

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

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

II. The general context in NAIRA

8.

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 Zuleymi 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.

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

r9-3()10(e)-3(x)8(pi)-

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,

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.