

Espinoza Gonzáles v. Peru

ABSTRACT¹

This case is about the arrest, detention, torture and rape of a woman accused of being a member of a terrorist organization. The Court found violation of multiple articles of the Inter-American Convention as well as of the Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”). The case is notable because the Court found wide-spread and systematic gender-based discrimination in the investigation of torture, rape, and sexual violence, and ordered Peru to reform criminal investigation protocols to protect women from sexual violence.

I. FACTS

A. Chronology of Events

June 3, 1953: Ms. Gladys Carol Espinoza Gonzáles is born in Lima, Peru.² Between 1977 and 1982, Ms. Espinoza Gonzáles attends the State University of Kiev, in the Union of the Soviet Socialist Republics (“USSR”), and earns a Master’s Degree in International Law.³

March 28, 1987: Ms. Espinoza Gonzáles is arrested by, and detained for fifteen days at, the National Counterterrorism Directorate (“DINCOTE”), in Lima.⁴ She is charged with involvement in attacks on commercial institutions as a member of the Túpac Amaru Revolutionary Movement (“MRTA”), a prominent guerilla group in Peru.⁵ At the police facility, Ms. Espinoza Gonzáles suffers from forced searches and physical attacks, but does not file a formal complaint.⁶

1. Durdana Karim, Author; Milja Miric, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 289, ¶ 69 (Nov. 20, 2014).

3. *Id.*

4. *Espinoza Gonzáles v. Peru*, Admissibility and Merits Report, Report No. 67/11, Inter-Am. Comm’n H.R., Case No. 11.157, ¶ 9 (Mar. 31, 2011).

5. *Id.*

6. *Id.*

April 6, 1992: Peru's government promulgates Decree Law No. 25,418, instituting a governmental agency known as the "Emergency and National Reconstruction Government."⁷ The new governmental agency passes new decree laws that allow for the investigation of terrorism and treason, and prevents filing of habeas corpus proceedings.⁸

April 17, 1993: The Abduction Investigation Division ("DIVISE") agents arrest and take Ms. Espinoza Gonzáles and her partner, Mr. Rafael Edwin Salgado Castilla, into custody.⁹ The arrest occurs during a public confrontation on the streets of Lima, resulting in severe injuries to both.¹⁰ The Peruvian National Police ("PNP") do not provide Ms. Espinoza Gonzáles with proper court documents or notification of the reason for her arrest.¹¹ Ms. Espinoza Gonzáles is severely injured as a result of the violent arrest by the PNP, in which she is beaten and threatened.¹² Mr. Salgado Castilla dies the same day from injuries sustained during the arrest.¹³

April 19, 1993: DIVISE agents transfer Ms. Espinoza Gonzáles to the prison cells of the DINCOTE.¹⁴ During her stay, she is raped, tortured and humiliated.¹⁵ She receives medical care during her incarceration by both the DINCOTE infirmary and Central Hospital of the PNP.¹⁶ Reports show the existence of hematomas and trauma throughout her body.¹⁷

April 23, 1993: Mrs. Gonzáles receives notification by the PNP that her daughter is detained at the DINCOTE.¹⁸ However, at the DINCOTE headquarters, agents deny that Ms. Espinoza Gonzáles is detained there and do not allow Mrs. Gonzáles to see her daughter until three weeks later.¹⁹

7. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 55-56.

8. *Id.* ¶ 57.

9. *Id.* ¶ 70.

10. *Id.* ¶ 71.

11. Espinoza Gonzáles v. Peru, Admissibility and Merits Report, ¶ 11.

12. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 71.

13. *Id.* ¶ 72.

14. Espinoza Gonzáles v. Peru, Admissibility and Merits Report, ¶ 12.

15. *Id.*

16. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 73.

17. *Id.*

18. *Id.* ¶ 74.

19. *Id.*

April 28, 1993: The General Coordinator of the Association for Human Rights in Peru (*Asociación Pro Derechos Humanos*; “APRODEH”), Mr. Francisco Soberon Garrido, provides notification of Ms. Espinoza González’ treatment to the Special Prosecutor of the Ombudsman’s Office as well as the Prosecutor General for Public Prosecution Service.²⁰ He states that Ms. Espinoza González suffered from sexual abuse and physical misconduct that resulted in injuries to her head and other body parts.²¹ He requests intervention by State officials to prevent further harm that could result in the death of Ms. Espinoza González.²²

April 28, 1993: Ms. Espinoza González gives statements to the DINCOTE agents in which she complains that she suffered from rape, torture and physical abuse while in the custody at the DIVISE headquarters.²³ Subsequently, Ms. Espinoza González provides additional statements to the investigating agents of the same information on May 7 and May 10, 1993.²⁴

May 10, 1993: A petition is filed on behalf of Ms. Espinoza González before the Inter-American Commission on Human Rights (“the Commission”).²⁵

May 17, 1993: Military Prosecutor of the Permanent Court-Martial of the Peruvian Air Force (“FAP”) charges Ms. Espinoza González with the crime of treason and files a formal complaint with the Investigating Judge of the FAP Permanent Court-Martial.²⁶ In addition, the FAP requests an extension on her detention.²⁷

June 1, 1993: The Special Military Judge elects to do a preliminary investigation into the crime of treason, issues an arrest warrant for Ms. Espinoza González and provides services to detain her at DINCOTE headquarters.²⁸

June 25, 1993: The Special Military Judge convicts Ms. Espinoza González for the crime of treason as a result of her involvement with MRTA

20. *Id.* ¶ 75.

21. *Espinoza González v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 75.

22. *Id.*

23. *Id.* ¶ 77.

24. *Id.*

25. *Id.* ¶ 2.

26. *Id.* ¶ 76.

27. *Espinoza González v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 76.

28. *Id.* ¶ 77.

and her leadership role in conducting “abductions, extortion and attacks in the State of Peru”.²⁹ Ms. Espinoza Gonzáles is sentenced to life imprisonment at the Maximum Security Prison administered by the National Penitentiary Institute.³⁰

June 30, 1993: Ms. Espinoza Gonzáles is transferred to Chorrillos Women’s Maximum Security Prison and remains in confinement there at the time of the Court’s Judgment.³¹

Between January 17, 1996 and December 16, 2003: Ms. Espinoza Gonzáles is moved through several prisons, including the Yanamayo Prison, where she is tortured.³²

February 17, 2003: Superior Criminal Chamber of the Supreme Court acquits Ms. Espinoza Gonzáles of all charges and proceedings under military jurisdiction.³³ The Provincial Prosecutor later files a complaint and commences an investigation on Ms. Espinoza Gonzáles for the crime against public peace-terrorism in the ordinary jurisdiction of the State.³⁴

August 28, 2003: Ms. Espinoza Gonzáles makes statements before the Second Special Criminal Court for Crimes of Terrorism in regards to her suffering from torture and violence during her detention at both DIVISE and DINCOTE.³⁵

February 2004: Ms. Espinoza Gonzáles completes psychological reports along with two forensic reports regarding her incarceration in DIVISE and DINCOTE.³⁶

March 1, 2004: The National Terrorism Chamber convicts Ms. Espinoza Gonzáles of the crime of breach of public peace-terrorism and gives her a fifteen-year sentence ending April 17, 2018.³⁷

November 24, 2004: The Permanent Criminal Chamber of the Supreme Court of Justice imposes a twenty-five-year sentence to end April 17,

29. *Id.* ¶ 78.

30. *Id.*

31. *Id.* ¶ 79.

32. *Id.*

33. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 80.

34. *Id.*

35. *Id.* ¶ 81.

36. *Id.*

37. *Id.* ¶ 81.

2018.³⁸ At the time of the judgment, Ms. Espinoza Gonzáles continues to serve her sentence at Chorrillos Women’s Maximum Security Prison.³⁹

March 31, 2011: The Commission makes several recommendations to the State after accepting the Report on Admissibility and Merits.⁴⁰

October 19, 2011: After receiving the final report by the Commission, the Minister of Justice orders the Prosecutor General to comply with the Report on Admissibility and Merits regarding Ms. Espinoza Gonzáles.⁴¹

March 31, 2014: The Prosecutor of the Third Supra-Provincial Criminal Prosecution Unit issues a decision on the investigation, which provides for the archiving of the crime of abduction, rape, and torture and the bringing of criminal charges against several individuals named in the judgment.⁴²

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

May 10, 1993: APRODEH and Mrs. Teodora Gonzáles de Espinoza file a petition on behalf of Ms. Espinoza Gonzáles with the Commission.⁴³ The Center for Justice and International Law (“CEJIL”) subsequently joins the litigation on November 19, 2008.⁴⁴

January 1999: Mrs. Gonzales informs the Commission of her daughter’s mistreatment during detention.⁴⁵ The Commission accepts this as a new petition, but later combines both Mrs. Gonzales and her daughter’s petitions.⁴⁶

38. *Id.* ¶ 82.

39. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 82.

40. *Id.* ¶ 2.

41. *Id.* ¶ 84.

42. *Id.* ¶ 96.

43. *Id.* ¶ 2.

44. *Id.*

45. *Espinoza Gonzáles v. Peru*, Admissibility and Merits Report, Report No. 67/11, ¶ 5.

46. *Id.*

March 31, 2011: The Commission approves the Reports on Admissibility and Merits and makes several recommendations to the State, including recognition of the State's responsibility of violations of the American Convention on Human Rights ("American Convention").⁴⁷

June 8, 2011: The State denies allegations that Ms. Espinoza González suffered from torture and sexual misconduct.⁴⁸ It also denies any violation of the American Convention.

B. Before the Court

December 8, 2011: The Commission submits the case before the Court, after the State fails to adopt its recommendations.⁴⁹ The Commission requests that the Court proclaim the State's responsibility over the violations and requests the State take appropriate measures to make reparations.⁵⁰

1. Violations Alleged by Commission⁵¹

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 7(1) (Right to Personal Liberty and Security)

Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law)

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)

Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges)

Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)

Article 7(6) (Right to Have Recourse Before a Competent Court)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 11(1) (Right to Honor and Dignity)

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity)

Article 25(1) (Right to Recourse Before a Competent Court)

all in relation to:

47. Espinoza González v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 2.

48. *Id.* ¶ 3.

49. *Id.* ¶ 4.

50. *Id.* ¶ 5.

51. *Id.* ¶ 2.

Article 1(1) (Obligation of Non-Discrimination) of the American Convention

Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”)

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

2. Violations Alleged by Representatives of the Victims⁵²

Same Violations Alleged by the Commission.

April 10 and 15, 2014: The Gender and Justice Clinic of Universidad Nacional Autónoma de Mexico, Women’s Link Worldwide and the Legal Clinic of the Universidad de Valencia each submit *amici curiae* briefs for the case to the Commission and parties for final observations and arguments.⁵³

November 18, 2014: The Court deliberates on the case.⁵⁴ The State submits two preliminary objections with the Court.⁵⁵

First, the State contends that the Court lacks competence in the subject-matter jurisdiction, or *ratione materiae*, in regards to Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará.⁵⁶ The State argues that the Court can exclusively interpret and apply the American Convention, but no other international conventions.⁵⁷

Second, the State argues that the Court lacks competence in the temporal jurisdiction, or *ratione temporis*.⁵⁸ The Convention of Belém do

52. Espinoza González v. Peru, Admissibility and Merits Report, ¶ 1. Association for Human Rights (APRODEH), Mrs. Teodora Gonzales Vda. de Espinoza, and the Center for Justice and International Law (CEJIL) served as representatives Ms. Espinoza González.

53. Espinoza González v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 13.

54. *Id.* ¶ 17.

55. *Id.* ¶ 19.

56. *Id.*

57. *Id.*

58. *Id.* ¶ 24.

Pará establishes that the Commission shall comply contemporaneously with the rights under the American Convention according to its procedures.⁵⁹ The State claims that the presumed violation relating to the investigation, which occurred in 1993, was prior to Peru's ratification of the Convention on June 4, 1996.⁶⁰ As a result, the State should not be responsible for potential violations prior to its ratification of the Convention of Belém do Pará.⁶¹

The Court dismisses the first preliminary objection by the State.⁶² The Court identifies that Article 12 (Mechanism of Protection) of the Convention of Belém do Pará permits petitions to the Commission for violations related to Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the same convention.⁶³ Under Article 12 (Mechanism of Protection) the Commission is required to adhere to the "the norms and procedures established by the American Convention" if such petitions.⁶⁴ As such the Court declares that the plain meaning of Article 12 (Mechanism of Protection) established the competence over subject-matter-jurisdiction by the Court to decide on violations alleged by petitioners in regards to the Convention of Belém do Pará.⁶⁵ In regards to the second objection, the Court concludes that it is unable to rule on the alleged torture and rape suffered by the victim and the alleged lack of investigations over these claims by the State which occurred prior to June 4, 1996, when the State ratified the Convention of Belém do Pará.⁶⁶ However, the Court will be able to review any facts and continued violations that occurred after the date of ratification.⁶⁷

III. MERITS

A. *Composition of the Court*⁶⁸

Humberto Antonio Sierra Porto, President

59. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 24.

60. *Id.*

61. *Id.*

62. *Id.* ¶ 23.

63. *Id.* ¶ 22.

64. *Id.*

65. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 22.

66. *Id.* ¶ 29.

67. *Id.*

68. Judge Diego García-Sayán is a Peruvian National and is unable take part in deliberation of the judgment for this case pursuant to Article 19(1) of the Rules of Procedure of the Inter-American Court, which prevents a judge who is a national of the respondent State from participating on the case. Judge Alberto Pérez Pérez also did not participate in the judgment for unexpected reasons. *See id.*

Roberto F. Caldas, Vice President
Manuel E. Ventura Robles, Judge
Eduardo Vio Grossi, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 24, 2014: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁶⁹

The Court found unanimously that the State had violated:

Article 7(1) (Right to Personal Liberty and Security), Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges), Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) and Article 7(6) (Right to Have Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Ms. Espinoza González,⁷⁰ because:

*The State arbitrarily arrested and detained Ms. Espinoza González without informing her of the reason and charges of her detention and without providing her court documentation to support the reasons for her arrest. The Court did not specifically analyze the State's violation as to the general rights identified under Article 7(1) (Right to Personal Liberty and Security), but found that "[a]ny violation of paragraphs 2 to 7 of Article necessarily entails the violation of Article 7(1) thereof."*⁷¹

Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) forbids unlawful deprivation of liberty.⁷² The Court found that the arrest of Ms. Espinoza González was unlawful because it lacked a proper court order stating the reasons and charges for her arrest, nor "grounds for flagrante delicto

69. *Id.*

70. *Id.* "Operative Paragraphs" ¶ 3.

71. *Espinoza González v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 106.

72. *Id.* ¶ 108.

(arrest during the act of a crime).”⁷³ The Court examined the domestic laws in place at the time Ms. Espinoza Gonzáles was arrested and detained.⁷⁴ As a result of the government’s state of emergency, several decree laws were enacted and enforced at the time of Ms. Espinoza Gonzáles’ detention that effectively suspended liberty and fundamental human rights.⁷⁵

The Court looked at Article 27(1) (Suspension of Guarantees), which specifies several factors that permit the suspension of certain rights protected under the Convention.⁷⁶ Specifically, suspensions of guarantees are permitted in emergency situations where safety or sovereignty is threatened.⁷⁷ Despite the state of emergency, the Court found that the State still exceeded the limitations imposed by the Convention and failed to set specified limits in its decrees enacted at the time.⁷⁸ Additionally, the State failed to properly record the detention of Ms. Espinoza Gonzales because there was no documentation identifying the circumstances around her arrest and release, thus violating Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) of the Convention.⁷⁹

As stated, the State failed to promptly notify Ms. Espinoza Gonzáles of the reasons and charges for her arrest, and thus, the Court determined the State additionally violated Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges).⁸⁰ The Court identified that compliance required prompt written notification clearly stating the factual and legal reasons for arrest.⁸¹ Since Ms. Espinoza Gonzáles learned about the reasons of her arrest during a subsequent interrogation, the State violated this provision.⁸²

Further, the State failed to provide Ms. Espinoza Gonzáles with timely judicial proceedings in violation of Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time).⁸³

73. *Id.*

74. *Id.* ¶ 109.

75. *Id.* ¶ 112-15.

76. *Id.* ¶ 117.

77. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 117, n.185.

78. *Id.* ¶ 120.

79. *Id.* ¶ 122.

80. *Id.* ¶ 124.

81. *Id.* ¶ 127.

82. *Id.* ¶ 124.

83. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 129.

*The State must provide the detained individual an opportunity to “appear in person before the competent authority, who must hear the detainee personally and assess all the explanations he or she provides, in order to decide whether to release him or her or to maintain the deprivation of liberty.”*⁸⁴ *The Court found that there was insufficient evidence to show exactly how long Ms. Espinoza González was detained without proper judicial authority, but identified that at least thirty days had passed before she was brought before a judge.*⁸⁵ *The Court stated that because the State prolonged Ms. Espinoza González’ detention without judicial authority, her detention was arbitrary.*⁸⁶ *Consequently, the Court found that the State violated Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) and 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) of the Convention.*⁸⁷

*The denial of judicial proceedings for Ms. Espinoza González when she complained of her unlawful arrest and detention also violated Article 7(6) (Right to Have Recourse Before a Competent Court) of the Convention.*⁸⁸ *The Court recognized that the State had implemented several decree laws as a result of on-going armed conflict in Peru.*⁸⁹ *Specifically, Decree Law 25,659 promulgated in August 1992 prevented proper application of habeas corpus (right to judicial proceedings for criminal convictions) for individuals charged with treason.*⁹⁰ *These decree laws, which were in effect at the time of Ms. Espinoza González’s arrest and detention, were in violation of the Convention.*⁹¹

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) of the Convention, and failed to comply with Article 1 (Obligation to Prevent and Punish Torture) and Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Convention to Prevent and Punish Torture, to the detriment of Ms. Espinoza González,⁹² because:

84. *Id.*

85. *Id.* ¶ 132.

86. *Id.* ¶ 134.

87. *Id.*

88. *Id.* ¶ 135.

89. Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 135.

90. *Id.* ¶ 136.

91. *Id.*

92. *Id.* “Operative Paragraphs” ¶ 4.

The State used unnecessary force, including psychological and physical torture, when it arrested and detained Ms. Espinoza Gonzáles in violation of her right to physical integrity identified in Article 5(1) (Right to Physical, Mental, and Moral Integrity).⁹³ Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) also prohibits the use of torture, cruel and inhumane punishment, and promulgates that individuals be treated with inherent human dignity even when they are being deprived of liberty.⁹⁴ The State failed to prove that the force used on Ms. Espinoza Gonzáles during her arrest was necessary.⁹⁵ Further, the State violated her physical integrity when they used psychological torture through implementation of threats and violence during her arrest, which “caused her feelings of intense anguish, fear and vulnerability.”⁹⁶ Finally, the State prolonged isolation and detention for a period of three weeks. Consequently, these acts against Ms. Espinoza Gonzáles constitute cruel and inhuman treatment in violation of the Convention.⁹⁷

The Court determined whether the acts committed on Ms. Espinoza Gonzáles while in the custody of DIVISE and DINCOTE constituted torture by analyzing whether the acts (1) were intentional, (2) caused severe physical or mental suffering, and (3) were committed with an objective or purpose.⁹⁸ The State acted intentionally when Ms. Espinoza Gonzáles was “beaten on all parts of her body, suspended by her hands and immersed in fetid water, and receiv[ed] death threats against herself and her family.”⁹⁹ The Court found these acts objectively and purposefully caused her severe psychological and physical suffering.¹⁰⁰ The Court determined these were acts of torture, and thus, the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the Convention.¹⁰¹

Article 11(1) (Right to Honor and Dignity) and Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), in relation

93. *Id.* ¶ 140.

94. *Id.*

95. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 184.

96. *Id.* ¶ 185.

97. *Id.* ¶ 186-87.

98. *Id.* ¶ 188.

99. *Id.* ¶ 189.

100. *Id.*

101. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 185.

to Article 1(1) of the Convention, to the detriment of Ms. Espinoza González,¹⁰² because:

The State failed to prevent the sexual violence committed against Ms. Espinoza González while under the custody of State authorities.¹⁰³ Article 11(1) (Right to Honor and Dignity) and Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) prohibits unjustified intrusion into the private life of individuals.¹⁰⁴ The Court stated this includes an individual's sexual well-being and dignity.¹⁰⁵ Accordingly, the sexual violence and rape perpetrated against Ms. Espinoza González violated the obligations of the State under the Convention.¹⁰⁶

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, and failed to comply with Article 1 (Obligation to Prevent and Punish Torture), Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) and Article 8 (Obligation to Investigate and Prosecute) of the Convention To Prevent And Punish Torture as well as Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Convention of Belém do Pará, to the detriment of Ms. Espinoza González,¹⁰⁷ because:

The State failed to adequately investigate the acts of torture and sexual violence against Ms. Espinoza González while in the custody of DIVISE and DINCOTE agents and during her time at Yanamayo Prison. Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) establishes the right to due process when an individual is deprived of personal liberty.¹⁰⁸ Article 25 (Right to Judicial Protection) requires that a State provide operative judicial remedies for “victims of human rights violations.”¹⁰⁹ The Court specified that compliance required proper investigation of incarcerated victims who allege human

102. *Id.* “Operative Paragraphs” ¶ 5.

103. *Id.* ¶ 197.

104. *Id.*

105. *Id.*

106. *Id.*

107. Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs, “Operative Paragraphs,” ¶ 6.

108. *Id.* ¶ 237.

109. *Id.*

rights violations.¹¹⁰

Because the State took approximately thirteen years to commence any legal proceeding related to Ms. Espinoza Gonzáles' alleged human rights violation, the State lacked timely investigation.¹¹¹ Undue delays of investigation occur when enough time has passed to adversely affect the ability to obtain and present evidence in judicial proceedings.¹¹² The State's inadequate medical examinations, substandard process of taking statements, and custom of State authorities using gender stereotypes resulted in deficient investigations.¹¹³ Consequently, the Court determined that because the State did not conduct an appropriate or timely investigation, it constituted a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection) of the Convention.¹¹⁴

Additionally, the Court found that the State failed to comply with obligations under Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Convention of Belém do Pará.¹¹⁵ It requires the State "to prevent, investigate, punish and eradicate violence against women."¹¹⁶ Compliance involves immediate and effective investigation once a State authority becomes aware of the issue, which the State did not implement here.¹¹⁷

Article 1(1) (Obligation of Non-Discrimination), in relation to Articles 2, 5(1), 5(2), 8(1), 11, and 25 of the Convention, as well as Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Convention To Prevent And Punish Torture and Article 7(b) of the Convention of Belém do Pará, to the detriment of Ms. Espinoza Gonzáles,¹¹⁸ because:

The State discriminated against Ms. Espinoza Gonzáles when she complained that she was subjected to sexual violence during her detention,

110. *Id.* ¶ 285.

111. *Id.* ¶ 286.

112. *Id.*

113. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 286.

114. *Id.* ¶ 288.

115. *Id.*

116. *Id.* ¶ 241.

117. *Id.*

118. *Id.* "Operative Paragraphs," ¶ 7.

violating Article 1(1) (Obligation of Non-Discrimination) of the Convention.¹¹⁹ The Court determined that discrimination occurs when individuals are treated differently without “objective and reasonable justification.”¹²⁰ The Court found that Ms. Espinoza Gonzáles was subjected to sexual violence and rape, constituting gender-based violence against women.¹²¹ Additionally, the State failed to promptly and adequately investigate Ms. Espinoza Gonzáles’ complaints of rape, sexual violence, and torture while in the custody of State authorities.¹²² The State lacked diligence when it waited nineteen years to begin an investigation.¹²³

The Court recognized that prompt investigation does not occur when the ability to present and obtain evidence is negatively affected due to the passage of time.¹²⁴ Further, the Court determined that the State did not implement competent investigations, which would include documenting all material evidence, arranging access to legal services for the victims to seek legal remedies, and administering on-going physical and psychological medical care, which seeks to prevent further suffering.¹²⁵ Since the State’s judicial authorities applied gender-stereotyping and gender-based discrimination when it failed to promptly investigate the allegations of torture and sexual violence, the Court found the State violated its obligations under Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Convention To Prevent And Punish Torture, as well as Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Convention of Belém do Pará.¹²⁶

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of next of kin,¹²⁷ because:

The Court found that certain human right violations, including the right to moral integrity, could be applied to the victim’s next of kin under the

119. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 215.

120. *Id.* ¶ 219.

121. *Id.* ¶ 225.

122. *Id.* ¶ 245.

123. *Id.* ¶ 286.

124. *Id.*

125. Espinoza Gonzáles v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 242.

126. *Id.* ¶ 287.

127. Mrs. Teodora Gonzáles and Mr. Manuel Espinoza Gonzáles are next of kin to Ms. Espinoza Gonzáles. *Id.* “Operative Paragraphs” ¶ 8.

*presumption of iuris tantum (rebuttable presumption) with regard to immediate family members.*¹²⁸ Article 5(1) (Right to Physical, Mental, and Moral Integrity) protects the moral principles of physical and mental integrity.¹²⁹ When the State failed to prevent the torture, sexual violence, and rape of Ms. Espinoza Gonzáles, it also caused harm to her mother, Ms. Teodora Gonzáles de Espinoza¹³⁰ and her brother, Mr. Manuel Espinoza.¹³¹ Accordingly, the Court determined that the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) of the Convention to their detriment.¹³²

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Investigate the Violations and Prosecute those Responsible

The Court first identified the injured parties as Ms. Espinoza Gonzáles, Mrs. Teodora Gonzáles de Espinoza and Mr. Manuel Espinoza Gonzáles.¹³³ Reparations by the State should be redressed to the injured parties identified.¹³⁴ The Court addressed that the State is required to diligently investigate and provide criminal proceedings, which “identify, prosecute and punish” the individuals accountable for the gross violations perpetrated against Ms. Espinoza Gonzáles.¹³⁵ Specifically, the State is required to initiate criminal proceedings for the acts of “torture, sexual violence and rape” which occurred during Ms. Espinoza Gonzáles’s arrest on April 17, 1993, as well as during her incarceration at the

128. *Id.* ¶ 296.

129. Organization of American States, American Convention on Human Rights, art. 5, Nov. 33, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

130. Mrs. Gonzáles de Espinoza is now deceased. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 297.

131. *Id.* ¶ 297.

132. *Id.*

133. *Id.* ¶ 303.

134. *Id.*

135. *Id.* ¶ 308.

DINCOTE and Yanamayo Maximum Security Prison.¹³⁶ Additionally, the Court required a gender-specific perspective for the investigation and legal proceedings, allowing for the full and complete examination of the sexual violence against Ms. Espinoza Gonzáles.¹³⁷ The State is not allowed to use legal “amnesty to benefit the perpetrators,” and ignore the documented pattern of torture in Peru during Ms. Espinoza Gonzáles’s arrest and detention.¹³⁸

2. Provide Medical and Psychological Treatment

The Court ordered the State to provide free and comprehensive “medical, psychological or psychiatric treatment” for Ms. Espinoza Gonzáles, if she consents to do so.¹³⁹ The State must provide these healthcare treatments in the most appropriate and adequate format, including allowing any necessary transfer to specialized health centers.¹⁴⁰ Additionally, the State is required to provide free psychological and psychiatric treatment as necessary for Mr. Manuel Espinoza Gonzáles, if he consents to do so.¹⁴¹

Furthermore, the Court established that the State should also provide free medical and psychological treatment for all women who were victims of sexual violence and/or rape during the years of 1980 and 2000 as a consequence of the State’s use of these psychologically-damaging acts as a recognized war tactic.¹⁴²

3. Publication of the Judgment

The State is required to publish the notification and official summary of the Judgment in the State’s gazette, a national newspaper, an official Judiciary, as well as a Public Prosecution Service, and the Peruvian National Police websites.¹⁴³

4. Institutional Reform

The Court acknowledged the efforts made by the State to circumvent the

136. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 308.

137. *Id.*

138. *Id.*

139. *Id.* ¶ 314.

140. *Id.*

141. *Id.*

142. *Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 331.

143. *Id.* ¶ 318.

practice of gender-based discrimination against women.¹⁴⁴ However, the Court mandated that the State reform the investigation procedures and policies so that that sexual violence and torture cases are appropriately handled according to the standards set forth in the Judgment.¹⁴⁵

5. Implement Education and Training Programs

The Court instructed the State provide stable and lasting educational and training programs for State authorities responsible for the criminal investigation, prosecution, and judicial proceedings using the standards set forth in the Judgment.¹⁴⁶ Additionally, these programs should aim to eliminate gender stereotyping of women in respect to investigations of sexual violence and rape.¹⁴⁷

6. Judgment as a Form of Reparation

The Court acknowledged that the Judgment was a *per se* a form of reparation.¹⁴⁸

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court ordered the State to compensate Ms. Espinoza González \$60,000.00, Mr. Manuel Espinoza González \$5,000, and Mrs. Teodora González \$40,000 through her living heirs for non-pecuniary damages suffered.¹⁴⁹

144. *Id.* ¶ 322.

145. *Id.*

146. *Id.* ¶ 327.

147. *Id.*

148. *Espinoza González v. Peru*, Preliminary Objections, Merits, Reparations and Costs, “Operative Paragraphs” ¶ 9.

149. *Id.* ¶ 334.

3. Costs and Expenses

The Court required the State to provide reimbursement in the amount of \$20,000 to APRODEH and \$15,000 to CEJIL for their representation of Ms. Espinoza González.¹⁵⁰ Additionally, the State must reimburse of the Victims' Legal Assistance Fund \$1,972.59.¹⁵¹

4. Total Compensation (including Costs and Expenses ordered):

\$141, 972.59

C. Deadlines

The State is required to provide the non-pecuniary damages as well as reimbursement of the cost and expenses identified in the Judgment within one year of notification of the Court's Judgment.¹⁵² For compensation that is to be paid out for deceased victims, the payment should be to the direct heirs.¹⁵³

Furthermore, the State must comply with the obligations for criminal investigations and proceedings set forth in the Judgment within a reasonable amount of time.¹⁵⁴

The State is required to publish the Judgment within six months from its notification.¹⁵⁵

V. INTERPRETATION AND REVISION OF JUDGMENT

March 18, 2015: The State submitted a request for the interpretation of the Judgment.¹⁵⁶ The State wanted clarity on whether the State was found to have violated the right to equality, whether the State is precluded from using the legal principle of non-retroactivity in its investigations of criminal proceedings, and an explanation of the reasoning giving way to the conclusion that the State was responsible for mitigating the systemic stereotyping in investigations of sexual violence against women through educational training to improve the criminal prosecution system.¹⁵⁷

150. *Id.* ¶ 339.

151. *Id.* ¶ 340.

152. *Id.* "Operative Paragraphs" ¶ 10.

153. *Id.* ¶ 344.

154. *Espinoza González v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 302.

155. *Id.* "Operative Paragraphs" ¶ 12.

156. *Espinoza González v. Peru*, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 295. ¶ 2 (Jun. 23, 2015).

157. *Id.*

*A. Composition of the Court*¹⁵⁸

Humberto Antonio Sierra Porto, President
Roberto F. Caldas, Vice President
Manuel E. Ventura Robles, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary

B. Merits

The Court found unanimously that there was no issue in need of clarification in its original Judgment and dismissed the State's questions as inadmissible.¹⁵⁹ First, the Court concluded that it was clear when it determined that the State only violated Article 1(1) (Obligation of Non-Discrimination) in relation to Article 5(1) (Right to Physical, Mental, and Moral Integrity), Article 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment), and Article 11 (Right to Privacy), as well as to Article 1 (Obligation to Prevent and Punish Torture) and Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) under the Convention To Prevent And Punish Torture.¹⁶⁰ Additionally, Article 5 (Right to Humane Treatment) prohibited discrimination in the State's compliance with the Convention.¹⁶¹ As a result, the Court concluded that there was no lack of clarification required, as the Judgment did not declare a violation of the right to equality before the law.¹⁶²

Second, the Court found that the Judgment was clear as to the State's obligation to abstain from using the legal principle of non-retroactivity in investigating the criminal violation perpetrated against Ms. Espinoza González.¹⁶³ Third, the Court reiterated that its conclusion concerning the

158. Pursuant to Article 19(1) of the Rules of Procedure of the Inter-American Court, Judge Diego García-Sayán, who is of Peruvian nationality, is again unable to take part in the decision over the interpretation of the judgment. *Id.*

159. *Id.* "Decides" ¶ 1.

160. *Id.* ¶ 18.

161. *Id.*

162. *Espinoza González v. Peru*, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs, ¶ 18.

163. *Id.* ¶ 23.

systemic stereotyping against women during investigations, or lack thereof, of sexual violence was proper given the pattern of discrimination and misconduct by State agencies.¹⁶⁴ As a result, the Court found that its decision to obligate the State to implement education and training for those investigating criminal prosecution was appropriate.¹⁶⁵

VI. COMPLIANCE AND FOLLOW-UP

December 20, 2014: The Judgment on Ms. Espinoza González asserted the State's responsibility over multiple heinous violations of human rights and was a landmark decision in requiring mass changes to criminal investigation protocols for female victims of sexual violence.¹⁶⁶ The Court's finding of prevalent gender-based discrimination in the investigation of torture, rape, and sexual violence in the judicial systems of the State systemically corresponded to gender stereotyping and undermined the legal relief and rights of victims.¹⁶⁷

Representatives of Ms. Espinoza González, including APRODEH and CEJIL have confirmed their need to ensure that the State complies with the Judgment and Ms. Espinoza González and her family are properly protected as a result of the decision.¹⁶⁸

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Espinoza González v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 289, \(Nov. 20, 2014\).](#)

164. *Id.* ¶ 30.

165. *Id.* "Decides" ¶ 2.

166. APRODEH & CEJIL: *Judgment made by IACHR in Gladys Carol case is a milestone in for victims of gender-based sexual violence in Peru* (Dec. 20, 2014), <https://www.cejil.org/en/aprodeh-cejil-judgment-made-iachr-gladys-carol-case-milestone-victims-gender-based-sexual-violence>, (last visited Sep. 24, 2016).

167. *Id.*

168. *Id.*

3. Provisional Measures

[Espinoza Gonzáles v. Peru, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R., \(ser. E\) \(March 07, 2014\) \(Available only in Spanish\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[Espinoza Gonzáles v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. \(ser. C\) No. 295, \(Jun. 23, 2015\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Espinoza Gonzáles v. Peru, Admissibility and Merits Report, Report No. 67/11, Inter-Am. Comm'n H.R., Case No. 11.157 \(Mar. 31, 2011\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[None]

6. Bibliography

[None]