

**2018 INTER-AMERICAN HUMAN RIGHTS MOOT COURT
COMPETITION**

**Case of María Elena Quispe and Mónica Quispe
v. Republic of Naira**

I. Background on the State of NAIRA

1. NAIRA is a democratic State with a population of 20 million and an area of 800,000 km², divided into 25 provinces. The country is economically stable, but has been experiencing a political crisis for several years that has affected the past three governments.

2. President Gonzalo Benavente, leader of the Democratic Reform Party, was elected in April 2014 and has three years remaining until the end of his term of office. During his campaign, Benavente made a number of election promises about regulatory changes and government programs to promote inclusion and improved conditions for vulnerable groups.

3. Nevertheless, despite winning the presidency, the administration faces intense opposition from the legislature, as a number of different political groups decided to form the Coalition for the Resistance and challenge the president on any reform they consider radical.

4. One of the most influential groups in congress is the “Respect My Children” Party, which contends that the country is undergoing a values crisis because recent legal and constitutional reforms have departed from what they call “an appropriate concept of family.” Because of this, they consistently resist any attempt at regulatory reform that is not in line with their aims. Fundamentally, they have managed to prevent the inclusion of a gender perspective in the national educational curriculum, which they consider a danger to “the traditional values of Nairan society.”

5. President Benavente has tried to maintain a harmonious relationship between the executive and the legislative branches, but the situation has become increasingly difficult and the president’s full cabinet is evaluating the possibility of making some concessions to ensure governability.

6. NAIRA is a monist state, as Article 22 of its constitution establishes that duly ratified treaties are directly enforceable by the courts and have constitutional status, prevailing over national laws.

7. NAIRA has ratified all of the international treaties, including the CEDAW (ratified in 1981), the American Convention on Human Rights (ratified in 1979), the Inter-American Convention to Prevent and Punish Torture (ratified in 1992), and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem do Pará, ratified in 1996).

II. The general context in NAIRA

8. Between 1970 and 1999, there were numerous acts of violence and confrontations in southern NAIRA, mainly in the provinces of Soncco, Killki, and Warmi, where the armed group “Freedom Brigades” (FB)—which has ties to drug trafficking—began carrying out terrorist actions with the aim of conducting its activities without state interference.

9. Then-President Juan Antonio Morales took a series of measures to counteract the group’s actions, such as declaring a state of emergency, suspending guarantees, and establishing Political and Judicial Command Units in the three provinces, which took control of the area by setting up military bases between 1980 and 1999.

10. Given the amount of time that has passed, these events are now considered part of Nairan history. The media reported some complaints of human rights violations, but nothing ever came of them, even though subsequent governments opened a few investigations on their own initiative. For that reason, these events are currently considered to be part of the past.

11. What is extremely troubling today are the many cases of gender-based violence that occur daily in NAIRA and are constantly reported in the media and by civil society organizations.

12. The Public Ministry has confirmed that there are 10 femicides or attempted femicides in the country every month, and that every two hours a woman is the victim of sexual violence in NAIRA. According to the National Statistics Institute, 3 of every 5 women were assaulted by their partners or ex-partners in 2016. Statistics also show that 1,300 girls between the ages of 11 and 14 and 3,000 15-year-olds gave birth in 2015. The National Opinion Institute additionally reports that 7 of every 10 women between 15 and 35 years of age have been subject to daily sexual street harassment throughout their lives. In addition, there has been an uptick in hate crimes against the LGBTI population in recent years, with 25 murders involving LGBTI victims having been reported from 2014 to the present.

13. On the subject of economic, social, and cultural rights, the Ministry of Labor reports that the wage gap between women and men is 16% in the public sector and 29% in the private sector. Time use surveys also reveal that women spend 50% of their labor efforts on unpaid work.

14. NAIRA’s regulatory framework includes Law 25253 on violence against women and the family and Law 19198 against street harassment. The Criminal Code recognizes the offenses of femicide and rape only, and does not define any other kind of sexual violence as a crime. In the case of femicide, penalties range from 25 years to life in prison if the victim is a minor, is raped, or is pregnant. The penalties for rape range from 12 years to life in prison if the victim is a minor and dies as a result of the assault. NAIRA has not decriminalized the termination of pregnancy in cases of rape,

does not recognize same-sex marriage or adoption by same-sex couples, and does not have a gender identity law.

III. Gender-based violence in NAIRA

15. The NGO Killapura is an institution that has documented and litigated cases of gender-based violence since it was founded in 1980. In its national reports, Killapura has consistently maintained that the state has not adequately responded to the needs of victims of gender-based violence in NAIRA, thereby allowing widespread discrimination to take root. In this context, two cases shook the country in recent years.

16. The first one was the case of Zuleimy Pareja, a transgender woman who had complained for years of violence at the hands of her partner, Angelino Mendoza. In 2010, the couple had an argument, and Mendoza murdered her and buried her in an open field. After Zuleymi's family filed a report, the police opened an investigation, discovered Zuleymi's body, and arrested her partner. In due course, the office of the public prosecutor charged Mendoza with femicide, seeking the maximum sentence of 40 years in prison.

17. Nevertheless, the First Criminal Court decided that Mendoza's crime did not fall within the statutory definition of femicide because Zuleymi Pareja had undergone gender reassignment surgery and because the name on her national ID card was male. The Court convicted Mendoza of murder, which carries a prison sentence of 15 years, and also found that it was a "crime of passion" because Zuleymi had been constantly unfaithful in their relationship. The case was reviewed twice on appeal, and the final judgment handed down by the Supreme Court on March 10 of this year upheld the original conviction.

18. The second case was that of Analía Sarmiento, a 19-year-old student who disappeared on January 7, 2015 after going out clubbing. Her body was found two days later in a garbage dumpster. Her killer, Guillermo Alcázar, was a man she had met and danced with at the club. According to the witnesses, when Alcázar tried to kiss her by force, Analía pushed him away and left the place. Alcázar followed the victim and forced her into his car, where he raped and killed her. During the investigations, it was discovered that Alcázar had previously been twice charged and once convicted of rape, but was out on probation.

19. The state decided to take specific and immediate measures to address this situation. These measures are collectively known as the Zero Tolerance Policy on Gender-Based Violence (ZTPGBV), and an extraordinary budget allocation has been made for its immediate implementation. The measure was well-received by civil society, women's organizations, and victims' associations, which were invited to submit their proposals for the design of the ZTPGBV.

20. Within this framework, the state decided to create a Gender-Based Violence Unit in the public prosecutor's office and in the judicial branch that will include specific measures to assist female victims, in addition to mandatory training and education for judges, prosecutors, and other public servants. In addition, this unit will have the authority to penalize public officials who commit acts of gender-based violence and discrimination.

21. The state also offered to review the legislation on femicide, violence, discrimination, and issues of gender identity in the coming months so that, with broad citizen participation to create national consensus, those points considered discriminatory can be amended.

22. Finally, it decided to create an Administrative Program on Reparations and Gender to implement reparations measures for the victims of any kind of gender-based violence, prioritizing cases of femicide and rape. Although this program will not allow for the litigation of cases, it will provide different economic and symbolic measures to address physical and mental health, education, housing, and employment, and victims will take part in its design. Registration with the Unified Registry of Victims of Violence is a requirement for accessing this program.

23. In this context, a new case is at the center of discussion in NAIRA. This is the case of Ms. María Elena Quispe who, on January 20, 2014, decided to report her husband Jorge Pérez for having disfigured her with a broken bottle. Ms. Quispe went to the police to file a complaint, but, because the only medical examiner in the area was out of town, Ms. Quispe could not undergo the respective medical exam.

24. Despite the fact that Law 25253 requires police to take urgent action for the protection of victims, they failed to do so because there was no medical certificate. In the absence of a police report, the office of the public prosecutor was unable to bring charges and the assailant was not arrested.

25. Four months later, Jorge Pérez intercepted Ms. Quispe on the street, insulting and hitting her in public view. That time, in the context of a major national debate, Pérez was arrested and prosecuted. However, he was sentenced to a year of suspended jail time because he had no prior history of violence and the medical examiner had classified the assault as one resulting in minor injuries. Three months later, Jorge Pérez sought out Ms. Quispe at her place of employment and beat her again. This time he left her permanently partially disabled, and therefore was arrested.

26. Mónica Quispe, the victim's sister, filed the complaint at the time of the events, and the court case is still pending. In the meantime, Mónica has been caring for María Elena's son and is also in the midst of custody litigation because Pérez has argued that María Elena's health condition makes her unable to care for their son. He has expressed remorse and has agreed to continue undergoing psychological treatment for the sake of his son, and has requested that the child be returned to his custody as soon as the trial is over. At the first instance, the family court judge ruled in favor of Pérez,

on the grounds that the bond between a father and his children cannot be affected by intimate partner violence.

27. Given the notoriety of the case, channel GTV, NAIRA's most important media outlet, interviewed Mónica in December 2014 for an in-depth look at María Elena's life and family background. In that interview, Mónica described the difficult circumstances she and her sister had experienced as natives of Warmi, where a Special Military Base (SMB) had been established to maintain control over the area and fight crime between 1990 and 1999.

28. During those years, officials from the SMB committed abuses against the population, including constant sexual violence against local women and girls, including Mónica and María Elena. According to Mónica, in March 1992, when they were very young, they were held at the SMB on false accusations for a month, and were forced to wash, cook, and clean every day. Both of them were also repeatedly raped—many times gang-raped—by the soldiers.

29. Mónica also recounted how, during her time at the SMB, she saw that the women were often forced to strip naked in front of the soldiers, who beat and groped them in the cells on the base.

30. When the situation in the area was brought under control by the state in 1999 with the surrender of the armed groups, the SMB was deactivated. The acts of sexual violence were never reported by the victims or investigated by the state on its own initiative.

31. The day after the interview aired in 2014, Killapura contacted the Quispe sisters and decided to take on both cases. María Elena and Mónica confirmed their statements in private conversations with the organization.

32. In addition, days after the 2014 news report, authorities in the town of Warmi issued a public statement denying the reports, saying that they never would have allowed such a situation to exist in their community, and that GTV and Killapura were giving the town a bad name. The vast majority of the town's residents supported the statement of the authorities.

33. After conducting a thorough investigation that included interviews with neighbors, victims, and witnesses, on March 10, 2015, Killapura filed criminal complaints alleging acts of sexual violence against both sisters in Warmi, but they were time-barred by the expiration of the 15-year statute of limitations. Killapura then called on the government to come forward and take the necessary measures to allow for these acts to be prosecuted, specifying that the actions of the state should not be limited to the Quispe sisters, but rather that a general and contextual investigation should be opened in order to guarantee the rights of other victims to truth, justice, and reparations. It further asserted that measures of reparation should be established for the women as well as for the children that may have been born as a result of those rapes.

34. The executive branch replied on March 15, 2015, stating that it was not within its purview to interfere in the court case but that it would create a High-Level Committee to explore the potential reopening of the criminal cases. It also said that it would include the case of the Quispe sisters in the ZTPGBV, making the necessary adaptations to guarantee their rights, and ordering the creation of a Truth Commission (TC) composed of representatives of the state and civil society, which will urgently undertake to investigate the facts. President Benavente himself announced these measures to the media, surrounded by his Cabinet, pledging his commitment to finding out the truth and promising that the victims would obtain justice and redress. In addition, he announced the creation of a Special Fund for reparations that will be allocated as soon as the TC concludes its report.

35. Regarding the status of children born of rape, the state maintains that it will provide for their immediate registration in the Public Registry of the ZTPGBV. Finally, it provided assurances that it would be monitoring the case of the attempted femicide of María Elena Quispe as well as the case concerning the custody of her son, but asked for understanding because it believes it has made significant efforts to combat the widespread culture of discrimination in NAIRA.

36. Killapura is of the opinion that the measures offered do not adequately satisfy the rights of their clients, since the case of the Quispe sisters is not one that involves everyday gender-based violence; rather, it has greater implications due to the possible mass nature of the events in Warmi and the widespread sexual violence in that place, the different manifestations of which are not covered by current legislation. It further maintains that, according to the Convention of Belem do Pará, the states have the obligation to prosecute acts of violence against women. Killapura additionally considers that there is an urgent need for the inclusion of a gender-based approach in the national educational curriculum, and for legal reforms to guarantee the status of female victims and the custody of their children.

37. For all of the foregoing reasons, and because they believe that their clients' right to truth, justice, and reparations is being denied, they have decided to avail themselves of the Inter-American Commission on Human Rights.

IV. Proceedings in the Inter-American System

38. On May 10, 2016, Killapura filed a petition with the Inter-American Commission on Human Rights (IACHR), alleging the violation of the rights enshrined in Articles 4 (Right to life), 5 (Right to humane treatment), 6 (Freedom from slavery), 7 (Right to personal liberty), 8 (Right to a fair trial), and 25 (Right to judicial protection) of the American Convention on Human Rights, all in relation to the obligation to respect and guarantee those rights under Article 1.1 thereof, to the detriment of María Elena and Mónica Quispe. The petition further alleged the violation of the state's obligations regarding violence against women contained in Article 7 of the Convention of Belem do Pará.

39. On June 15, 2016, the IACHR admitted the petition for processing, forwarding the pertinent parts to the State of NAIRA and granting it the period of time specified in the Rules of Procedure to present its reply.

40. On August 10, 2016, the state replied, denying its responsibility for the alleged human rights violations and providing an account of all of the actions it has taken in favor of the victims and women in general. In addition, it stated that it did not intend to reach a friendly settlement and that, if necessary, it would present the case for the defense before the Inter-American Court.

41. In view of the state's reply, and in keeping with its Rules of Procedure and the provisions of American Convention, the IACHR adopted a report declaring the case admissible and finding violations of Articles 4, 5, 6, 7, 8, and 25, all in relation to Article 1.1, of the American Convention on Human Rights, as well as Article 7 of the Convention of Belem do Pará, to the detriment of María Elena and Mónica Quispe.

42. Once the deadlines and requirements established in the American Convention and the Rules of Procedure of the IACHR had been met, and because Naira did not find it necessary to implement any of the recommendations made by the IACHR, the case was submitted to the jurisdiction of the Inter-American Court of Human Rights on September 20, 2017, alleging the violation of the same articles cited in the IACHR's report on the merits.