

V.R.P. and V.P.C., et al. v. Nicaragua

ABSTRACT *

This case is about the State's failure to properly investigate, prosecute and try the case of the rape of a child. Eventually, the Court found Nicaragua in violation of several articles of the American Convention. In reaching the decision, the Court took into account the UN Convention on the Rights of the Child.

I. FACTS

A. Chronology of Events

April 15, 1992: V.R.P. is born in Jinotega, Nicaragua.¹ She lives with her mother, V.P.C. and three older brothers, N.R.P., H.J.R.P. and V.A.R.P.² V.R.P.'s father, H.R.A., is a lawyer who serves as the Assistant Attorney of the Department of Matagalpa.³ He is also a member of the ruling party, Sandinista Front for National Liberation.⁴

October 16, 2001: V.P.C. takes nine-year-old V.R.P. to the pediatrician for a medical examination, which reveals a ruptured hymen and genital warts on her perianal area.⁵ V.R.P.'s doctor refers her to an obstetrician-gynecologist for a second evaluation to confirm the diagnosis.⁶

October 17, 2001: V.R.P. is evaluated by an obstetrician-gynecologist, who concludes she was a sexual abuse victim, who had suffered anal penetration.⁷

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1. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 350, ¶ 66 (Mar. 8, 2018).

2. *Id.* ¶ 67.

3. *Id.* ¶ 68.

4. *Id.*

5. *Id.* ¶ 71.

6. *Id.*

7. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 71.

November 20, 2001: V.P.C. files a complaint against H.R.A. before the Jinotega District Criminal Court for the rape of V.R.P.⁸

November 21, 2001: V.R.P. testifies in the Jinotega District Criminal Court that sometime between September and October 2000, H.R.A. took her to an unknown location and gave her coffee, which made her dizzy and fall asleep.⁹ V.R.P. states when she woke up, she did not know what H.R.A. had done to her, but she saw him pulling up his pants and she felt pain in her buttocks.¹⁰

The Jinotega District Criminal Court issues a warrant for H.R.A.'s arrest, and he is taken into custody.¹¹ H.R.A. gives a preliminary statement denying the allegations and accuses V.P.C. of being in a Mormon cult that was ultimately responsible for the allegations against him.¹²

November 22, 2001: The presiding judge orders an investigation and requires V.R.P. undergo an independent medical examination by forensic physician, Mr. Andrés Altamirano.¹³ After the examination, V.P.C. submits a complaint to the Director of the State Public Health Department (Sistemas Locales de Atención Integral de Salud; "SILAIS") indicating that the forensic physician failed to complete the examination and re-victimized her as a result of hostile and aggressive behavior.¹⁴

November 23, 2001: The Jinotega District Criminal Court orders H.R.A. undergo a medical examination by forensic physician, Dr. Andrés Altamirano, which renders inconclusive results.¹⁵ H.R.A. goes to the Institute of Legal Medicine to undergo a second medical examination.¹⁶ However, the physician does not find evidence of a sexually transmitted disease in his genital region.¹⁷ The forensic physician requests a laboratory study to

8. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 72-73.

9. V.R.P. and V.P.C., et al. v. Nicaragua, Admissibility Report, Report No. 3/09, Inter-Am. Comm'n H.R., Pet. No. 4408-02, ¶ 9 (Feb. 11, 2009); V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, Report No. 4/16, Inter-Am. Comm'n H.R., Case No. 12.690, ¶ 31 (Apr. 13, 2016).

10. V.R.P. and V.P.C., et al. v. Nicaragua, Admissibility Report, ¶ 9; V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 31.

11. V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 31.

12. *Id.* ¶ 32.

13. *Id.* ¶ 33; V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 75-76.

14. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 77.

15. *Id.* ¶ 90.

16. *Id.* ¶ 91.

17. *Id.*

detect the presence of a sexually transmitted disease in H.R.A.'s semen samples and skin.¹⁸ However, no laboratory study is done.¹⁹

November 24, 2001: The presiding judge orders a second medical examination, to be carried out at a women's center.²⁰ However, V.R.P. becomes upset and refuses to let the physician perform the medical exam.²¹

November 26, 2001: V.R.P. undergoes a psychiatric evaluation at the Victoria Motta Hospital and identifies her father as her abuser.²²

November 27, 2001: V.R.P. undergoes an examination at the Institute of Forensic Medicine.²³ Forensic physician Sara Mota confirms V.R.P. had suffered a partial tear of her hymen and had contracted two sexually transmitted diseases.²⁴

November 29, 2001: V.R.P. and V.P.C. attend a judicial inspection of the scene and a reconstruction of the alleged rape with H.R.A.'s defense counsel, V.P.C.'s counsel, the presiding judge, the secretary of the office, and V.R.P.'s psychiatrist.²⁵ During the reconstruction, the presiding judge requires V.R.P. to recount the facts of the incident by indicating where she was raped and demonstrating the position she was in when H.R.A. raped her.²⁶

November 30, 2001: The Jinotega District Criminal Court determines there is enough evidence to establish that H.R.A. raped his daughter and orders his arrest and preventive detention.²⁷

December 3, 2001: H.R.A.'s attorney submits an appeal against the Jinotega District Criminal Court judgment.²⁸

18. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 91.

19. *Id.*

20. *Id.* ¶ 81.

21. *Id.*

22. V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 36.

23. *Id.* ¶ 38.

24. *Id.*

25. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 88.

26. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 39.

27. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 92.

28. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 41.

April 10, 2002: The Jinotega District Criminal Court schedules H.R.A.'s jury trial.²⁹ However, the hearing is postponed because there is a protest outside the courthouse.³⁰ After selecting a new jury, the hearing is postponed again because H.R.A.'s attorney gets sick.³¹

April 12, 2002: The presiding judge grants H.R.A.'s defense attorney's request to add two additional lawyers to his team.³² However, the presiding judge rejects V.P.C.'s identical request.³³ When the hearing ends, one of H.R.A.'s defense lawyers gives the judge a package with two pink sheets of paper and states that H.R.A. requests that the jurors read the contents of the package during deliberation.³⁴

April 13, 2002: After a brief deliberation, the jury issues a verdict finding H.R.A. innocent of the crime of rape against V.R.P.³⁵ The Jinotega District Criminal Court orders H.R.A.'s immediate release.³⁶

April 14, 2002: V.P.C.'s attorney files an appeal to annul the judgment, alleging numerous irregularities throughout the criminal process, which resulted in its unreasonably long trial, lack of due diligence in how the case was handled, lack of medical examination of H.R.A., irregular jury composition and treatment, and the State's failure to comply with minimum international standards by authorizing the presence of other people during V.R.P.'s court-ordered medical examination.³⁷

April 25, 2002: The Office of the Prosecutor for the Defense of Human Rights issues a resolution concluding the jury verdict was unjust and violated V.R.P.'s right to physical, mental and sexual integrity.³⁸

May 13, 2002: The Jinotega District Criminal Court grants V.P.C.'s appeal based on evidence that H.R.A. bribed the jury and issues a new arrest

29. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 43.

30. *Id.*

31. *Id.*

32. *Id.* ¶ 44.

33. *Id.*

34. *Id.* ¶ 44; V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 99.

35. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 45.

36. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 101.

37. *Id.* ¶ 103; V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 46.

38. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 47.

warrant for H.R.A. and orders a new trial.³⁹ H.R.A. files a motion challenging this decision.⁴⁰

January 13, 2003: The Criminal Chamber of the Northern District Appellate Court issues a judgment upholding H.R.A.'s appeal remedy and orders a substitute judge replace the judge who granted V.P.C.'s appeal because she exceeded her authority.⁴¹ After the Appellate Court issues this judgment, five judges recuse themselves from hearing the case, which causes a delay in the processing of the case.⁴²

January 13, 2005: The Jinotega District Criminal Court finally selects a judge to hear the case after V.P.C. filed a petition before the President of the Supreme Court of Justice questioning the delay of the case.⁴³

August 9, 2005: The Jinotega District Criminal Court issues a judgment rejecting V.P.C.'s appeal and upholds H.R.A.'s acquittal.⁴⁴ The District Criminal Court reasons the Appellate Court already resolved V.P.C.'s allegation that H.R.A. bribed the jurors in the judgment rendered on January 13, 2003, wherein the court rejected such allegation.⁴⁵ The court also explains that jury selection and sentencing were both in compliance with State law, and noted that the Special Prosecutor for Children and Adolescents had indicated that there were no irregularities during the proceedings.⁴⁶ The Assistant Prosecutor of the Public Ministry and V.P.C. both file an appeal against this ruling.⁴⁷

October 24, 2007: The Criminal Appellate Court rejects the appeal filed by the Assistant Prosecutor and V.P.C., stating the petitioners failed to demonstrate H.R.A. bribed the jurors or that the presiding judge engaged

39. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 50.

40. *Id.* ¶ 51.

41. V.R.P. and V.P.C., et al. v. Nicaragua, Admissibility Report, ¶ 11; V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 56.

42. V.R.P. and V.P.C., et al. v. Nicaragua, Admissibility Report, ¶ 11.

43. *Id.* ¶ 11; V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 115.

44. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 119.

45. *Id.*

46. *Id.* ¶ 119.

47. *Id.* ¶ 120.

in fraud when she absolved the original jury.⁴⁸ The Appellate Court declares this decision final.⁴⁹

B. Other Relevant Facts

May 7, 2002: After V.P.C. filed several complaints alleging irregularities during the criminal proceedings and the denial of justice against the forensic doctor, the Assistant Prosecutor, and the presiding judge over H.R.A.'s jury trial, several jurors, the forensic doctor and the judge file complaints against V.P.C. for libel and slander.⁵⁰

December 6, 2002: V.P.C. leaves Nicaragua with her daughters and was subsequently granted asylum in the United States due to politicized persecution by the judicial branch, religious persecution, and gender discrimination.⁵¹

October 2003: V.R.P. is suffering from severe depression, anxiety, hypervigilance, and self-mutilating behavior related to the rape, and begins psychiatric treatment.⁵² However, treatment is unsuccessful, and she is eventually hospitalized for post-traumatic depression.⁵³

The United States Postal Inspection Office and the Department of Children and Family investigate an anonymous death threat that V.P.C. received against her family.⁵⁴ V.P.C. claims she received the threat due to neglect and abuse that State judicial authorities subjected V.P.C.'s family to throughout the judicial process.⁵⁵

II. PROCEDURAL HISTORY

A. Before the Commission

October 28, 2002: V.P.C. files a petition with the Inter-American Commission on Human Rights ("Commission").⁵⁶

48. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 69.

49. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 122.

50. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 71.

51. *Id.* ¶ 72.

52. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 135.

53. *Id.* ¶ 137.

54. *Id.* ¶ 136.

55. *Id.*

56. *Id.* ¶ 2(a).

February 11, 2009: The Commission issues Admissibility Report No. 3/09, which declares the petition admissible.⁵⁷

The Commission finds the State violated rights provided in Articles 5(1) (Right to Physical, Mental and Moral Integrity), 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), 11 (Right to Privacy), 19 (Rights of the Child), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the American Convention, all in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the same instrument, and rights provided in 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 to the detriment of V.R.P.⁵⁸

The Commission also finds the State violated rights provided in Articles 5(1) (Right to Physical, Mental and Moral Integrity), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, all in relation to Article 1(1) (Obligation of Non-Discrimination) of the same instrument to the detriment of V.P.C.⁵⁹

The Commission finds insufficient factual or legal bases to support the claim that the State also violated rights provided in Articles 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 7(1) (Right to Personal Liberty and Security), 12(1) (Freedom to Maintain or Change Religion and Freedom to Profess or Disseminate), 12(2) (Prohibition of Restrictions Impairing Freedom of Conscience and Religion), 13(1) (Right to Seek, Receive and Impart Information and Ideas) and 17(1) (Family's Right to be Protected) of the American Convention.⁶⁰

April 13, 2016: The Commission issues the Merits Report No. 4/16.⁶¹ The Commission concludes the State is responsible for violating rights to personal integrity, judicial guarantees, the protection of private life, the rights of children, equality before the law and non-discrimination, and judicial protection established in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 19 (Rights of the Child), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation of Non-

57. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(b).

58. V.R.P. and V.P.C., et al. v. Nicaragua, Admissibility Report, "decides" ¶ 1.

59. *Id.*

60. *Id.* "decides" ¶ 2.

61. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 4.

Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the same instrument, to the detriment of V.R.P.⁶²

The Commission also finds the State is responsible for violating rights to personal integrity, judicial guarantees and judicial protection established in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the same instrument, to the detriment of V.P.C.⁶³

Finally, the Commission declares the State is responsible for violating rights provided in 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, to the detriment of V.R.P. and V.P.C.⁶⁴

In light of the foregoing, the Commission recommends the State: (1) perform a reasonably timed, thorough and impartial investigation to identify, prosecute and punish the person responsible for V.R.P.'s rape; (2) make comprehensive and adequate reparation to V.R.P. and V.P.C.; (3) immediately provide mental health treatment to both victims or compensate the victims an amount that would cover reasonable healthcare costs both victims require; (4) conduct administrative, disciplinary or criminal procedures regarding State authorities' acts, which contributed to the failure of justice; (5) adopt stronger methods of investigating rape and sexual violence; (6) adopt measures to ensure the appropriate punishment and compensation in cases of rape against women; (7) implement permanent training for State authorities and health personnel that comply with international standards for investigation of rape against women and children; (8) adopt new public policies to combat discriminatory violence against women, and eliminate discriminatory sociocultural conduct that prevents a woman's full access to justice.⁶⁵

B. Before the Court

August 25, 2016: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁶⁶

62. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 4.

63. *Id.*

64. *Id.*

65. *Id.* "recommends" ¶ 1-8.

66. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

May 16, 2017: The State raises three preliminary objections.⁶⁷ The State's preliminary objections argue that: (1) domestic remedies have not been exhausted; (2) the Court lacks temporal jurisdiction over the case; and (3) the Court lacks substantive jurisdiction to decide the alleged violations of rights provided in the Convention on the Rights of the Child.⁶⁸

*C. Violations Alleged by Commission*⁶⁹

To the detriment of V.R.P.:

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 11 (Right to Privacy)

Article 19 (Rights of the Child)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

To the detriment of V.P.C.:

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

To the detriment of V.R.P. and V.P.C.:

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.

67. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 7.

68. *Id.* ¶ 17.

69. V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, ¶ 4.

*D. Violations Alleged by Representatives of the Victims*⁷⁰

Same violations alleged by the Commission, plus:

Article 12(1) (Freedom to Maintain or Change Religion and Freedom to Profess or Disseminate)

Article 17(1) (Family's Right to be Protected)

Article 22(1) (Right to Move Freely Within a State) of the American Convention.

Article 1 (Definition of Violence Against Women)

Article 2 (Acts that Constitute Violence Against Women)

Article 4(b) (Right to Physical, Mental and Moral Integrity)

Article 4(g) (Right to Simple and Prompt Judicial Response) of the of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

Articles 2 and 2(1) (Non-discrimination)

Article 3(1) (The Best Interest of the Child)

Article 4 (Implementing the Convention on the Rights of the Child)

Article 16 (Privacy)

Articles 24(1) and (2) (Health and Healthcare) of the Convention on the Rights of the Child.

III. MERITS

*A. Composition of the Court*⁷¹

Eduardo Ferrer Mac-Gregor Poisot, President

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

70. *V.R.P. and V.P.C., et al. v. Nicaragua*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 6.

71. Judge Eduardo Vio Grossi and Judge Roberto F. Caldas, for reasons of force majeure, did not participate in the deliberation and signing of the Judgment. *Id.* n.**.

B. Decision on the Merits

March 8, 2018: The Court issues its Judgment on Merits, Reparations and Costs.⁷²

The Court found unanimously:

To dismiss all three of the State's preliminary objections,⁷³ because:

First, the State argued not all domestic remedies were exhausted.⁷⁴ The Court rejected this argument because the State failed to meet the standards necessary to argue lack of exhaustion of domestic remedies, such as stating which remedies were to be exhausted or in progress, and why those remedies are effective.⁷⁵

Second, the Court rejected the State's argument that the Commission lacked temporal jurisdiction to hear the case under Article 45 of the Convention, which provides jurisdiction to hear cases presented by States against other State parties.⁷⁶ Instead, the Court applied Article 44, which authorizes any person or nongovernmental entity to submit a petition before the Commission alleging State violations of rights established in the Convention.⁷⁷

Finally, the Court noted the victims' representatives did not request the Court to declare the State was responsible for violating the rights established in the Convention on the Rights of the Child.⁷⁸ The victims' representatives simply invoked the rules under the Convention on the Rights of the Child as a tool to provide context into the content and scope of the special protection measures outlined in Article 19 (Rights of the Child) of the Convention.⁷⁹ The Court has long held when examining whether State conduct is compatible with international standards, it may interpret specific obligations and rights within the Convention using other

72. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 18.

73. *Id.* "decides" ¶ 1-3.

74. *Id.* ¶ 7.

75. *Id.* ¶¶ 23, 29.

76. *Id.* ¶ 33.

77. *Id.* ¶¶ 34-35.

78. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 40.

79. *Id.*

treaties.⁸⁰ Accordingly, the Court rejected the State's preliminary issue that the Court lacked jurisdiction to rule on the alleged violations of rights provided in the Convention on the Rights of the Child.⁸¹

The Court found unanimously that Nicaragua had violated:

Article 5(1) (Right to Physical, Mental and Moral Integrity), Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity), and Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention, in relation to Article 1(1)(Obligation of Non-Discrimination) and Article 19 (Rights of the Child) of the same instrument, and Article 7(b) (Duty to Prevent, Investigate and Punish Violence) of the Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women to the detriment of V.R.P. and V.P.C.,⁸² because:

Parties of the State are required to provide judicial remedies to victims of human rights violations.⁸³ The Court first recognized that the right of access to justice includes the right to know the truth about what happened to each victim and to punish those responsible within a reasonable amount of time.⁸⁴ These investigations require a level of due diligence that protects the rights of victims to a fair trial, and the due process requirements from Article 8 (Right to a Fair Trial) of the Convention apply not only to the judicial process but to investigative processes that would bring about a criminal action.⁸⁵ Additionally, in the context of human rights violations against children, a higher level of due diligence is required.⁸⁶ Therefore, the State must avoid delay and create an investigative body that is sufficiently independent of the responsible parties.⁸⁷

The Court applied four guiding principles established in the Convention on the Rights of the Child: (1) non-discrimination; (2) the best interests

80. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 42.

81. *Id.*

82. *Id.* “declares” ¶ 4.

83. *Id.* ¶ 150.

84. *Id.*

85. *Id.* ¶ 152.

86. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 155.

87. *Id.* ¶¶ 153-154.

of the child; (3) respect for “right to life, survival and development;” and (4) respect for the opinion of children.⁸⁸ Enhanced due diligence requires the adoption of special measures adapted to children so that they can participate in criminal proceedings without being subjected to revictimization.⁸⁹ Such special measures include providing child victims of sexual violence with free legal assistance and health services and ensuring privacy and trust by providing the child with “an environment that is not intimidating, hostile, insensitive or inappropriate.”⁹⁰

More specifically, the forensic physician in charge of conducting a medical examination of a child should have extensive knowledge and experience in cases of sexual violence against girls to prevent additional trauma.⁹¹ Further, the physician in charge of the exam should be trained in both child-adolescent gynecology and forensic medical examinations for cases of sexual abuse and rape.⁹² Finally, the Court also noted the importance of obtaining the victim’s informed consent before conducting the examination.⁹³

In this case, the Court analyzed four specific events including: (1) the forensic medical examination with Dr. Altamirano; (2) V.R.P.’s testimony at trial; (3) V.R.P.’s participation during the inspection of the scene and reconstruction of the events; and (4) the lack of comprehensive care for V.R.P.⁹⁴

First, the Court held that repeatedly submitting V.R.P. to gynecological examinations increased the psychological damage she had already suffered.⁹⁵ The Court identified a series of shortcomings in the first forensic medical examination that were incompatible with the requirements of strict due diligence.⁹⁶ For example, the State failed to provide V.R.P. or her mother with adequate information regarding what the forensic medical examination would consist of and they were not given an opportunity to select the sex of the examiner.⁹⁷ Moreover, there was no evidence that

88. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 155.

89. *Id.* ¶ 163.

90. *Id.* ¶¶ 165-66, 168.

91. *Id.* ¶¶ 174-75.

92. *Id.* ¶¶ 175-76.

93. *Id.* ¶¶ 178-79.

94. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 171.

95. *Id.* ¶ 173.

96. *Id.* ¶ 174.

97. *Id.*

Dr. Altamirano was specially trained in gynecology or children, and he did not perform the examination in a gynecological ward.⁹⁸ The Court identified Dr. Altamirano's use of force to conduct the examination after V.R.P. clearly expressed her refusal to proceed as an act of institutional sexual violence.⁹⁹

Second, the Court found that State judicial authorities failed to accommodate V.R.P. when she was summoned to testify in court in the same manner as an adult.¹⁰⁰ The fact that the State did not conduct the interview in an environment specifically conditioned for children or by a specially trained psychologist with expertise in questioning child victims of sexual violence was a violation of her rights.¹⁰¹

Third, the Court considered V.R.P.'s participation in the inspection of the scene and reconstruction of facts to be especially problematic because at the time, V.R.P. was nine years old.¹⁰² The Court emphasized that in rape cases involving children, judicial authorities must be careful to avoid re-victimization or a recurring traumatic impact on the victim.¹⁰³ Thus, the Court concluded that V.R.P.'s mandated participation constituted a serious breach of duty of care and an act of re-victimization and institutional violence against a child victim of sexual violence.¹⁰⁴

Finally, States must take coordinated and integrated action to provide care and support to child victims of sexual violence to safeguard their current and subsequent development.¹⁰⁵ The Court found that there was no record of the State providing any therapeutic care to V.R.P. or her family through its public institutions to help her recover.¹⁰⁶ The Court emphasized that V.R.P., who was 25 years old at the time of the Judgment, continued to suffer the psychological consequences of her rape and the lack of timely medical care.¹⁰⁷ Thus, the Court concluded that the State failed to provide V.R.P. comprehensive care or support during or after

98. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 174.

99. *Id.* ¶¶ 177, 179.

100. *Id.* ¶ 183.

101. *Id.*

102. *Id.* ¶ 184-85.

103. *Id.* ¶ 185.

104. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 193.

105. *Id.* ¶ 194.

106. *Id.* ¶ 198.

107. *Id.* ¶ 199.

*the criminal proceeding to facilitate her recovery, reintegration and rehabilitation.*¹⁰⁸

*Thus, in looking at the totality of the circumstances, the Court concluded that the State violated the victims' rights to personal integrity, and rights to judicial guarantees and judicial protections.*¹⁰⁹

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) of the American Convention, in relation to Article 1(1)(Obligation of Non-Discrimination) of the same instrument, and Article 7(b) (Duty to Prevent, Investigate and Punish Violence) of the Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women, to the detriment of V.R.P. and V.P.C.,¹¹⁰ because:

*This Article gives every person the right to be heard by an impartial tribunal when a proceeding involves their rights.*¹¹¹ *The Court found that there was sufficient evidence of bias in the prosecution after the defense gave the jury a package and requested the jurors view its contents in private.*¹¹² *The State's failure to investigate further also contributed to the general suspicion of bribery.*¹¹³ *Thus, the Court found the fear of possible bribery was objectively justified, and that the State violated the guarantee of objective impartiality established in Article 8 (Right to a Fair Trial) of the Convention.*¹¹⁴

*In considering whether the criminal procedure protected against arbitrary verdicts, the Court determined that the State failed to scrutinize the jury's decision to ensure that it was not arbitrary.*¹¹⁵ *The State's failure to scrutinize the jury's decision also contributed to the failure to ensure the victims understood why H.R.A. was acquitted.*¹¹⁶

108. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 202.

109. *Id.* ¶ 203.

110. *Id.* "declares" ¶ 5.

111. *Id.* ¶¶ 217, 239, 253.

112. *Id.* ¶ 250.

113. *Id.* ¶ 253.

114. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 253.

115. *Id.* ¶ 269.

116. *Id.* ¶ 270.

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) of the American Convention, in relation to Article 1(1)(Obligation of Non-Discrimination) and Article 19 (Rights of the Child) of the same instrument, and Article 7(b) (Duty to Prevent, Investigate and Punish Violence) of the Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women, to the detriment of V.R.P and V.P.C.,¹¹⁷ because:

The Court recognized that the right of access to justice includes the right to know the truth about what happened to each victim and to punish those responsible within a reasonable amount of time.¹¹⁸ The Court explained that the judicial process ends when a final judgment has been issued and noted that any prolonged delay in reaching a final judgment could constitute a violation of the judicial guarantees.¹¹⁹

In order to establish whether the State violated the guarantee of the reasonable period within the framework of the subsequent criminal proceedings, the Court analyzed the following four elements: (1) the complexity of the case; (2) the interested party's procedural activity from the date of the first procedural act to the date a final judgment is issued; (3) any judicial authority's conduct; and (4) the impact on the legal situation of the alleged victim.¹²⁰

In this case, it took over five years from the date of the acquittal until a final decision, which indicated that judicial authorities did not act with due diligence.¹²¹ Additionally, given the seriousness of the allegations, the State had an even greater duty of due diligence in investigating and punishing the person responsible.¹²² The Court noted the procedural activities that V.P.C. took on behalf of V.R.P. caused no relevant delays and were not improper.¹²³ The State failed to justify the five-year delay in the proceedings and thus, in looking at the totality of the circumstances, the Court concluded that the judicial authorities exceeded the reasonable period of the process, which violated the victims' right to judicial guarantees.¹²⁴

117. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, "declares" ¶ 6.

118. *Id.* ¶ 275.

119. *Id.*

120. *Id.* ¶ 278.

121. *Id.* ¶ 277.

122. *Id.* ¶ 284.

123. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 280.

124. *Id.* ¶ 285.

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) of the American Convention, in relation to Article 1(1)(Obligation of Non-Discrimination) and Article 19 (Rights of the Child), and Article 24 (Right to Equal Protection) of the same instrument, and Article 7(b) (Duty to Prevent, Investigate and Punish Violence) of the Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women, to the detriment of V.R.P.,¹²⁵ because:

*States are obligated not to introduce discriminatory laws, and must act to eliminate discriminatory regulations that exist within their legal system to ensure all persons are treated with equality under the law.*¹²⁶ *The act of rape is a manifestly an act of discrimination against women, which requires a State to adopt measures that guarantee victims of rape equal access to justice.*¹²⁷

*The Court focused on the process and whether the State made comprehensive services available to V.R.P. that served to eliminate any presence of discrimination.*¹²⁸ *The Court found the State failed to provide V.R.P. with any service designed to assist her recovery, which constituted discriminatory treatment under the law on the basis of sex, gender and on V.R.P.'s status as a child.*¹²⁹ *Finally, the manner in which the State investigated the rape was discriminatory because it was not carried out from a gender perspective pursuant to the requirements in Article 19 (Rights of the Child) of the Convention and Article 7(b) (Duty to Prevent, Investigate and Punish Violence) of the Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women.*¹³⁰

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same instrument, to the detriment of V.R.P.,¹³¹ because:

125. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, "declares" ¶ 7.

126. *Id.* ¶ 289.

127. *Id.* ¶¶ 290, 293.

128. *Id.* ¶ 293.

129. *Id.*

130. *Id.* ¶ 295-96.

131. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, "declares" ¶ 8.

The State became the secondary aggressor when it subjected V.R.P. to acts that constituted institutional sexual violence.¹³² Thus, V.R.P. was the victim of double violence.¹³³ The Court found the State revictimized V.R.P., which violated the prohibition of cruel, inhuman and degrading treatment established in Article 5(2) of the American Convention.¹³⁴

Articles 22(1) (Right to Move Freely Within a State) and 17(1) (Family's Right to be Protected) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 19 (Rights of the Child) of the same instrument, to the detriment of V.R.P.; Articles 22(1) (Right to Move Freely Within a State) and 17(1) (Family's Right to be Protected) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same instrument, to the detriment of V.P.C. and N.R.P.; and Article 17(1) (Family's Right to be Protected) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same instrument, to the detriment of H.J.R.P. and V.A.R.P.,¹³⁵ because:

Article 22 (Freedom of Movement and Residence) of the Convention includes protection against forced displacement within a state, and forced removal from a State in which they legally reside.¹³⁶ The Court has long considered the freedom of movement and residence are essential components for an individual's free development.¹³⁷

Here, V.P.C. and her children were forced to leave the State due to the State's failure to protect their rights and a fear of judicial harassment.¹³⁸ Thus, the Court held the State responsible for having generated the conditions that forced the victims to leave the country, which led to the family's separation.¹³⁹

132. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 297.

133. *Id.* ¶ 297-98.

134. *Id.* ¶ 299.

135. *Id.* "declares" ¶ 9.

136. *Id.* ¶ 308.

137. *Id.*

138. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 320.

139. *Id.*

Article 5(1) (Right to Physical, Mental and Moral Integrity) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same instrument, to the detriment of V.R.P.'s next of kin, V.P.C., N.R.P., H.J.R.P., and V.A.R.P.,¹⁴⁰ because:

Finally, the Court noted that the State's conduct as a result of the rape of V.R.P., revictimization, institutional violence caused by intervening State authorities and complaints filed by public officials all contributed to the severe psychological and emotional suffering of V.P.C. and her children.¹⁴¹ Thus, the State was responsible for violating the victims' right to personal integrity established in Article 5(1) (Right to Physical, Mental and Moral Integrity) of the Convention.¹⁴²

The Court found unanimously that the State had not violated:

Article 12(1) (Freedom to Maintain or Change Religion and Freedom to Profess or Disseminate) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same instrument,¹⁴³ because:

The Court did not find evidence sufficient to establish that the State's alleged religious persecution caused the victims' departure from Nicaragua.¹⁴⁴

The Court decided unanimously not to rule on:

Article 25 (Right to Judicial Protection) of the American Convention,¹⁴⁵ because:

The Court explained it did not independently consider violations of rights established in Article 25 (Right to Judicial Protection) of the Convention because it already considered the relevant analysis in previous sections.¹⁴⁶

140. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, "declares" ¶ 10.

141. *Id.* ¶ 329.

142. *Id.* ¶ 334.

143. *Id.* "declares" ¶ 11.

144. *Id.* ¶ 323.

145. *Id.* "declares" ¶ 12.

146. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 303.

IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The Court noted that the Judgment itself is a form of reparation.¹⁴⁷

2. Investigate Acts of Revictimization and Institutional Violence against V.R.P.

The Court ordered the State must investigate the public officials who contributed to the revictimization and institutional violence against V.R.P. within a reasonable amount of time and if necessary, apply the consequences in accordance with the law.¹⁴⁸

3. Provide Psychological and Psychiatric Treatment

The Court ordered the State to provide free and immediate psychological and psychiatric treatment, including dispensing medication to V.R.P.'s brothers, H.J.R.P. and V.A.R.P., who were still living in Nicaragua.¹⁴⁹

4. Publish the Judgment

With V.R.P.'s informed consent, the State must publish the Judgment within six months and publish the Official Summary of the Judgment in a newspaper of large national circulation and in the Official Gazette.¹⁵⁰ The Court required the Judgment be published on an official State website for one year, and noted the State must immediately notify the Court once each publication is made available regardless of any time period restriction.¹⁵¹

147. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, "and provides" ¶ 13.

148. *Id.* ¶ 345, "and provides" ¶ 14.

149. *Id.* ¶ 352, "and provides" ¶ 16.

150. *Id.* ¶ 355, "and provides" ¶ 17.

151. *Id.*

5. Provide a Scholarship Fund for V.A.R.P.

The Court ordered the State must provide a scholarship fund to a public institution in Nicaragua for V.A.R.P. at his request, which includes all academic and educational materials.¹⁵²

6. Creation and Adoption of New Public Policies

The State must create, implement, and supervise three standardized protocols for the following matters: (1) investigations and protocol for the criminal processing of sexual violence cases involving children; (2) protocol on comprehensive approach for legal and medical assessments for sexual violence cases involving children; and (3) comprehensive care protocol for children who are victims of sexual violence.¹⁵³

7. Provide Free Legal Assistance to Child and Adolescent Victims of Crimes

The Court ordered the State must create and implement a special public policy that provides free legal assistance to children who are victims of crimes, specifically sexual violence crimes.¹⁵⁴

8. Training for Public Officials

The Court decided that training programs and courses for public officials regarding sexual violence and gender perspectives must be implemented.¹⁵⁵

152. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, ¶ 363, “and provides” ¶ 19.

153. *Id.* ¶ 384, “and provides” ¶ 20.

154. *Id.* ¶ 387, “and provides” ¶ 21.

155. *Id.* “and provides” ¶ 22.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$7,000 to V.P.C. for consequential damages¹⁵⁶ and \$23,400 for loss of income.¹⁵⁷

Additionally, the Court ordered the State compensate V.R.P., V.P.C. and N.R.P. in the amounts of \$75,000; \$50,000; and \$20,000, respectively for medical expenses associated with the physical and psychological damage they suffered.¹⁵⁸

2. Non-Pecuniary Damages

With respect to the non-pecuniary damages the Court awarded the following amounts: (1) \$65,000 to V.R.P.; (2) \$45,000 to V.P.C.; (3) \$20,000 to N.R.P.; (4) \$15,000 to H.J.R.P.; and (5) \$15,000 to V.A.R.P.¹⁵⁹

Additionally, the Court ordered the State must provide a scholarship fund for V.R.P. for vocational training expenses in the amount of \$150,000.¹⁶⁰

3. Costs and Expenses

The Court awarded \$15,000 to V.P.C. for the costs and expenses she incurred during litigation.¹⁶¹

Furthermore, the Court awarded \$13,862.51 as reimbursement for costs and expenses to the Court's Legal Assistance Fund for Victims.¹⁶²

4. Total Compensation (Including Costs and Expenses Ordered)

\$514,262.51

156. *V.R.P. and V.P.C., et al. v. Nicaragua*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 411.

157. *Id.* ¶ 419.

158. *Id.* ¶ 351, "and provides" ¶ 15.

159. *Id.* ¶ 426.

160. *Id.* ¶ 362, "and provides" ¶ 18.

161. *Id.* ¶ 433, "and provides" ¶ 23.

162. *V.R.P. and V.P.C., et al. v. Nicaragua*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 441, "and provides" ¶ 24.

C. Deadlines

Within one year from the Judgment, the State must provide the Court with a report on the measures it took to comply with the Judgment.¹⁶³

The State must publish the Official Summary and the Judgment within six months of the date of the Judgment.¹⁶⁴

The State must make all payments for damages, and costs and expenses within one year from the date of the Judgment, and the State must reimburse the Court Assistance Fund within six months from the date of the Judgment.¹⁶⁵

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

October 21, 2019: The Court found the State has not complied with its obligations established in the Judgment.¹⁶⁶ The Court kept the case open to continue monitoring the State's compliance with its orders.¹⁶⁷

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Decisions on Merits, Reparations, and Costs

V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 350 (Mar. 8, 2018).

163. V.R.P. and V.P.C., et al. v. Nicaragua, Preliminary Objections, Merits, Reparations, and Costs, "and provides" ¶ 25.

164. *Id.* ¶ 355.

165. *Id.* ¶¶ 441-42, "and provides" ¶ 23.

166. V.R.P. and V.P.C., et al. v. Nicaragua, Presentation of Observations to the State's Report, Inter-Am. Ct. H.R., ¶¶ 3-5 (October 21, 2019).

167. *Id.*

2. Provisional Measures

V.R.P. and V.P.C., et al. v. Nicaragua, Resolution of the President, Call for Hearing, Inter-Am. Ct. H.R. (ser. C) No. 350 (Sept. 21, 2017).

3. Compliance Monitoring

V.R.P. and V.P.C., et al. v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Oct. 21, 2019).

4. Review and Interpretation of Judgment

[None]

A. *Inter-American Commission*

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

V.R.P. and V.P.C., et al. v. Nicaragua, Admissibility Report, Report No. 3/09, Inter-Am. Comm'n H.R., Pet. No. 4408-02 (Feb. 11, 2009).

3. Provisional Measures

[None]

4. Report on Merits

V.R.P. and V.P.C., et al. v. Nicaragua, Report on Merits, Report No. 4/16, Inter-Am. Comm'n H.R., Case No. 12.690 (Apr. 13, 2016).

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

[None]