup>158</sup> Inter-American Court. Judgment, Santo Domingo Massacre, para. 164.

<sup>159</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 289.

<sup>160</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 289.

<sup>161</sup> Inter-American Court. Judgment, Cotton Field, para. 394-395.

<sup>162</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, para. 291. Also see Judgment, Velásquez Paiz *et al.*, para. 176; *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, para. 208.

<sup>163</sup> Inter-American Court. *Case of Mohamed vs. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2012. Series C No. 255, para. 81; *Case of Castillo Petruzzi et al. v. Peru*. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 83; *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations, and Costs. Judgment of May 30, 1999. Series C No. 52, para. 90, Merits, Velásquez Rodríguez, para. 134.

Gutiérrez Angulo's criminal liability, nor, in the circumstances of the specific case, on the criminal offense appropriate to the conduct alleged. Rather, it must determine whether the irregularities during the investigation and prosecution amounted to violations of the guarantees established in the Convention. In this regard, the Commission finds that, effectively, the lack of a serious, impartial, and effective investigation and of an efficient prosecution led to the criminal proceedings being overturned and sent back for new trials, violating the rights of Brisa De Angulo to an effective judicial remedy.

36. Also, the Commission notes that during the investigation and trials, the necessary measures were not taken to prevent Brisa's revictimization, and the proceedings were not conducted from a gender perspective or a perspective that took into account childhood, nor did they adhere to the principle of strict due diligence and enhanced and special protection required by allegations of sexual violence committed against a teen. Effectively, first of all, the State did not grant immediate and professional medical and psychological care to the alleged victim. Rather, it was her family who took charge of her treatment, to the point of establishing an institution to help other victims in similar situations due to the lack of such support systems in Bolivia. Second of all, regarding the statements, as described by the alleged victim, the prosecutor subjected her to traumatic interviews in an intimidating, hostile, insensitive, and inappropriate environment. Also, although during the first criminal proceeding, an attempt was made to prevent the girl from experiencing trauma and revictimization by ordering the parties to leave the chamber during Brisa's testimony, the Court did not take the necessary measures to, at the same time, protect the rights of the accused. The Court's failure to take these measures meant that Brisa had to testify again during the second criminal proceeding. In addition to this, measures were not taken to ensure that prior to her testimony, the adolescent was not threatened and harassed by the witnesses for the accused, as she describes having happened.

37. Third, regarding the physical examinations conducted, as described in the proven facts, in July 2002, Brisa was subjected to an abusive forensic examination that violated her privacy, in which she was not given the opportunity to choose the sex of the forensic specialist; the record does not show that the physician or the students attending the examination had special training on attending to minor victims of sexual violence; there was an excessive number of healthcare staff; force was used; her requests and her expressions of anxiety and pain were not respected; and the examination was not conducted in a safe, appropriate, and nonintimidating environment.<sup>164</sup> Circumstances similar to this were already evaluated by the Inter-American Court in a similar case, and they led it to conclude that they amount to not only arbitrary interference with the victim's privacy but, because force was used and there was a lack of consent for continuing with the examination, they also constitute grave institutional acts of sexual violence.<sup>165</sup>

38. Also, at the Trial Court level, Brisa was subjected to another forensic gynecological examination in 2008, which was absolutely unnecessary, as there was no dispute as to whether the alleged victim and the accused had had sexual relations, and an expert examination of this type performed almost seven years after the facts could prove nothing. The irrelevance of this examination does not change based on the "agreement" of the private prosecution with it, as the State has argued,<sup>166</sup> as this agreement was reached precisely because original forensic examination was excluded during the second criminal proceeding, leading the Court to reach the absurd conclusion that Brisa and Eduardo "had sexual relations, as their testimony given during the trial stated as much, without specifying the date. However, due to the evidentiary weakness of the public and private prosecutions, the Court cannot find whether these sexual relations were consensual or sexual assault, or even if sexual relations took place, because there is no forensic medical report to indicate such situation."<sup>167</sup>

39. Likewise, due to the errors and failures in the investigation and prosecutions, the criminal proceeding has not been decided within a reasonable period of time, as to date, no final judgment has been reached, neither to convict or acquit, even though almost 18 years have passed since the facts under investigation took place. This excessive delay is not attributable to the complexity of the matter or the procedural activity of the interested party. Rather, it is without question the results of the conduct of the prosecutorial and judicial authorities who, because of their errors and failures, caused significant delays in the processing of a number of remedies; the

<sup>164</sup> In a similar sense, see: Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, paras. 174-179.

<sup>165</sup> Inter-American Court. Judgment of V.R.P., V.P.C. *et al.*, paras. 178-179.

<sup>166</sup> Comments on the merits of Bolivia, May 11, 2018, paras. 268-272.

<sup>167</sup> Judgment, second oral trial, second criminal proceeding A, page 279.

overturning of two final judgments; and the case being sent for a new trial on two occasions. Also, they did not take the necessary measures to prevent the suspect from fleeing despite sufficient indications of such risk during the process, which has prevented completion of the criminal proceeding.

40. Regarding this latter point, as described in the proven facts, from the moment of his original arrest in August 2002, the Office of the Public Prosecutor was aware that Eduardo Gutiérrez presented a flight risk, which was taken into account when he was issued precautionary measures. In addition, in his testimony during the second criminal proceeding, the accused himself stated that he had been "subjected to this process for three years, punctually complying with the requirements, and did not try to escape, even when his own family begged him to do so."<sup>168</sup> This indicates that there was a clear risk that he would flee as soon as the ban that had been implemented on leaving the country was lifted. The proceedings give no indication that new precautionary measures were requested after the Supreme Court of Justice annulled the judgment to acquit in May 2007, nor that his arrest and extradition from Colombia had been requested after he fled in November of that year and the holding of contempt of court and arrest warrant were issued in November 2008.

41. As previously noted, judicial ineffectiveness and inefficiency in cases of violence against women, such as is described above, constitutes in itself discrimination against women with regard to access to justice and creates:

an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women can be tolerated and accepted, fostering the perpetuation and social acceptance of the phenomenon, the feeling and impression of insecurity among women, and persistent mistrust of the justice system.<sup>169</sup>

42. Therefore, in view of the failure to comply with its duty to act with enhanced due diligence and provide special protection in the investigation of and proceedings surrounding the abuse, violence, and sexual assault alleged by Brisa Liliana De Angulo Lozada, the Commission concludes that the Bolivian State is responsible for the violation of its duty to guarantee, without discrimination based on gender and age, the right to access to justice, pursuant to the terms of article 8(1) and 25(1) of the American Convention, in conjunction with the obligations established in articles 1.1, 19, and 24 of the Convention, as well as articles 7(b) and 7(f) of the Convention of Belém do Pará, to the detriment of Brisa Liliana De Angulo. Likewise, the Commission concludes that the State is responsible for the violation of the rights to humane treatment and privacy enshrined in articles 5(1) and 11(2) of the American Convention, in conjunction with the obligations established in article 1(1) of the same instrument, to the detriment of Brisa De Angulo Lozada.

## V. CONCLUSIONS AND RECOMMENDATIONS

43. The Commission concludes that Bolivia is responsible for the violation of its duty to guarantee, without discrimination based on gender and age, the right to access to justice, pursuant to the terms of articles 8(1) and 25(1) of the American Convention, in conjunction with the obligations established in articles 1(1), 19, and 24 of the Convention, as well as article 7(b) and 7(f) of the Convention of Belém do Pará, to the detriment of Brisa Liliana De Angulo. Likewise, the Commission concludes that the State is responsible for the violation of the rights to humane treatment and privacy enshrined in articles 5(1) and 11(2) of the American Convention, in conjunction with the obligations established in articles 1(1) of the same instrument, to the detriment of Brisa De Angulo Lozada.

44. By virtue of the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE BOLIVIAN STATE,**

1. Provide full pecuniary and nonpecuniary reparations for the human rights violations declared in this report. The State must adopt measures to provide financial compensation and satisfaction.

<sup>168</sup> Testimony of Eduardo Gutiérrez Angulo, Second oral trial, second criminal proceeding A, page 271.

<sup>169</sup> Inter-American Court. Judgment of V.R.P., V.P.C. et al., para. 291.

2. Order measures to provide the health care needed by Brisa De Angulo Lozada, in accordance with their wishes and in coordination with them. If it is not possible to implement the health measures to the benefit of the victim due the fact that she lives outside Bolivia, the State shall provide a financial sum to her that is sufficient to cover her treatment.

3. Continue the criminal investigation and proceedings diligently, effectively, and within a reasonable period of time with the goal of fully resolving the facts, and determine who is responsible, with the corresponding punishments. In the framework of continuing the investigation and the criminal proceeding, the State must take all measures available to it to compensate for and correct the multiple deficiencies, irregularities, and omissions described in this report and refrain from invoking improper and discriminatory stereotypes such as those identified in the judgments annulled. Also, the State must launch an *ex officio* investigation into the actions of the medical and other officials who directly committed the violations found in this report or contributed to them.

4. Order measures of non-repetition, including the adoption of legislative, administrative, and other measures, to ensure that the officials who come in contact with those alleging sexual violence to the detriment of girls and adolescents and the investigation and prosecution thereof have the necessary training to carry out their duties from a gender approach that takes childhood into account, as well as conforms to the standards set forth in this report on the merits.