

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF VELÁSQUEZ PAIZ *EL AL.* V. GUATEMALA**  
**JUDGMENT OF NOVEMBER 19, 2015**  
***(Preliminary objections, merits, reparations and costs)***

In the case of *Velásquez Paiz et al.*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) composed of the following judges:

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

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this judgment, structured as follows:

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**I**  
**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.* On March 5, 2014, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted the case to the jurisdiction of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) against the Republic of Guatemala (hereinafter “the State” or “Guatemala”). According to the Commission, the case relates to the presumed responsibility of the State for failing to comply with the obligation to protect the life and personal integrity of Claudina Isabel Velásquez Paiz. Regarding the facts, the Commission indicated that, when the presumed victim did not return home on August 12, 2005, her parents, Jorge Rolando Velásquez Durán and Elsa Claudina Paiz Vidal, went to report her disappearance. However, they were unable to do so because they were told that they would have to wait 24 hours to report this fact. Even though the State authorities were aware of the existence of a context of violence against women that clearly placed her in imminent danger, the State failed to take immediate and exhaustive measures to find and protect her within the initial hours after learning that she was missing. The body of the presumed victim was found the following day with signs of presumably having been subjected to extreme violence, including sexual violence.

2. The Commission alleged that the State had incurred international responsibility because it had failed to conduct a serious investigation into the disappearance, the sexual violence and murder of Claudina Isabel Velásquez Paiz. It indicated that, from the outset, the investigation was riddled with errors such as flaws in the handling and analysis of the evidence collected, and shortcomings in managing and preserving the crime scene and in the tests run on the evidence; irregularities in the autopsy report, a failure to perform a thorough examination of various parts of the victim’s body to confirm a possible rape; irregularities in the fingerprinting of the victim, and the failure to take statements from important witnesses. The Commission also found that the delay in the proceedings could be attributed to the State, particularly owing to the constant changes in the prosecutors assigned to the case, which disrupted the investigation and meant that procedures were not carried out on time or were not taken into consideration by the new prosecutors. Lastly, it found presumed discriminatory stereotyping during the proceedings that had a negative impact on the lack of diligence in the investigation. The Commission considered that the failure to protect the presumed victim and the failure to investigate her death were a clear reflection of the underlying situation of discrimination against women in Guatemala. Finally, the Commission alleged the violation of the right to personal integrity of her parents and also her brother, Pablo Andrés Velásquez Paiz.

3. *Process before the Commission.* The process before the Commission was as follows:

a) *Petition.* On December 10, 2007, the Guatemalan *Instituto de Estudios Comparados en Ciencias Penales*, Jorge Rolando Velásquez Durán and Carlos Antonio Pop AC lodged the initial petition before the Commission.

b) *Admissibility Report.* On October 4, 2010, the Commission adopted Admissibility Report No. 110/10.

c) *Merits Report.* On November 4, 2013, the Commission adopted Merits Report No. 53/13 pursuant to Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 53/13”), in which it reached a series of conclusions and made several recommendations to the State.

*Conclusions.* The Commission concluded that the State was responsible for violating the following rights:

- the right to life and to personal integrity recognized in Articles 4, 5 and 11 [sic] of the American Convention, all in relation to the obligations imposed on the State by Article 1(1) of this instrument and Article 7 of the Convention of Belém do Pará.
- the rights of Claudina Isabel Velásquez Paiz under Article 7 of the Convention of Belém do Pará, in relation to Article 24 of the American Convention, in conformity with the general obligation to respect and ensure rights established in Article 1(1).
- the right to personal integrity recognized in Article 5(1) of the American Convention in connection with the obligations imposed on the State by Article 1(1) of this instrument, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez and Pablo Andrés Velásquez Paiz, as well as the right to judicial guarantees and protection recognized in Articles 8(1) and 25 of the American Convention of this instrument and in relation to the obligations imposed on the State by Article 1(1) and Article 7 of the Convention of Belém do Pará.

*Recommendations.* The Commission recommended that the State:

- Complete a prompt, immediate, serious and impartial investigation to solve the murder of Claudina Isabel Velásquez Paiz and identify, prosecute and, as appropriate, punish those responsible.
- Adopt and/or, as appropriate, adapt investigation protocols and expert services used in all crimes related to the disappearance, rape or murder of women, in accordance with international standards on such matters and from a gender perspective.
- Make full reparations to the next of kin of Claudina Isabel Velásquez Paiz for the human rights violations [...] established.
- As a measure of non-repetition, implement a comprehensive and coordinated State policy, backed by sufficient public funds, for the prevention of violence against women.
- Bolster the institutional capacity to combat impunity in cases of violence against women, through effective criminal investigations conducted from a gender perspective that have constant judicial monitoring, thereby ensuring proper punishment and reparation.
- Implement a system to produce appropriate disaggregated statistics, which will allow the design and evaluation of public policies on the prevention, punishment and eradication of violence against women.
- Introduce reforms in the State's educational programs, starting in the early formative years, so as to promote respect for women as equals and observance of their rights to non-violence and non-discrimination.
- Adopt comprehensive public policies and integrated institutional programs designed to eliminate discriminatory stereotypes about the role of women and to promote the eradication of discriminatory socio-cultural patterns that prevent women's full access to justice; this should include training programs for public officials in all sectors of the State, including education, administration of justice and police, as well as comprehensive policies on prevention.

d) *Notification of the State.* Merits Report No. 53/13 was notified to the State on December 5, 2013.

e) *Reports relating to the Commission's recommendations:* On January 13, 2014, Jorge Rolando Velásquez Durán and Carlos Antonio Pop AC indicated their position on Merits Report 53/13. According to the Commission, on February 5, 2014, the State forwarded a report in which it "contested the conclusions of the Merits Report [...] concerning its international responsibility and indicated that, consequently, it was not in order to establish measures of reparation for the victim's next of kin."

4. *Submission to the Court.* On March 5, 2014, the Commission submitted the case to the jurisdiction of the Inter-American Court by forwarding Merits Report No. 53/13, "owing to the need to obtain justice for the victims in view of the State of Guatemala's failure to comply with its recommendations." The Commission appointed Commissioner James Cavallaro and Executive Secretary, Emilio Álvarez Icaza, as its delegates before the Court. Also, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Fiorella Melzi, lawyers of the Commission's Executive Secretariat would act as legal advisors.

5. *Requests of the Inter-American Commission.* Based on the above, the Commission asked the Court to declare the international responsibility of Guatemala for the violations indicated in its Merits Report (*supra* para. 3.c). It also asked the Court to order the State to make certain reparations, which are described and analyzed in Chapter VIII of this judgment.

## II PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and the representatives.* The submission of the case was notified to the representatives of the presumed victims and to the State on May 16 and June 4, 2014, respectively.

7. *Brief with motions, pleadings and evidence.* On July 15, 2014, Carlos Antonio Pop AC, the *Asociación de Abogados y Notarios Mayas de Guatemala*, and the Robert F. Kennedy Center for Justice and Human Rights (hereinafter “the representatives”), submitted their brief with motions, pleadings and evidence (hereinafter “motions and pleadings brief”) to the Court, in accordance with Article 40 of the Rules of Procedure.

8. *Answering brief.* On November 21, 2014, the State presented its brief with preliminary objections, answering the submission of the case, and with observations on the motions and pleadings brief (hereinafter “answering brief”), in accordance with Article 41 of the Rules of Procedure.

9. *Observations on the preliminary objections.* On February 4, 2014, the representatives and the Commission presented their respective observations on the preliminary objections submitted by the State, in accordance with Article 42(4) of the Rules of Procedure.

10. *Public hearing.* In an order of March 19, 2015,<sup>1</sup> the President of the Court, (hereinafter “the President”) called the parties to a public hearing, which was held in Cartagena de Indias, Colombia, on April 21 and 22, 2015, during the Court’s fifty-second special session,<sup>2</sup> and required several statements to be received in this case.

11. *Helpful evidence.* In the annexes to a brief of March 25, 2015, the State forwarded “the file documents containing the procedural actions taken from May 2012 to date,” that were requested as helpful evidence in an order of the President of March 19, 2015 (*supra* para. 10).

12. *Information on the detention of a presumed victim following the public hearing.* In a communication of May 18, 2015, the representatives reported the “capture” of Jorge Rolando Velásquez Durán, as the alleged result of “his statements during the [...] public hearing.” Consequently, they asked that, based on Article 53 of the Rules of Procedure, the Court “require [...] the State [...] to provide information on this fact.” In a note of the Secretariat of May 19, 2015, the State was asked to remit its observations on the information presented by the representatives. In a brief of May 26, 2015, the State reported that the arrest and detention of Mr. Velásquez [had been] ordered [...] [because] an action [had been] opened against [him ...] on September 11, 2001,” during which an order had been issued annulling the warrant for his arrest; however, this had not been processed, leading to the detention of Mr. Velásquez. The State also indicated that, once “the legal situation of Jorge Rolando Velásquez had been corroborated, he had been released immediately.” The State stressed that this was an isolated incident and that no reprisals of any kind were being taken against him. The representatives and the Commission forwarded their observations on the State’s brief on June 8 and 10, 2015, respectively. In this regard, the representatives stated that, following Jorge Velásquez Durán’s

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<sup>1</sup> The order of the President of the Court of March 19, 2015 is available at: [http://www.corteidh.or.cr/docs/asuntos/velasquez\\_19\\_03\\_15.pdf](http://www.corteidh.or.cr/docs/asuntos/velasquez_19_03_15.pdf)

<sup>2</sup> There appeared at this hearing: (a) for the Inter-American Commission on Human Rights: James Cavallaro, Commissioner; Silvia Serrano Guzmán and Jorge Meza, Executive Secretariat lawyers; (b) for the representatives of the presumed victims: Carlos Antonio Pop, Kerry Kennedy, Santiago A. Canton, Angelita Baeyens, Wade McMullen and Christina Fetterhoff, and (c) for the State: Rodrigo José Villagrán Sandoval, Agent; César Javier Moreira Cabrera, Legal Advisory, and Steffany Rebeca Vásquez Barillas, Deputy Agent.

detention, an “oral hearing” had been held in which the judge ordered his “immediate release, [...], conditional on the alternative measure of appearing before the original court” to clarify the situation. The following day, Mr. Velásquez went to the Eighth Criminal Trial Court for drug-trafficking and environmental crimes which verified that the arrest warrant was no longer in effect and reiterated its annulment.

13. *Final written arguments and observations.* On May 22, 2015, the State, the representatives and the Commission forwarded their final written arguments and observations, respectively. The State included annexes with its brief. On June 15 and 18, 2015, the representatives and the Commission presented their observations on the annexes submitted by the State with its final written arguments.

14. *Deliberation of the case.* The Court began deliberating this case on November 16, 2015.

### **III JURISDICTION**

15. The Inter-American Court has jurisdiction to hear this case, pursuant to Article 62(3) of the American Convention, because Guatemala has been a State Party to this instrument since May 25, 1978, and accepted the Court’s contentious jurisdiction on March 9, 1987.

### **IV PRELIMINARY OBJECTIONS**

#### **A. Preliminary objection concerning lack of material jurisdiction over Article 7 of the Convention of Belém do Pará**

##### *A.1. Arguments of the parties and the Commission*

16. The **State** affirmed that the Court was not competent to hear this case in relation to the presumed violations of the rights recognized in the Convention of Belém do Pará. It argued that, when accepting the Court’s contentious jurisdiction, it had done so for cases “relating to the application or interpretation of the American Convention,” and that it had never authorized the Court to hear cases relating to the application or interpretation of other international treaties. It indicated that Article 12 of the Convention of Belém do Pará<sup>3</sup> does not automatically imply that the Court has competence *ratione materiae* to hear and decide complaints based on that treaty because, for the Court to be able to rule on violations of rights contained in instruments other than the American Convention, the State must have authorized this expressly.

17. The **Commission** noted that the State had filed this objection in the case of *Veliz Franco et al.*, and that the Court had rejected it based on its consistent case law under which it has been applying Article 7 of the Convention of Belém do Pará directly, in the understanding that Article 12 of this instrument incorporates a general clause of competence accepted by the States when ratifying or adhering to it. Therefore, it asked the Court to declare this preliminary objection inadmissible.

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<sup>3</sup> Article 12 of the Convention of Belém do Pará stipulates: “Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.”

18. The **representatives** agreed with the Commission and repeated the criteria established in the cases of *Veliz Franco et al.* and the *Cotton Field*. They added that it was false that the State had “never” accepted the Court’s competence to hear violations of the rights recognized in the Convention of Belém do Pará because, in the cases of the *Río Negro Massacres* and *Gudiel Álvarez (Diario Militar)*, the Court had declared that Guatemala was internationally responsible for violating Article 7 of the Convention of Belém do Pará,<sup>4</sup> “a responsibility that was acknowledged by [the State] itself, without questioning the Court’s competence.”

#### A.2. Considerations of the Court

19. The State ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”) on January 4, 1995, without any reservations or limitations. Article 12 of this treaty indicates the possibility of lodging “petitions” with the Commission, with “denunciations or complaints of violations of [its] Article 7,” establishing that “the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Rules of Procedure of the [...] Commission.” As the Court has indicated in the cases of *González et al. (“Cotton Field”) v. Mexico*, *Véliz Franco v. Guatemala* and *Espinoza González v. Peru*, “it seems clear that the literal meaning of Article 12 of the Belém do Pará Convention grants competence to the Court, by not excluding from its application any of the norms and procedural requirements for individual communications.”<sup>5</sup> It is worth emphasizing that, in other contentious cases against Guatemala,<sup>6</sup> the Court has declared the State responsible for the violation of Article 7 of the Convention of Belém do Pará and it does not find any factors that would justify diverging from its case law. Accordingly, the Court rejects the preliminary objection of its lack of jurisdiction to rule on Article 7 of the Convention of Belém do Pará.

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<sup>4</sup> Article 7 of the Convention of Belém do Pará establishes: “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- (a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- (b) apply due diligence to prevent, investigate and impose penalties for violence against women;
- (c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- (d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- (e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- (f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- (g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- (h) adopt such legislative or other measures as may be necessary to give effect to this Convention.”

<sup>5</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 41. In this regard, the Court indicated that the “wording” of Article 12 of the Convention of Belém de Pará “does not exclude any provision of the American Convention; consequently it must be concluded that the Commission will act in petitions relating to Article 7 of the Belém do Pará Convention ‘in accordance with the provisions of Articles 44 to 51 of [the American Convention],’ as established in Article 41 of this Convention. Article 51 of the Convention [...] refers [...] expressly to the submission of cases to the Court,” Similarly, see, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, footnote 22, and *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, footnote 5.

<sup>6</sup> Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 17; *Case of Gudiel Álvarez (Diario Militar) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 17, and *Case of Veliz Franco et al. v. Guatemala, supra*, para. 36.



## **B. Objection of failure to exhaust domestic remedies**

### *B.1. Arguments of the parties and the Commission*

20. The **State** argued that this case should not have been submitted to the consideration of the Court because domestic remedies had not been exhausted. It asserted that the exceptions contained in paragraphs (a), (b) and (c) of Article 46(2) of the American Convention had not been met,<sup>7</sup> because the presumed victim's next of kin had never been denied access to justice; also the case remained under investigation and they had not availed themselves of the legally established remedies. In this regard, the State indicated, first, that domestic law established the due process that should be exhausted, and mentioned the State's domestic procedural laws; consequently, individuals considered victims in criminal proceedings had a series of recognized guarantees and rights to promote and advance the investigation or the judicial proceedings. They are also able to exercise the control of the proceedings if they consider that these have been ineffective, inconsistent or mismanaged, or if there has been an unjustified delay, either at the investigation stage or during the judicial proceedings. Second, the State asserted that, the presumed victim's next of kin had never been denied access to justice, nor had they been prevented from exhausting the domestic remedies, and that the fact that it had not been possible to identify the individual responsible for the death was not due to the State's lack of willingness, but rather to the complexity of the case. Third, it indicated that the reasonable time had not been violated, because the case was complex; that there had been no inactivity during the investigation, and that the actual Code of Criminal Procedure established a series of rights and tools which allow the next of kin to provide information and play an active role in the investigation.

21. The **Commission** confirmed that the State had filed this objection at the appropriate time during the admissibility stage before it and that, in response, in paragraphs 29 to 31 of its Admissibility Report, it had taken note that the investigation remained open and had applied the exception of an unjustified delay established in Article 46(2)(c) of the American Convention, based on the fact that five years had passed since the presumed victim's death without the State having advised that the proceeding had concluded, or provided information on the measures established to advance beyond the initial stage of investigation, or on any recent procedures conducted or progress that would lead to elucidating the facts and to punishing those responsible, and without presenting information that would allow it to be concluded that the investigation was appropriate and effective. All of this in an alleged context of the impunity of violence against women in Guatemala. It indicated that, under the American Convention, the Commission has the authority to take decisions concerning admissibility, and such decisions are taken based on the information available at the time. It noted that the evidence taken into account in the Admissibility Report was "fully confirmed" at the merits stage, because it had concluded that the State was responsible for the denial of justice in accordance with Articles 8 and 25 of the Convention.

22. The **representatives** agreed with the Commission. They added that the moments at which the investigation had been most active, without this relating to effective actions, coincided with key stages in the processing of the case before the inter-American system and, in any

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<sup>7</sup> Paragraphs (a), (b) and (c) of Article 46(2) of the American Convention indicate that: "The provisions of paragraphs 1(a) and 1(b) of this article shall not be applicable when:

(a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

(b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

(c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies."

case, resulted from the impetus given to the proceedings by Jorge Rolando Velásquez Durán, the presumed victim's father, in his capacity as joint complainant. They argued that the alleged complexity was the result of the State's actions, because serious errors had been committed when handling the crime scene, and years had passed before routine investigation procedures had been conducted. They also stressed that, despite the constant indifference and resistance of the Public Prosecution Service, the continuous efforts of Mr. Velásquez Durán had resulted in "most of the evidence and lines of investigation," as well as the procedures presented by the State as evidence of its supposed diligence.

### *B.2. Considerations of the Court*

23. Article 46(1)(a) of the American Convention establishes that one of the requirements for "[a]dmission by the Commission of a petition or communication" is "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." One of the exception to that requirement, established in paragraph (2)(c) of Article 46, occurs when "there has been unwarranted delay in rendering a final judgment under the aforementioned remedies." In the instant case, in the initial petition of December 10, 2007, Article 46(2) of the Convention was cited to indicate that prior exhaustion of domestic remedies was not appropriate. Meanwhile, during the admissibility procedure before the Commission and in a communication of May 17, 2010, the State argued that the requirement of exhaustion of domestic remedies had not been met.<sup>8</sup> Therefore, this preliminary objection was filed at the proper procedural moment. In the Admissibility Report of October 4, 2010, the Commission applied the exception to the requirement of exhaustion of domestic remedies established in Article 46(2)(c) of the Convention, because it had "verifie[d] an unjustified delay by the Guatemalan jurisdictional organs in relation to the reported facts."<sup>9</sup>

24. The Court recalls that, for the preliminary objection of failure to exhaust domestic resources to be admissible, the State that presents this objection must specify the domestic remedies that have not been exhausted and prove that these remedies were available and adequate, appropriate and effective.<sup>10</sup> Thus, it is not the task of the Court, or the Commission, to identify *ex officio* the domestic remedies that remain to be exhausted. The Court underlines that it is not incumbent on the international organs to rectify the lack of precision of the State's arguments.<sup>11</sup>

25. Furthermore, Article 46(2) of the Convention stipulates that the requirement of prior exhaustion of domestic remedies is not applicable when: (a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. In this regard, the Court has indicated that it is not required to exhaust ineffective remedies:

[The remedy] must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be

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<sup>8</sup> Cf. The State's brief of May 17, 2010 (evidence file, folio 603).

<sup>9</sup> Cf. Admissibility Report No. 110/10 of October 4, 2010 (evidence file, folio 590).

<sup>10</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, paras. 88 and 91, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 21.

<sup>11</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 23, and *Case of López Lone et al. v. Honduras, supra*, para. 21.

considered effective.<sup>12</sup> That could be the case, for example, when practice has shown its ineffectiveness, [...] or in any other situation that constitutes a denial of justice,<sup>13</sup> as when there is an unjustified delay in the decision.

26. In this regard, and as already indicated, in their initial petition before the Commission, the representatives affirmed that the rule of prior exhaustion of domestic remedies was not applicable in this case based on Article 46(2) of the Convention, because, despite the efforts of the father of Claudina Velásquez as joint complainant:

He has found it almost impossible to obtain substantial progress in the investigations. [...] On several occasions, Mr. Velásquez Durán has asked the Public Prosecution Service to conduct investigation procedures that required judicial authorization [...]. Even though some of these have been carried out, this has been extremely belatedly, thus resulting in their ineffectiveness. [...] In view of the failings of the Public Prosecution Service, Mr. Velásquez filed a complaint before the Supervisor General of this organ to obtain the sanction of those responsible for the violations of due process [...]. Even though the Supervisor concluded that the procedure had provided 'inadequate treatment to the victim, her parents and next of kin [...],' it merely made a couple of recommendations. [...] Meanwhile, in a resolution of July 20, 2006, the Ombudsman declared that the internal procedures of the Public Prosecution Service had been inadequate to protect the rights of Mr. Velásquez Durán. Accordingly, the negligence, the flaws in the investigation, the delay in conducting procedures, and the humiliating treatment had not been subject to disciplinary or administrative reprimands within the Public Prosecution Service, thus revealing a pattern of tolerance towards such practices.

27. Regarding the investigation into the death of Claudina Velásquez, the State indicated, in this communication of May 17, 2010, that "the agents of justice who were investigating the incident in 2005 took emergency measures to collect evidence that were viewed negatively by the Velásquez Paiz family and, therefore, the agents of justice were issued with the corresponding sanctions." It also indicated that: (i) "it continue[d] to monitor all the investigative actions through the Public Prosecution Service"; (ii) the "investigation [... had] not concluded"; (iii) "under the line of investigation that the Public Prosecution Service [was] currently following, information had surface of presumed suspects, against whom a possible accusation could be filed," and (iv) "the petition [was] inadmissible because the domestic remedies had not yet been filed and exhausted."

28. In this regard, the Court considers that, in its brief, the State had accepted that, to date, "the agents of justice" had taken actions that warranted sanction, implicitly admitting the possibility that, at the time the petition was lodged, the domestic remedies suffered from unjustified delays and lack of effectiveness (*supra* para. 27). The file contained a resolution dated July 20, 2006 – in other words, before the initial petition was lodged and before the above-mentioned State brief – in which the Guatemalan Ombudsman declared "the violation of the obligation to respect and to ensure the rights to life, personal safety and justice within a reasonable time, and the right to effective judicial protection of Claudina Isabel Velásquez Paiz and her next of kin," as well as the "violation of the right to be treated with dignity and respect of the next of kin of the victim who are seeking justice."<sup>14</sup> Moreover, it is admissible to take into consideration that, although the State indicated, in its brief of May 17, 2010, answering the initial petition, that domestic remedies had not been exhausted, it made no mention whatsoever

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<sup>12</sup> Cf. *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24. See, also: *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 145; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 111, and *Case of Reverón Trujillo v. Venezuela, supra*, para. 61.

<sup>13</sup> Cf. *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights), *supra*, para. 24, and *Case of Abrill Alosilla et al. v. Peru. Merits, reparations and costs*. Judgment of March 4, 2011 Series C No. 223, para. 75.

<sup>14</sup> Cf. Resolution of July 20, 2006 (evidence file, folios 3255 and 3259).

of the remedies that had not been exhausted and failed to prove that those that were available were adequate, appropriate and effective. Based on the foregoing, the Court rejects the preliminary objection filed by the State.

## V EVIDENCE

### A. Documentary, testimonial and expert evidence

29. The Court has received various documents submitted as evidence by the Commission and the parties attached to their main briefs (*supra* paras. 4, 7 and 8). The has also received from the State documents requested as helpful evidence pursuant to Article 58 of the Rules of Procedure (*supra* para. 11). In addition, the Court has received the affidavits of presumed victims Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz, witness Andrea Cristina Utrera Martínez, and expert witnesses Karen Musalo and Alberto Bovino, all offered by the representatives.<sup>15</sup> It has received the opinions of expert witnesses Paloma Soria Montañez and Christine Mary Chinkin offered by the Commission. It has also received the statement of the witness offered by the State, Víctor Manuel Boror de la Rosa. Regarding the evidence provided during the public hearing, the Court heard the statement of presumed victim Jorge Rolando Velásquez Durán and the opinion of expert witness Claudia González Orellana,<sup>16</sup> both offered by the representatives. Lastly, the Court received various documents submitted with the State's final written arguments.

### B. Admission of the evidence

#### B.1. Admission of the documentary evidence

30. The Court admits the documents presented by the parties and the Commission at the appropriate procedural opportunity that were not contested or challenged,<sup>17</sup> and also the documents obtained and incorporated, *ex officio*, by the Court.<sup>18</sup> Regarding some documents indicated by the parties and the Commission by means of electronic links, the Court has established that if a party provides, at least, the direct electronic link to the document that it cites as evidence and it is possible to access this, neither legal certainty nor procedural balance is affected because it can be located immediately by the Court and the other parties.<sup>19</sup> In this case, neither the other parties nor the Commission contested or commented on the content and authenticity of such documents.

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<sup>15</sup> In a communication of March 30, 2015, the representatives withdrew the offer of the expert opinions of Otto Dany León Oliva and Daniela Galindez Arias.

<sup>16</sup> On April 21, 2015, expert witness Claudia González Orellana presented in writing the expert opinion she had provided before this Court during the public hearing that day. The Commission and the State had the opportunity to comment on this brief.

<sup>17</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile. Merits, reparations and costs*. Judgment of September 2, 2015. Series C No. 300, para. 12.

<sup>18</sup> In this case, the Court considered the following documents, on its own motion: the Guatemalan Ombudsman, Compendium "*Muertes Violentas de Mujeres, 2003 a 2005*"; National Report to the Working Group of the Universal Periodic Review of the United Nations Human Rights Council, dated August 7, 2012; bill advocating the approval of the Law on the immediate search for missing women. Available at: <http://www.congreso.gob.gt/manager/images/4097B3FD-E522-0547-3042-D05791A99602.pdf>, and Report No. 03-2014, Bill 4588, Law on the immediate search for missing women, submitted to the Legislative Director of the Congress of the Republic in a note of March 25, 2014, by the Congressional Committee on Legislation and Constitutional Matters. Available at: <http://www.congreso.gob.gt/manager/images/91E9DEF7-5D94-7146-29A0-8AB105E3FC92.PDF>

<sup>19</sup> Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of López Lone et al. v. Honduras, supra*, para. 33.

31. Regarding the procedural opportunity for submitting documentary evidence, according to Article 57(2) of the Rules of Procedure, in general, this must be presented together with the briefs submitting the case, with motions and pleadings, or answering the submission of the case, as applicable. Evidence remitted outside the proper procedural opportunities is not admissible, unless it relates to the exceptions established in the said Article 57(2) of the Rules of Procedure: namely, *force majeure*, serious impediment, or if it refers to a fact that has occurred following these procedural moments.

32. The State contested the admissibility of the documents presented by the Commission with its Merits Report that did not come from public institutions or individuals with authority to certify documents, because it was not possible to confirm the truth of the facts they contained due to the absence of sources that proved them.<sup>20</sup> Regarding the documents presented by the representatives with their motions and pleadings brief, the State contested the admissibility of Annex 12 on the calculation of Jorge Rolando Velásquez Durán's loss of earnings, considering that it had not been proved that the victim's father had suffered from any physical or mental illness owing to the facts of this case which would have prevented him from exercising his profession and working regularly following his daughter's death. It also contested the press releases issued in 2006 and 2007 contained in Annex 31, considering that they were not a reliable means of presenting the facts objectively. In addition, it contested the admissibility of Annex 36 on the psychological assessment of the next of kin of Claudina Velásquez Paiz because, according to the State, the appraisal was biased. In this regard, the Court finds that the State's arguments relate to the probative weight and scope of the contested evidence, but does not affect its admissibility as part of the body of evidence. Therefore, the Court finds it in order to admit the said documents. Regarding the press releases submitted, the Court has considered that they may be evaluated when they refer to well-known public events or to declarations by State officials, or when they corroborate aspects related to the case.<sup>21</sup>

33. Meanwhile, the representatives contested the evidence presented by the State on March 25, 2015 (*supra* para. 11), considering that it contravened Article 41 of the Rules of Procedure, because "[t]he State ha[d] ample time to include evidence on the investigative actions and procedures." In this regard, in the order of March 19, 2015 (*supra* para. 10), the President of the Court had asked the State to forward "the file documents containing the procedural actions taken from May 2012 to date" as helpful evidence. Accordingly, the evidence provided by the State in response to the request made under Article 58(b) of the Rules of Procedure, which authorizes the Court to ask the parties to provide evidence at any stage of the case, was admitted

34. The State forwarded five annexes with its final written arguments. The Court noted that these documents were sent in response to questions that the judges had asked the State during the public hearing. Neither the Commission nor the representatives contested their admissibility. Therefore, pursuant to Article 58(b) of the Rules of Procedure, the Court admits these documents.

#### *B.2. Admission of the testimonial and expert evidence*

35. The Court finds it pertinent to admit the statements of the presumed victims and witnesses, and also the expert opinions provided during the public hearing and by affidavit that were not contested, insofar as they are in keeping with the purpose defined by the President in the order requiring them (*supra* para. 10).

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<sup>20</sup> In particular, the State contested Annexes 33, 34.a and 34.b, 35, 36 and 37 to the Commission's Merits Report.

<sup>21</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146, and *Case of López Lone et al. v. Honduras, supra*, para. 32.

36. In its final written arguments, the State indicated that expert witness Claudia González Orellana, was never either “[im]partial or objective,” and that her opinion went beyond the purpose established by the President. It also argued that the expert opinion of Christine Mary Chinkin was characterized by an evident bias and lack of objectivity, did “not respond expressly to the questions,” and “was not grounded on specific or proven facts, but rather on suppositions, data and statistics that the expert witness herself had acknowledged were not reliable.” Consequently, Guatemala expressed its disagreement with the opinions of expert witnesses González and Chinkin being used as evidence in this case. The Court considers that these objections relate to the probative weight and scope of the said expert opinions, but did not affect their admissibility as part of the body of evidence. Accordingly, the Court finds it in order to admit them in the terms established in the said order of the President.

37. In addition, in a communication of April 6, 2015, the representatives presented an objection to the scope of the purpose of the statement of witness Víctor Manuel Boror de la Rosa, because, “after reviewing all the documents presented by the State [at the Court’s request – in other words, the file documents containing the procedural actions from May 2012 to date], [they had] only found four documents dated 2014.” Consequently, they asked the Court to “instruct the witness [...], when referring to the investigative actions and procedures from 2014 to date in his statement, to adhere strictly to the facts contained in the [said four documents].” They also considered that admitting this testimony offered by the State, in the above-mentioned terms and without sharing with the parties the documentary grounds on which the testimony would mainly be based, would contravene the right to adversarial proceedings in relation to evidence, and the principle of the equality of arms. They also indicated that the State was trying to introduce new evidence after the time limits established in Articles 41 and 28 of the Rules of Procedure of the Court had expired.

38. In this regard, the order of the President of March 19, 2015 (*supra* para. 10) established that it would limit the statement by witness Boror de la Rosa if the State failed to forward the investigation file with the procedural actions conducted “to date” within a certain timeframe. In a brief of March 25, 2015 (*supra* para. 11), the State complied with this requirement by forwarding “three documents identified as Investigation Procedures,” which were part of the investigation file up until March 2014. The Court took note of the representatives’ observations on these investigation procedures forwarded by the State; however, their objection related to the probative weight and scope of the testimony of Mr. Boror de la Rosa, but did not affect its admissibility as part of the body of evidence. Accordingly, the Court finds it in order to admit the statement of the witness in the terms established in the President’s order.

### **C. Assessment of the evidence**

39. As established in Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as in its consistent case law concerning evidence and its assessment, the Court will examine and evaluate the documentary probative elements forwarded by the parties and the Commission, the statements, testimony and expert opinions, and the helpful evidence requested and incorporated by the Court in order to establish the facts of the case and to rule on the merits. To this end, it will abide by the principles of sound judicial discretion, within the corresponding normative framework, taking into account the whole body of evidence and the arguments submitted in the case.<sup>22</sup> Based on the Court’s case law, the statements of the presumed victims cannot be assessed in isolation, but rather in the context of all the evidence in the proceedings, insofar as they may provide further information on the presumed violations and the consequences.<sup>23</sup>

<sup>22</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No 37, paras. 69 al 76, and *Case of López Lone et al. v. Honduras, supra*, para. 40.

<sup>23</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No 33, para. 43, and *Case of López Lone et al. v. Honduras, supra*, para. 41.

## VI FACTS

40. In this chapter, the Court will examine, first, the context in which the facts of the case occurred and, second, the facts of the case concerning Claudina Isabel Velásquez Paiz, which include: (i) the report of her disappearance; (ii) the discovery of her corpse and the initial procedures conducted; (iii) the criminal investigation opened into her death; (iv) the investigation into the facts of the case opened by the Guatemalan Ombudsman; (v) the disciplinary proceedings opened in the Head Office for the Prosecution of Crimes against Life and Integrity, and the Criminal Investigation Department of the Public Prosecution Service, and (vi) the disciplinary proceeding opened in the Disciplinary Regime Unit of the Judiciary's Human Resources System.

### A. Context in which the facts of the case occurred

41. The **Commission** and the **representatives** asserted that this case formed part of a context of high levels of acts of violence against women and girls in Guatemala, as well as of the general impunity of such acts. In particular, the **Commission** affirmed that, since 2001, both national and international agencies, and also non-governmental organizations had expressed concern owing to the State's failure to comply with due diligence to prevent, investigate and punish acts of violence against women, and with regard to the context in which this was intensifying in Guatemala. In addition, it indicated that there was consensus that, despite the existence of several parallel institutions promoting the advancement of women, their mandates overlapped and, consequently, they suffered from weak coordination by the State and a lack of resources to implement their programs. It also underlined that the situation in Guatemala had not changed since the time of the facts of the cases of *Veliz Franco et al.* (2001) and *Velásquez Paiz et al.* (2005). It asserted that "the evidence points to a marked increase in the rates of violent deaths of women with specific signs of gender-based violence."

42. The **State** indicated that it was still necessary that both the petitioners and the Commission establish why the facts of this case conformed to the specific elements of gender-based violence. In this regard, it asserted that, in this case, it had not been proved that there were signs that the physical integrity of Claudina Velásquez had been violated before her death and, in particular, that she had been a victim of sexual violence. Thus, as established in the record of the removal of her body and the examinations performed by the Judiciary's forensic physician and experts from the Technical Department of the Public Prosecution Service, "Claudina's death cannot be considered to fall within the context of violence against women." It also stated that the statistics indicated that "men are the victims in more than 80% of the violent deaths in the country."

43. In the exercise of its contentious jurisdiction, the Court has examined the different historical, social and political contexts that situated the facts that allegedly violated the American Convention within the framework of the specific circumstances in which they occurred. In some cases, the context made it possible to characterize the facts as part of a systematic pattern of human rights violations, as a practice applied or tolerated by the State, or as part of massive, and systematic or generalized attacks on some sector of the population. The context has also been taken into account to understand and assess the evidence, and to determine the State's international responsibility, the appropriateness of certain measures of reparation, and the standards established with regard to the obligation to investigate such cases.<sup>24</sup>

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<sup>24</sup> Cf. *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 49, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, para. 43.

44. In this case, the Commission and the representatives based their arguments on the alleged context of violence against women in Guatemala, referring to the case of *Veliz Franco et al.*, as well as to documents of national and international agencies and non-governmental organizations. Meanwhile, the State asserted that, in the judgment in the case of *Veliz Franco et al.*, the Court had recognized that “before and after the facts [of that] case, [the State] ha[d] adopted diverse measures aimed at combating discrimination and violence against women. Thus, it was worth noting the Law for the Prevention, Punishment and Eradication of Domestic Violence of November 28, 1996, as well as the Law against Femicide and Other Forms of Violence against Women enacted in 2008.” Added to this, it indicated that, in the said judgment, the Court had acknowledged that “the State had taken measures to deal with the problems affecting women.” The Court will use these documents as a fundamental part of the evidence of the contemporary historical and political context of the facts of this case. On this point, the Court will take into account the arguments on the context submitted by the State, and also its comments on the evidence.

### **A.1. Homicidal violence in Guatemala, its specificity and evolution in relation to women victims, and State actions in the investigation of the murder of women**

45. The report “*Guatemala: Memoria del Silencio*” of the Commission for Historical Clarification (hereinafter “CEH”) stated that “[w]omen were victims of all forms of human rights violations during the armed conflict, but they also suffered from specific forms of gender-based violence.” The CEH reached the conviction that the devaluation of women was absolute and allowed members of the Army to attack them with total impunity, and it concluded that, during the internal armed conflict, the courts of justice revealed themselves to be incapable of investigating, processing, prosecuting and punishing those responsible.<sup>25</sup> In the case of *Veliz Franco et al.*, in its judgment of May 19, 2014, the Court indicated that this situation had persisted following the end of the armed conflict and that it was reflected in a culture of violence that had continued over the years and that included a substructure of violence that especially affected women. In this regard, the Court noted that, although it was difficult to pinpoint the exact moment when this started, in any case, in December 2001, there was a context of an escalation of homicidal violence against women in Guatemala and there were indications that the State was aware of this. Also, “among all the violent deaths of women that occurred in 2001 in Guatemala, the existence of gender-based homicides was not exceptional.”<sup>26</sup> Furthermore, the escalation of homicidal violence against women increased throughout the country in 2004 and 2005, and the evidence provided in this case indicates that high levels of this type of violence continue.<sup>27</sup>

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<sup>25</sup> Cf. *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 68. Citing, CEH, “*Guatemala: Memoria del Silencio*,” volume III, June 1999, pp. 13 and 27. Available at: [http://www.iom.int/seguridad-fronteriza/lit/land/cap2\\_2.pdf](http://www.iom.int/seguridad-fronteriza/lit/land/cap2_2.pdf)

<sup>26</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, paras. 73, 81 and 152. The Court notes that, in May 2008, Guatemala adopted Decree No. 22-2008 or the Law against Femicide and other forms of violence against women, which defined actionable offenses, including that of “femicide.” Article 3 of the law states that this offense consists in the “[v]iolent death of a woman in the context of unequal power relations between men and women, in the exercise of the power of gender against women.” Furthermore, in the judgment in the case of *González et al. (“Cotton Field”) v. Mexico*, this Court used the expression “‘gender-based murder of a woman,’ also known as femicide.” Cf. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 143. The Court clarifies that, for the purposes of this judgment, it will use the expression “gender-based murder of a woman” to refer to “femicide.”

<sup>27</sup> Cf. Economic and Social Council, “Report of the Special Rapporteur on violence against women, its causes and consequences,” Mission to Guatemala, E/CN.4/2005/72/Add.3, February 10, 2005, paras. 28 and 29. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/108/17/PDF/G0510817.pdf?OpenElement>; Office of the United Nations High Commissioner for Human Rights, Press release on the official visit to Guatemala, May 27, 2006. Available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/C7F2A41A172BC438C125717D0056605A?opendocument>; United Nations, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Guatemala, December 31, 2012, A/HRC/22/8, paras. 23 and 36. Available at: <https://www.refworld.org/docid/50f91f3a2.html>; United Nations, Committee against Torture, Final observations on the combined fifth and sixth periodic reports of



46. Specifically, in the case of *Veliz Franco et al.*, the Court noted that, according to the Guatemalan Judiciary, "official figures" revealed that there had been a "sustainable increase in violent deaths of women at the national level from 2001 to 2011." Also, the same document stated that, "according to a report," in 2012, "Guatemala occupied third place at the global level for violent deaths of women, with a rate of 9.7 femicides per 100,000 inhabitants."<sup>28</sup> Similarly, according to data from the National Institute for Statistics collected by the Monitoring Mechanism for the Convention of Belém do Pará (MESECVI), the number of murders of women in the country evolved as follows: 1995: 150; 1996: 163; 1997: 249; 1998: 190; 1999: 179; 2000: 213; 2001: 215; 2002: 266; 2003: 282, and 2004: 286. In addition, the Inter-American Commission asserted that State sources had confirmed that "from 2001 to 2004, 1,188 women were murdered, [and that] different sources confirm that [...] the level of violence and brutality used on the bodies of the victims increased."<sup>29</sup> The evidence presented in this case is consistent with the increase in the number of murders of women in the country because, according to the Public Prosecution Service's statistical data provided by the State, the evolution is as follows: 2005: 920; 2006: 1035; 2007: 1036; 2008: 1029; 2009: 981; 2010: 943; 2011: 704; 2012: 860; 2013: 784; 2014: 769, and up until April 2015: 249.<sup>30</sup>

47. That said, over and above the increase in the number of killings of women, in the case of *Veliz Franco et al.*, the Court received different information as regards the percentage of murders of women compared to those of men, and regarding the growth of this proportion. On the one hand, it was informed that, from 2001 to 2006, almost 10% of murders were committed against women. This percentage is similar if the period from 1986 to 2008 is considered, or the period from 2002 to 2012. It was over 10%, at least, in 2003 and 2004, years in which it had been more than 11% and 12%, respectively. Moreover, information also exists that, from 1995 to 2004, the increase in the growth rate of the killing of women was almost double that of the killing of men and that, in 2004 "the number of violent deaths of women had increased by 20% more than the number of violent deaths of men."<sup>31</sup>

48. Furthermore, in this case, the evidence is consistent as regards the exacerbation of the degree of violence against the women and the brutality used against the bodies of many of the victims. It also reveals that the murders of women in Guatemala occurred in a context of different forms of violence against them, such as violence within the family, and domestic violence, rape and violation, harassment, exploitation and others forms of sexual violence.<sup>32</sup>

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Guatemala, June 24, 2013, para. 13. Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsiqfk8caYZRrn8MoNjn4orHkCGqxO6Nu%2FXAFc4v8YxseJsuRAp9DK4NBYNjwWByJiwtUJ7gGgcNMsEqzDozUWk9ryKPF6m2PO72hWIelmE%2F9>, and Expert opinion provided by Karen Musalo by affidavit dated April 13, 2015 (evidence file, folio 6660).

<sup>28</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 75.

<sup>29</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 76.

<sup>30</sup> Cf. Statistical table on the overall number of murders from 2005 to April 2015 of the Department for Strategic Analysis of Crime, Crime Analysis Department, Public Prosecution Service (evidence file, folio 6841).

<sup>31</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 77.

<sup>32</sup> In the case of *Veliz Franco et al.*, the Court stated that it had been indicated that a characteristic of many of the cases of women victims of murder was the "brutality of the violence used," the presence of "signs of sexual violence" on the corpses or "their mutilation." Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 78. Citing, Amnesty International, "Guatemala. No protection no justice: Killings of women in Guatemala," June 2005, p. 8; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Mission to Guatemala, UN Doc. A/HRC/4/20/Add.2, February 19, 2007, paras. 22 and 26, and Guatemalan Ombudsman, Compendium "*Muertes Violentas de Mujeres 2003 a 2005*," p. 22. Expert witness Paloma Soria Montañez explained that in the "context of the justification and normalization of violence, we see that, in Guatemala, the figures for domestic violence, sexual violence, and violent deaths of women are very high. In this regard, the murders are committed with increasingly extreme violence and are generally accompanied by other types of injuries that reveal the misogyny with which they are perpetrated: sexual violence, mutilations, dismemberment, decapitation and injuries." The expert witness observed that, at the present time, there is a situation of structural violence against women in Guatemala. Cf. Expert opinion of Paloma Soria Montañez provided by affidavit on April 16, 2015 (evidence file, folios 6764 and 6765). Expert witness Karen

49. In addition, in the above-mentioned judgment in the case of *Veliz Franco et al.*, this Court considered that, in December 2001, as well as in the following years, there was a high rate of general impunity in the State; in other words, relating to different types of crimes and victims. In this context, most violent acts that led to the death of women remained unpunished, and that situation, both the general one and the specific one as regards violent acts against women, has not changed substantially up until the present.<sup>33</sup> The Court also noted that a high proportion of such crimes are not reported<sup>34</sup> and that the absence of the effective punishment of crime in general may be linked to the flaws in the investigations.<sup>35</sup> Added to this, the Court referred to reports and the testimony of women survivors and their families that mention the “tendency of investigators to discredit the victims and to blame them for their lifestyle or their clothes” and to question the victims on aspects of their personal and sexual relationships.<sup>36</sup> Information provided in this case indicates that, in investigations of crimes against women, the authorities and investigators still often tend to have this type of attitude.<sup>37</sup>

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Musalo indicated that “[i]n 2005, femicides in Guatemala were perpetrated in the context of many other forms of violence that occurred at a shocking level; the killings did not represent isolated incidents, but reflected the greater context of omnipresent violence against women. The violence extended over all sectors of society and included domestic violence and other forms of violence within the family: sexual violence, incest, trafficking in women for sexual exploitation, and sexual harassment. Although there are no official statistics, the few that do exist reveal a high incidence of violence in the home, in the community and among the public in general.” Cf. Expert opinion of Karen Musalo provided by affidavit on April 13, 2015 (evidence file, folio 6655). In 2006, the Committee against Torture expressed its concern regarding “the increase in violent killings of women, which often involve sexual violence, mutilations and torture.” Cf. United Nations, Committee against Torture, Consideration of reports submitted by States Parties under Article 19 of the Convention, CAT/C/GTM/CO/4, July 25, 2006, para. 16. Available at: <https://undocs.org/CAT/C/GTM/CO/4>. In 2004, the Special Rapporteur on the rights of women of the Inter-American Commission had received reports consistent with murders “to set an example,” in which the abuse reflected by the state of the victim’s body and the areas in which the corpses were left, is designed to send a message of terror and intimidation. She reported that she had “also received information and evidence on other forms of violence affecting women such as family and domestic violence, rape, sexual harassment and abduction, amongst others.” Cf. IACHR, Press release, No. 20/04, September 18, 2004, paras. 7 and 10. Available at <http://www.IACHR.oas.org/Comunicados/English/2004/20.04.htm>, and United Nations, Economic and Social Council, “Report of the Special Rapporteur on violence against women, its causes and consequences,” Mission to Guatemala, E/CN.4/2005/72/Add.3, February 10, 2005, paras. 33 and 34. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/108/17/PDF/G0510817.pdf?OpenElement>.

<sup>33</sup> In the case of *Veliz Franco et al.*, the State provided specific and detailed information on the measures adopted before and after December 2001, aimed at addressing discrimination and violence against women. Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, paras. 82 to 84 and 264. The Court has noted that, in addition to the information provided on that occasion, in this case information has been submitted on State actions in the investigation of murders of women. Cf. Expert opinion of Paloma Soria Montañez provided by affidavit on April 16, 2015 (evidence file, folio 6765); Expert opinion of Karen Musalo provided by affidavit on April 13, 2015 (evidence file, folios 6658 to 6660), and Inter-American Commission on Human Rights, “Access to Justice for Women Victims of Violence in the Americas,” January 20, 2007, paras. 18 and 130. Available at: <http://www.cidh.org/women/Access07/tocaccess.htm>.

<sup>34</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 87.

<sup>35</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 89.

<sup>36</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, paras. 90 and 212.

<sup>37</sup> Expert witness Karen Musalo explained that “[t]he fact that violence could be inflicted on women and girls with an almost certainty that it would not be punished, increased the levels of violence. The deficiencies in the legal system were documented at each stage of the investigation process; ranging from failure to respond to a missing person report, to contamination of the crime scenes in order to prejudice the case as a result of discrimination and gender stereotyping by the courts.” Cf. Expert opinion of Karen Musalo provided by affidavit on April 13, 2015 (evidence file, folio 6656). In this regard, expert witness Paloma Soria Montañez emphasized that “[t]he actual situation of violence is also accompanied by a context of impunity. Thus, violence against women is neither investigated nor condemned, and this allows us to affirm that the institutions responsible for security and justice have not reacted with due diligence.” Cf. Expert opinion of Paloma Soria Montañez provided by affidavit on April 16, 2015 (evidence file, folio 6765). In 2007, the Inter-American Commission observed the existence of delays when women victims of violence are reported to have disappeared and that the authorities commit two types of violation: (1) they fail to launch an immediate search for the victim, and (2) they discredit and blame the victim for what happened, thereby indicating that the missing woman does not deserve State efforts to locate and protect her. Cf. IACHR, “Access to Justice for Women Victims of Violence in the Americas,” January 20, 2007, para. 135. Available at: <http://www.cidh.org/women/Access07/tocaccess.htm>. In 2004, the Special Rapporteur for the rights of Women of the Inter-American Commission “heard evidence from victims in many cases that the different agencies responsible for investigating and pursuing the crime treated them in a disrespectful

50. The Court will not analyze the alleged facts in this case in isolation, but rather in the context described, in order to make it possible to understand the evidence and reach a precise determination of the facts. It will also use this context to assess whether specific standards for the obligations to prevent and to investigate human rights violations should be applied in this case. Lastly, the context will be taken into account, if appropriate, when establishing measures of reparation, specifically with regard to the obligation to investigate and the guarantees of non-repetition (*infra* Chapters VII.I, VII.II and VIII).

## **B. Facts of the case concerning Claudina Isabel Velásquez Paiz**

51. Claudina Velásquez was born on November 21, 1985, in Guatemala City, the daughter of Elsa Claudina Paiz Vidal and Jorge Rolando Velásquez Durán, and younger sister of Pablo Andrés Velásquez Paiz.<sup>38</sup> At the time of the facts of this case she was 19 years of age and was studying for a degree in Social and Legal Sciences in the Faculty of Social and Legal Sciences of the Universidad de San Carlos de Guatemala.<sup>39</sup>

52. It is an uncontested fact that, at approximately 8.30 a.m. on August 12, 2005, Claudina Velásquez left for the university with her brother. In the evening, she made and received several calls on her mobile phone, with both members of her family and other persons. According to her family, after Claudina had informed them that she was at a party, they had a final telephone conversation with her at around 11.45 p.m. and, subsequently, lost contact with their daughter, who failed to return home. The parents of Claudina Velásquez began to search for her when they were advised, at around 2 a.m., that she could be in danger by someone who said that they had been in telephone contact with Claudina and who went directly to the family home to alert them to this situation. At 2.12 a.m., the National Civil Police (hereinafter "PNC") received a report by the 110 number of a possible sexual assault in Colonia Roosevelt.

### **B.1. Report of her disappearance**

53. It is recorded in the evidence and unchallenged by the State that, on August 13, 2005, at around 2.50 or 2.55 a.m., the Claudina Velásquez's parents telephoned the National Civil Police and, in response, a patrol car arrived at the main guardhouse of Colonia Panorama at approximately 3 a.m. After the mother and father of Claudina Velásquez informed the police agents that they were searching for their daughter because she was missing, they followed the police patrol car searching for their daughter from the main entrance of Colonia Panorama to the entrance of Colonia Pinares, where the police agents told them that they "were unable to do anything more and would continue patrolling."<sup>40</sup> The police agents also indicated that they would

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manner. These reports show how discriminatory stereotypes operate in practice. These attitudes range from a lack of sensitivity to the situation of the person concerned, to openly hostile and discriminatory attitudes that devalue the person. They may, for example, blame the victim and her family for the way they live, the clothes they wear, or the time they spend outside their home; further, the definition of many of these crimes as "crimes of passion" without due investigation reflects a pattern of discrimination. This lack of respect for the dignity of the victims or their families has the effect of "re-victimizing" them." Cf. IACHR, Press release No. 20/04, September 18, 2004, para. 26. Available at: <http://www.cidh.oas.org/Comunicados/English/2004/20.04.htm>

<sup>38</sup> Cf. Birth registration on December 2, 1985 (evidence file, folio 3047).

<sup>39</sup> Cf. Certification of notes in the Faculty of Social and Legal Sciences of the Universidad de San Carlos de Guatemala (evidence file, folio 2629).

<sup>40</sup> Cf. Statement by Jorge Rolando Velásquez Durán of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 9); Statement by Elsa Claudina Paiz Vidal of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 16); Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folios 3868 to 3869); Interview of Elsa Claudina Paiz Vidal, Investigation report dated October 24, 2005 (evidence file, folio 51).

have "to wait at least 24 hours" before being able to report that Claudina Velásquez was missing.<sup>41</sup>

54. From 3 a.m. to 5 a.m. Claudina Velásquez's parents continued their search with the help of family members and friends. At around 5 a.m., her parents went to the police station to report her disappearance. There, they were again told that they had to wait 24 hours.<sup>42</sup> At around the same time, the Guatemalan Voluntary Firefighters received an anonymous call reporting the discovery of a corpse in Colonia Roosevelt and, therefore, went to the place indicated. Also, two PNC agents went to Colonia Roosevelt at approximately 5.30 a.m. At around 6.30 a.m., members of the Public Prosecution Service also arrived. Lastly, it is on record that it was only at 8.30 a.m. on August 13, 2005, that the report that Claudina Velásquez was missing was received in writing in the PNC Sub-Station San Cristóbal 1651.<sup>43</sup>

## **B.2. Discovery of the body and initial procedures**

55. Following orders given by the radio operator on duty of the central communications office of the 14<sup>th</sup> Precinct, at approximately 5.30 a.m. on August 13, 2005, two members of the PNC went to 10<sup>th</sup> Avenue, in front of the house numbered 8-87 "A", in Colonia Roosevelt, Zone 11, to make inquiries regarding a woman who "was possibly deceased." On their arrival, they recorded that "a lifeless female" was lying on the pavement.<sup>44</sup> Also present, were two members of the Guatemalan Voluntary Fire Service who had arrived based on an anonymous call received from a public telephone at around 5 a.m. (*supra* para. 54); they recorded that they were unable to identify the person "as the individual had no personal documents."<sup>45</sup> At approximately 6.30 a.m. the assistant prosecutor arrived, together with the forensic physician and the criminal investigation experts of the Public Prosecution Service, as well as members of the Crime Scene Protection Unit and the Unit to Combat Murders of Women of the PNC Criminal Investigation Service.<sup>46</sup> The evidence reveals that at 6.30 a.m. the area had already been cordoned off.<sup>47</sup>

56. The body was identified "as XX"<sup>48</sup> and, as noted in the forensic record of the crime scene, was lying "on the pavement covered with a white sheet, with a bullet casing and blood" and "there was a strong smell of alcohol in the air."<sup>49</sup> The woman was wearing a pair of blue jeans, a

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<sup>41</sup> Cf. Statement by Elsa Claudina Paiz Vidal of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 16); Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folio 198), and Statement by expert witness Álvaro Rodrigo Castellanos Howell during the hearing before the Inter-American Commission of March 27, 2012 (evidence file, folio 2723).

<sup>42</sup> Cf. Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 3871), and Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folio 198).

<sup>43</sup> Cf. Record of the reported disappearance of August 13, 2005 (evidence file, folio 21), and Resolution of the Ombudsman of July 20, 2006 (evidence file, folio 124).

<sup>44</sup> Cf. Communication No. 2544/2005 of August 13, 2005, PNC Station 142, Zone 11, Guatemala City (evidence file, folio 23).

<sup>45</sup> Cf. Record No. 828.09.2005 of the Guatemalan Voluntary Fire Service (evidence file, folio 33), and Statement of December 6, 2005 (evidence file, folio 3859).

<sup>46</sup> Cf. Communication No. 2544/2005 of August 13, 2005, PNC Station 142, Zone 11, Guatemala City (evidence file, folio 23); Report of August 16, 2005, of the Criminal Investigations Expert of the Public Prosecution Service (evidence file, folio 56), and Report of August 19, 2005, of the Criminal Investigation Experts of the Public Prosecution Service (evidence file, folio 40).

<sup>47</sup> Cf. Photographic album of the actions taken on August 13, 2005, at the place where the body of Claudina Velásquez was discovered (evidence file, folio 2797); Statement of the forensic physician of January 20, 2009, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 2880), and Video of the actions taken at the scene on August 13, 2005.

<sup>48</sup> Cf. Communication No. 2544/2005 of August 13, 2005, PNC Station 142, Zone 11, Guatemala City (evidence file, folio 23), and Form on the Removal and Transfer of Corpses dated August 13, 2005, Public Prosecution Service (evidence file, folio 25).

<sup>49</sup> Cf. Report on external medical examination and forensic processing of the crime scene dated August 30, 2005 (evidence file, folio 35).

black blouse, a pink sweater, black sandals, a brassiere (white/pink), and underpants (salmon/pale pink);<sup>50</sup> she had a navel piercing with a ring, a choker-style necklace, and there was "a bullet wound with powder tattooing on her forehead," as well as "bloodstained" clothes, "she was not wearing her brassiere," rather it was placed between her jeans and her hips, "belt removed," "zipper undone" and "blouse on back to front."<sup>51</sup> In addition, there was "reddish-purple bruising round her left eye and cheek" and scratches on her left knee and side, with no vital signs.<sup>52</sup>

57. Various objects at the scene of the crime were collected as evidence.<sup>53</sup> These were wrapped up and placed in the custody of the Public Prosecution Service's crime scene experts. In addition, according to information gathered by "the reporting agents," several individuals who were present stated that "a white taxi-type vehicle had stopped there, possibly to dump the body." However, these individuals "did not give their names for fear of reprisals." At around 7.30 a.m., the body was transferred by a police vehicle to the Zone 3 Judiciary's morgue.<sup>54</sup> The same day, the PNC police report was drawn up and the Public Prosecution Service's Form on the Removal and Transfer of Corpses was completed.<sup>55</sup>

58. The parents of Claudina Velásquez found out about the discovery of their daughter's body by a telephone call from a friend of one of Elsa Claudina Paiz Vidal's cousins, who advised them that there was an unidentified body with the characteristics of their daughter in the morgue of the Zone 3 Judiciary's Forensic Medicine Service. They went to the morgue,<sup>56</sup> where at around midday on August 13, 2005, the Forensic Medicine Service returned their daughter's body to

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<sup>50</sup> Cf. Communication No. 2544/2005 of August 13, 2005, PNC Station 142, Zone 11, Guatemala City (evidence file, folio 23); Form on the Removal and Transfer of Corpses of August 13, 2005, Public Prosecution Service (evidence file, folio 27), and Record No. 828.09.2005, of the Guatemalan Voluntary Fire Service (evidence file, folio 33); Report of August 16, 2005, of the Criminal Investigations Expert of the Public Prosecution Service (evidence file, folio 56), and Photographic album of the actions taken at the scene on August 13, 2005 (evidence file, folios 2796 to 2805).

<sup>51</sup> Cf. Report of August 19, 2005, of the Criminal Investigation Experts of the Public Prosecution Service (evidence file, folio 40), and Report on external medical examination and forensic processing of the crime scene of August 30, 2005 (evidence file, folio 35).

<sup>52</sup> Cf. Report of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 13, 2005 (evidence file, folio 71); Report of August 16, 2005, of the Criminal Investigations Expert of the Public Prosecution Service (evidence file, folio 56); Autopsy report of August 16, 2005 (evidence file, folios 30 and 31); Photographic album of the actions taken at the scene on August 13, 2005 (evidence file, folio 2802), and Statement of the forensic physician of January 20, 2009, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 2880).

<sup>53</sup> The objects collected as evidence were: (1) a bullet casing of unknown caliber; (2) a bullet of unknown caliber; (3) a packet of dehydrated vegetables marked "Ramen Cup," and (4) the pink sweater she wore with possible blood stains. Cf. Communication MP-001-2005-69430 of the Criminal Investigations Department of the Public Prosecution Service of September 23, 2005 (evidence file, folio 4613); Report No. 2242-05 of the Technical and Scientific Department of the Public Prosecution Service (evidence file, folio 4615), and Photographic album of the actions taken at the scene on August 13, 2005 (evidence file, folio 2804). It was recorded that the following accessories that she was wearing were also collected: (5) a small silver earring for pierced ear with a rose-colored pearl, and (6) a pink choker-type necklace with a medal portraying Osiris. Cf. Communication No. 2544/2005 of August 13, 2005, PNC Station 142, Zone 11, Guatemala City (evidence file, folio 23), and Report of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 13, 2005 (evidence file, folios 69 and 70).

<sup>54</sup> Cf. Communication No. 2544/2005 of August 13, 2005, PNC Station 142, Zone 11, Guatemala City (evidence file, folio 23).

<sup>55</sup> Cf. Communication No. 2544/2005 of August 13, 2005, PNC Station 142, Zone 11, Guatemala City (evidence file, folio 23), and Form on the Removal and Transfer of Corpses of August 13, 2005, Public Prosecution Service (evidence file, folio 26).

<sup>56</sup> Cf. Statement by Jorge Rolando Velásquez Durán of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folios 10 and 11); Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 3874); Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folio 198), and Interview with Elsa Claudina Paiz Vidal on August 15, 2005, by the investigator of the PNC Criminal Investigation Service (evidence file, folio 2903).

them, once they had identified her.<sup>57</sup> The same day, the death of Claudina Velásquez was registered and certified in the Civil Registry of the Municipality of Guatemala.<sup>58</sup>

### **B.3. Criminal investigation**

59. On August 13, 2005, following the discovery of Claudina Velásquez's body, the criminal investigation into her death was opened. The investigation was headed by the Office of the Prosecutor for Crimes against Life and Integrity of the Public Prosecution Service, under the jurisdictional control of the Criminal Trial Courts for Drug-trafficking and Environmental Crimes of Guatemala. In the course of the investigation, it has been verified that at least nine individuals have been linked to the incident<sup>59</sup> and that, over more than ten years, different assistant prosecutors of the Public Prosecution Service and agents of the National Police have been involved.

60. *Report on external medical examination and forensic processing of the crime scene.* On August 13, 2005, the forensic physician of the Public Prosecution Service who was present at the place where Claudina Velásquez's body was found, conducted the external medical examination and the forensic processing of the crime scene. The respective report was prepared on August 30, 2005, and sent to the agent in charge of the investigation.<sup>60</sup> On June 7, 2006, the assistant prosecutor requested that the report be expanded and corrected,<sup>61</sup> and on June 21, 2006, the forensic physician submitted his corrected report.<sup>62</sup> In a statement made before the assistant prosecutor on January 20, 2009,<sup>63</sup> the forensic physician added information on the findings at the scene of the crime.

61. *Autopsy reports.* On August 13, 2005, the Judiciary's forensic physician performed the autopsy on the body of Claudina Velásquez. On August 16, 2005, he prepared the respective report, which he sent to the assistant prosecutor of the Public Prosecution Service.<sup>64</sup> On October 5 and 13, 2005, June 7, 2006, and October 11 and 26, 2007, the assistant prosecutor requested the expansion, correction and clarification of certain aspects of the autopsy report.<sup>65</sup> In response, on October 7, 2005, June 7, 2006, and December 3, 2007, the forensic physician presented the requested expansions and clarifications.<sup>66</sup>

62. *Fingerprinting.* Because Claudina Velásquez's fingerprints had not been taken at the place where her corpse was found or in the Judiciary's morgue, the assistant prosecutor and the criminal investigation experts of the Public Prosecution Service went to the funeral home where a wake was being held for the corpse on August 13, 2005, and took her fingerprints. On August 16, the Criminal Investigations Expert sent the "ten fingerprint" sheet to the Technical and

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<sup>57</sup> Cf. Identification record of the Forensic Medicine Service of August 13, 2005 (evidence file, folio 77), and Resolution of the Ombudsman of July 20, 2006 (evidence file, folio 124).

<sup>58</sup> Cf. Death certificate of October 17, 2005 (evidence file, folio 3016).

<sup>59</sup> Cf. Communications of November 10, 2005, July 5, 2006, and June 22, 2009 (evidence file, folios 4264, 4734 and 4977). See also *infra* para. 67.

<sup>60</sup> Cf. Report on external medical examination and forensic processing of the crime scene of August 30, 2005 (evidence file, folios 35 and 36).

<sup>61</sup> Letter of the assistant prosecutor addressed to the Criminal Investigations Department of the Public Prosecution Service of June 7, 2006 (evidence file, folio 193).

<sup>62</sup> Letter of the forensic physician addressed to the assistant prosecutor of June 21, 2006 (evidence file, folio 38).

<sup>63</sup> Cf. Statement of the forensic physician of January 20, 2009, before the assistant prosecutor of the Public Prosecution Service (evidence file, folios 2879 to 2883).

<sup>64</sup> Cf. Autopsy report sent to the assistant prosecutor on August 16, 2005 (evidence file, folios 30 and 31).

<sup>65</sup> Cf. Letters of the assistant prosecutor of October 5 and 13, 2005, June 7, 2006, and October 11 and 26, 2007, addressed to the Forensic Medicine Service (evidence file, folios 4221, 4243, 3277, 4363, 4364, 4519 and 4514).

<sup>66</sup> Cf. Reports of the forensic physician of October 7, 2005, June 7, 2006, and December 3, 2007 (evidence file, folios 2976 to 2977, 3278 and 5073).

Scientific Department.<sup>67</sup> Initially, Jorge Rolando Velásquez Durán opposed fingerprints being taken, but he was advised that, if he did not allow this, “he would be accused of obstruction of justice and the investigation and that, if Claudina Isabel’s case should reach the trial stage, this could be affected if there was no record of the identification of her body.” Following these clarifications and on the advice of a lawyer, friend of the family, he agreed to fingerprints being taken. At her father’s request, Claudina Velásquez’s body was taken to a private area of the funeral home for this purpose.<sup>68</sup>

63. *Report of the Guatemalan Voluntary Fire Service.* On August 13, 2005, two members of the Guatemalan Voluntary Fire Service went to the place where the body of Claudina Velásquez was found. On September 6, 2005, a report on the incident was drawn up and forwarded to the prosecutor.<sup>69</sup> Also, in a statement made before the assistant prosecutor on December 6, 2005, one of the members of the Voluntary Fire Service added information on the findings made at the crime scene.<sup>70</sup>

64. *Investigation reports.* The investigation has been headed by the respective prosecutor with collaboration from the investigators of the Unit to Combat Murders of Women of the Criminal Investigation Service and the investigators of the PNC Special Criminal Investigation Division, as well as the criminal investigation experts and investigators of the Criminal Investigation Department of the Public Prosecution Service. In the course of their activities and functions, they have all prepared diverse investigation reports advising that they had carried out numerous interviews, inquiries, on-site inspections, sketches, planimetry, photographs and on-site procedures that had all been documented. They also made suggestions and comments in this regard. These reports are as follows:

- a) On August 13, 22 and 25, 2005,<sup>71</sup> the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service forwarded investigation reports on actions taken up until that time to the prosecutor;
- b) On August 23 and September 19, 2005, and July 18, 2008, respectively, the Criminal Investigations Expert of the Public Prosecution Service forwarded to the assistant prosecutor, the photographic album, the sketch of the crime scene and 10 discarded photographs of the crime scene taken on August 13, 2005.<sup>72</sup> Also, on August 16 and 19, October 14 and November 4, 2005, December 5, 2008, September 17, 2010, August 4, 10, 25, 26 and 30 and September 27, 2011, January 12 and 20, February 2, April 27 and August 27, 2012, September 22 and October 1, 2013, and January 30, 2014, the criminal investigation experts prepared investigation reports, which they sent to the assistant prosecutor;<sup>73</sup>

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<sup>67</sup> Cf. Report of the Criminal Investigations Expert of the Public Prosecution Service of August 16, 2005 (evidence file, folio 59), and Resolution of the Ombudsman of July 20, 2006 (evidence file, folio 124).

<sup>68</sup> Cf. Statement made by Jorge Rolando Velásquez Durán during the public hearing held on April 21 and 22, 2015, before the Inter-American Court; Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folios 3875 and 3876); Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folio 199); Psychiatric assessment of Elsa Claudina Paiz Vidal of December 2, 2010 (evidence file, folio 206).

<sup>69</sup> Cf. Record No. 828.09.2005, of the Guatemalan Voluntary Fire Service of September 6, 2005 (evidence file, folio 33).

<sup>70</sup> Cf. Statement made by a volunteer firefighter before the assistant prosecutor on December 6, 2005 (evidence file, folio 3859).

<sup>71</sup> Cf. Reports of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 13, 22 and 25, 2005 (evidence file, folios 68 to 71, 2901 to 2905 and 4986 to 4993).

<sup>72</sup> Cf. Letters of the Criminal Investigations Expert of August 23 and September 19, 2005, and July 18, 2008 (evidence file, folios 2795 to 2805, 4611 to 4612, and 4153 to 4158).

<sup>73</sup> Cf. Reports of the Criminal Investigations Expert of the Public Prosecution Service of 2005, 2008, 2010, 2011 and 2012 (evidence file, folios 56 to 57, 2893 to 2895, 4636, 4641 to 4644, 4877 to 4883, 3216 to 3217, 5308 to 5310,

- c) On October 24 and November 29, 2005, July 11, March 22, August 7, November 2 and December 18, 2006, and March 7, 2007, the investigators of the Criminal Investigation Department of the Public Prosecution Service prepared their respective investigation reports, which were sent to the assistant prosecutor,<sup>74</sup> and
- d) On May 9 and June 23, 2006, August 4 and 22 and September 22, 2011, and January 9 and 19, February 6 and March 12, 2012, the investigators of the PNC Special Criminal Investigation Division drew up investigation reports, which they forwarded to the assistant prosecutor.<sup>75</sup>

65. *Procedures conducted based on the evidence collected on the corpse of Claudina Velásquez.* On August 13, 2005, an order was issued to perform laboratory tests for blood alcohol level and prohibited drugs, and on rectal and vaginal swabs, and fingernail scrapings. In response, it is recorded that the forensic physician who performed the autopsy took blood, urine and liver samples, together with samples from her nails, and rectal and vaginal swabs.<sup>76</sup> The tests described below were performed on these samples.

66. On September 16, 2005, an expert report was issued on the alcohol and drug tests based on the blood, liver and urine samples, which found an alcohol level of 1,4g/L in the blood and 2,4 g/L in the urine, with no trace of drugs.<sup>77</sup> In addition, on November 18, 2011, and at the request of the assistant prosecutor, the Guatemalan National Institute of Forensic Science (hereinafter "INACIF") issued a report in which it provided a standard table of levels of alcohol according to which Claudina Velásquez was slightly inebriated (agitated).<sup>78</sup>

67. On September 26, 2005, the Criminal Investigation Department of the Public Prosecution Service issued a report which identified the presence of semen in the vagina, but not in the rectal cavity.<sup>79</sup> On January 24 and June 12, 2006, March 5, 2008, and July 28 and September 14, 2009, the Forensic Medicine Department of the Universidad de Granada, Spain, received blood samples from eight individuals linked to the investigation from the Guatemalan Public Prosecution Service in order to compare their genetic profiles to the genetic profile of the semen found on the vaginal swab taken from Claudina Velásquez. As a result, on February 3 and June 26, 2006, March 28, 2008, and October 5 and 23, 2009, that laboratory determined that a genetic profile compatible with a man was evident on the vaginal swabs, but that it did not coincide with the genetic profile of any of the suspects.<sup>80</sup> Finally, on June 6, 2012, the assistant prosecutor asked the INACIF to compare the result of the genetic profile of one more person

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5318 to 5322, 5339, 5340 to 5342, 5348 to 5377, 5465 to 5469, 5673 to 5676, 5685 to 5686, 5695, 6152, 6153, 6165 to 6166, 6204 to 6211 and 6274 to 6283).

<sup>74</sup> Cf. Reports of the investigator of the Criminal Investigations Department of the Public Prosecution Service of 2005, 2006 and 2007 (evidence file, folios 3002 to 3013, 3052 to 3055, 4760 to 4766, 4767 to 4778, 4688 to 4712, 4781 to 4784, 4805 to 4810, 4825 to 4827 and 4828 to 4831).

<sup>75</sup> Cf. Report of the investigators of the Criminal Investigation Division of the PNC of 2006, 2011 and 2012 (evidence file, folios 4996 to 4997, 4998 to 5003, 5305 to 5307, 5334 to 5336, 5457 to 5670, 5679 to 5682, 5696 to 5697 and 5754 to 5756).

<sup>76</sup> Cf. Form on the Removal and Transfer of Corpses of August 13, 2005, Public Prosecution Service (evidence file, folio 27), and Letter of the forensic physician of the Public Prosecution Service of August 30, 2005 (evidence file, folio 35).

<sup>77</sup> Cf. Expert report TOXI-05-2620 of September 16, 2005 (evidence file, folios 93 and 94), and Request for an expert opinion of August 26, 2005 (evidence file, folio 4182).

<sup>78</sup> Report TOXI-11-11371 INACIF-11-30730 of the National Institute of Forensic Science of November 18, 2011 (evidence file, folios 4172 and 5648 to 5649).

<sup>79</sup> Cf. Report BIOL-05-1455 of the Criminal Investigations Department of September 29, 2005 (evidence file, folio 90).

<sup>80</sup> Cf. Criminalistic report GU-C03/06 of February 3, 2006 (evidence file, folios 4678 to 4680); Criminalistic report GU-C12/06 of June 26, 2006 (evidence file, folios 4791 to 4793); Criminalistic report GU-C07/08 of March 28, 2008 (evidence file, folios 4871 to 4873); Criminalistic report GU-C72/09 of October 23, 2009 (evidence file, folios 4900 to 4902); Criminalistic report GU-C61/09 of October 5, 2009 (evidence file, folios 4904 to 4906), and Prosecutor's Report of March 12, 2012 (evidence file, folio 5865).



linked to the investigation, with the genetic profile of the semen found. On July 3, 2012, the INACIF advised the assistant prosecutor that they did not match.<sup>81</sup>

68. The evidence reveals, also, that on August 7, 2006, and April 6, 2009, the Forensic Medicine Department of the Universidad de Granada, Spain, received the blood samples of Jorge Rolando Velásquez Durán and Elsa Claudina Paiz Vidal from the Guatemalan Public Prosecution Service in order to compare their genetic profiles with the genetic profile obtained from the blood and vaginal and rectal swabs taken from Claudina Velásquez, and establish whether they were compatible. Accordingly, on September 29, 2006, and May 20, 2009, that laboratory determined that the genetic profile of Claudina Velásquez was compatible and that she was their biological daughter.<sup>82</sup>

69. On September 26, 2005, the Biology Section of the Technical and Scientific Department of the Public Prosecution Service issued a report determining the presence of animal blood on both hands of the presumed victim.<sup>83</sup> Consequently, on August 11, 2011, the assistant prosecutor asked the Universidad de San Carlos de Guatemala and the INACIF to perform a laboratory test to determine what kind of animal these blood samples corresponded to. In response, on August 19, 2011, the University's Toxicology Laboratory indicated that "it [was] not possible to conduct this type of test [...] in any of [its] laboratories," and that the test could be conducted in the Veterinary Faculty of a Venezuelan university.<sup>84</sup> Then, on September 1, 2011, the INACIF excused itself from responding to the request because "this institution does not handle veterinary-type tests."<sup>85</sup> On August 11, 2011, the assistant prosecutor asked the Administrator of the Roosevelt Market to provide information on the stalls in this market that had sold meat on August 12, 2005, as well as the names of the butchers shops and the personal data of the owners. On October 13, 2011, the Director of the Market forwarded the names and other information of 10 butcher's shops in the Market.<sup>86</sup>

70. *Procedures conducted based on evidence collected at the crime scene.* On August 13, 2005, a bullet and a bullet casing were collected from the crime scene as evidence, and also a packet of dehydrated vegetables marked "Ramen Cup," and the pink sweater that Claudina Velásquez was wearing. In this regard, it is recorded that various procedures were conducted and these are described in the following paragraphs.

71. On September 23, 2005, the Criminal Investigations Expert of the Public Prosecution Service sent a packet of dehydrated vegetables marked "Ramen Cup," and a pink sweater with possible blood stains to the laboratory for testing.<sup>87</sup> A laboratory report dated September 26, 2005, determined the presence of human group "O" blood on both pieces of evidence, and 10

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<sup>81</sup> Cf. Report of the INACIF addressed to the assistant prosecutor on July 3, 2012 (evidence file, folios 6139 to 6141), and Report on interpretive analysis of the Guatemalan Forensic Anthropology Foundation of June 11, 2012 (evidence file, folios 6143 to 6145).

<sup>82</sup> Cf. Criminalistic report GU-C20/06 of September 29, 2006 (evidence file, folios 4796 to 4799); Report of the Guatemalan National Institute of Forensic Science of April 7, 2008 (evidence file, folios 4946 to 4948), and Criminalistic report GU-C25/09 of May 20, 2009 (evidence file, folios 4913 to 4915).

<sup>83</sup> Cf. Report BIOL-05-1455 of the Criminal Investigations Department of September 29, 2005, (evidence file, folio 90).

<sup>84</sup> Cf. Communication DT.281.08.2011 of the Toxicology Department of the Universidad de San Carlos de Guatemala of August 23, 2011 (evidence file, folio 5332).

<sup>85</sup> Cf. Communication SEG-ESP-0854-2011 of the Guatemalan National Institute of Forensic Science of September 6, 2011 (evidence file, folio 5406).

<sup>86</sup> Cf. Letter of the assistant prosecutor addressed to the Administrator of the Roosevelt Market on August 11, 2011 (evidence file, folio 5793), and Letter from the Markets Directorate addressed to the assistant prosecutor on October 13, 2011 (evidence file, folios 5480 and 54819).

<sup>87</sup> Cf. Communication MP-001-2005-69430 of the Criminal Investigations Department of the Public Prosecution Service of September 23, 2005 (evidence file, folio 4613), and Analysis request, Report No. 2242-05 of the Technical and Scientific Department of the Public Prosecution Service (evidence file, folio 4615).

human hairs on the pink sweater.<sup>88</sup> The hairs were compared with those taken from Claudina Velásquez's clothes and provided to the prosecutor by Jorge Rolando Velásquez Durán on September 6, 2005.<sup>89</sup> In a report dated October 27, 2005, it was concluded that two of five hairs had macroscopic and microscopic characteristics similar to those found on the sweater,<sup>90</sup> and corresponded to Claudina Velásquez, according to the expanded report of June 12, 2006.<sup>91</sup> On July 11, 2006, the Criminal Investigation Department received a request from the assistant prosecutor dated June 6, 2006,<sup>92</sup> to fingerprint the packet of dehydrated vegetables. In response, on July 20, 2006, it was indicated that the test could not be conducted because the packet had not been preserved for lofoscopy analysis.<sup>93</sup>

72. On October 14 and December 6, 2005, following a request by the assistant prosecutor, the Ballistics Section of the Criminal Investigation Department of the Public Prosecution Service and the Ballistics Laboratory of the PNC General Directorate issued their respective opinions on ballistic tests carried out on the bullet and casing collected at the crime scene, in which they determined the caliber, type and probable make of the weapon used.<sup>94</sup> Also, on November 4, 2005, search, inspection, seizure and registration of weapons procedures were conducted in the buildings inhabited by two of the individuals linked to the criminal investigation;<sup>95</sup> as a result of these procedures, a revolver was found in the residence of one of them.<sup>96</sup> On January 17, 2006, this weapon was subjected to ballistic testing, which determined that its caliber was different from the bullet and casing collected at the scene of the crime.<sup>97</sup> In addition, on September 22, 2010, the search, inspection, seizure and registration procedure was carried out in four buildings related to a third person linked to the criminal investigation, with negative results.<sup>98</sup> The case file reveals that, subsequently, various procedures were carried out, but it is unclear to the Court how many and for how long; these are described in the following paragraphs.

73. On September 21, October 7 and November 29, 2005, April 7, July 6, 7, 27 and 28, August, 1, September 13 and November 6, 2006, March 14, 2008 and August 5, 2011, the assistant prosecutor asked the Department for the Control of Weapons and Ammunition for information on the existence of valid gun licenses and the number of weapons with their corresponding ballistic fingerprints of approximately 51 individuals.<sup>99</sup> In response, on October 28 and December 6, 2005, May 2 and 8, June 7, July 11, 13, 14, 17 and 27, August 7 and 10,

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<sup>88</sup> Cf. Report BIOL-05-1458 of the Public Prosecution Service of September 26, 2005 (evidence file, folio 4628)

<sup>89</sup> Cf. Record of the assistant prosecutor of September 6, 2005 (evidence file, folio 2986).

<sup>90</sup> Cf. Report BIOL-05-1827 of November 3, (evidence file, folio 4637).

<sup>91</sup> Cf. Communication MP001-2005-69430-C.A. of June 8, 2006 (evidence file, folio 4365), and Expanded Report No. BIOL-06-01273 of June 12, 2006 (evidence file, folio 4748).

<sup>92</sup> Cf. Communication MP-001-2005-69430 of the assistant prosecutor of June 6, 2006 (evidence file, folios 4394 and 4395).

<sup>93</sup> Cf. Report DACT-06-0466 RDC-06-14692 of the Criminal Investigations Department of July 20, 2006 (evidence file, folio 4720).

<sup>94</sup> Cf. Communication BAL-05-1308/1639 of the Criminal Investigations Department of October 14, 2005 (evidence file, folios 4803 and 4804), and Communication MP001/2005/6930 of the Ballistics Laboratory of the PNC General Directorate of December 6, 2005 (evidence file, folios 4994 and 4995).

<sup>95</sup> Cf. Resolution of the judge of the case of November 3, (evidence file, folios 3677 and 3680).

<sup>96</sup> Cf. Letter of November 7, 2005, forwarding the records of the search, inspection, registration and seizure of weapons (evidence file, folios 3027 to 3029).

<sup>97</sup> Cf. Communication BAL-05-1836 of the Criminal Investigations Department of January 19, 2006 (evidence file, folio 4659).

<sup>98</sup> Cf. Letter of November 10, 2005, forwarding the records of the search, inspection, registration and seizure of weapons (evidence file, folios 3227 to 3231).

<sup>99</sup> Cf. Communications requesting valid gun licenses issued by the assistant prosecutor (evidence file, folios 4195 to 4197, 4239, 4295 to 4296, 4332 to 4344, 4390, 4401, 4424, 4429, 4439, 4458, 4459, 4461 to 4463, 4532, 5016 to 5035, 5046 to 5047, 5049 to 5051, 5064 to 5068 and 5311).

September 12, 14 and 20 and November 8, 2006, April 3, 2008, August 9, 2011, and March 26 and May 31, 2014, the assistant prosecutor received the information related to his request.<sup>100</sup>

74. In addition, on June 5 and July 5, 2006, the section prosecutor asked the chiefs of Precincts 11, 14 and 16 of the National Civil Police, for information on the number of weapons seized and on the weapons used to commit crimes between August 12, 2005, and July 4, 2006, within the district covered by each Precinct.<sup>101</sup> Also, on September 11 and 12, 2006, the assistant prosecutor asked the head of the Department for the Control of Weapons and Ammunition to advise whether Precincts 14 and 16 had remitted weapons to him, specifically 9 mm caliber firearms.<sup>102</sup> In response, on September 14 and 20, 2006, the Department sent the list of 9 mm caliber firearms that it had received from Precincts 14 and 16.<sup>103</sup>

75. Furthermore, there is evidence that, following a request by the assistant prosecutor, ballistic analyses was performed on June 30, August 18 and October 5, 2006, comparing different ballistic fingerprints with the bullet and casing collected at the crime scene, all with negative results.<sup>104</sup> Meanwhile, on August 20, 2008, and January 31, 2011, ballistic tests were conducted to identify various firearms and the caliber of different cartridges, casings and bullets was established.<sup>105</sup>

76. On November 7, 2006, the Department for the Control of Weapons and Ammunition of the Ministry of National Defense remitted eight firearms with their respective magazines, cartridges and casings to the Ballistics Laboratory of the Technical and Scientific Department of the Public Prosecution Service<sup>106</sup> and, on September 16, 2008, these were forwarded to the INACIF Central Evidence Storage Unit.<sup>107</sup> Subsequently, the assistant prosecutor asked the INACIF Criminalistics Laboratories Unit to advise whether, the database of the Integrated Ballistics Identification System (hereinafter "IBIS System") contained the ballistic fingerprints of the firearms registered with the General Directorate for the Control of Weapons and Ammunition (DIGECAM), and to determine whether the said eight firearms were included in the IBIS System records. On October 25, 2011, the Criminalistics Laboratories Unit advised that it had no record of the ballistic fingerprints of the firearms registered in the DIGECAM and that, at that time, it was not possible to respond to the request owing to the material impossibility of entering into the IBIS system cases that occurred before December 7, 2010, the first date on which data was introduced into the system.<sup>108</sup> Lastly, and following a request from the assistant prosecutor, there is evidence that, at least by November 15, 2012, the INACIF had entered the casing and the bullet collected into the IBIS System, without these corresponding to any other items entered into the system at that time.<sup>109</sup>

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<sup>100</sup> Cf. Communications addressed to the assistant prosecutor on valid gun licenses (evidence file, folios 5016 to 5035, 5046 to 5047, 5049 to 5051, 5064 to 5068, 5076, 5260, 5298, 5311, 6288 and 6515).

<sup>101</sup> Cf. Communications of the section prosecutor of June 5 and July 5, 2006 (evidence file, folios 4387 to 4389).

<sup>102</sup> Cf. Communications of the assistant prosecutor addressed to the head of the Department for the Control of Weapons and Ammunition (evidence file, folios 4425 and 4426).

<sup>103</sup> Cf. Reports addressed to the assistant prosecutor dated September 14 and 20, 2006 (evidence file, folios 5066 and 5067).

<sup>104</sup> Cf. Communication of the Sub-Directorate General of Criminal Investigation of June 30, 2006 (evidence file, folios 5004 and 5005); Communication BAL-06-1226/1674/1938 of August 18, 2006 (evidence file, folios 4787 to 4789), and Communication BAL-06-2480 of October 5, 2006 (evidence file, folios 4801 and 4802).

<sup>105</sup> Cf. Communication BAL-06-3144 of August 20, 2008 (evidence file, folios 4885 to 4890), and Communication BAL-11-0882 INACIF-114964 of January 31, 2011 (evidence file, folios 5768 to 5771).

<sup>106</sup> Cf. Report of the Department for the Control of Weapons and Ammunition of the Ministry of National Defense of November 7, 2006 (evidence file, folios 5607 and 5608).

<sup>107</sup> Cf. Report of the National Institute of Forensic Science of September 16, 2008 (evidence file, folios 5609 and 5610).

<sup>108</sup> Cf. Report of the National Institute of Forensic Science of October 25, 2011 (evidence file, folio 5611).

<sup>109</sup> Cf. Report of the National Institute of Forensic Science of November 15, 2012 (evidence file, folio 6269).

77. *Statements received.* The file reveals that, at least over the period between 2005 and 2013, the prosecutor and the assistant prosecutor received numerous statements in the course of the investigation.<sup>110</sup>

78. *Procedures to identify the last places that Claudina Velásquez presumably visited.* On September 4, 2005, the prosecutor and the assistant prosecutor went to the gas station in Zone 8, Mixco, to request the security video recordings on August 12 and 13, 2005. The gas station administrator advised them that his security system only had 30 cassettes which he re-recorded one month after they had been used. Therefore, he no longer had those recordings.<sup>111</sup> Also, on October 30, 2007, the manager of the gas station of Zone 8, Mixco, was asked for information on the invoices issued for instantaneous soups on August 12 and 13, 2005, and how they were paid for.<sup>112</sup> On April 23, 2008, the assistant prosecutor acknowledged receipt of the requested information and asked for additional information on the types of soup billed.<sup>113</sup>

79. *Procedures related to the search for a taxi-type vehicle.* On September 21, October 5 and 14 and November 9 and 28, 2005, March 28, June 6 and August 6, 2006, March 31, April 28 and November 18, 2008, September 15, and October 5, 6, 7 and 31, 2011, and November 28, 2013, the assistant prosecutor asked various entities and institutions for information on different vehicles, taxi companies, and driving licenses.<sup>114</sup> This information was provided and/or forwarded on October 10 and 14, and November 10 and 30, 2005, March 28, June 6 and July 14, 2006, April 15, and 19, and May 20, 2008, October 5, 7, 10, 21 and 31, 2011, and March 19 and 20, April 17, May 10, October 1, 29 and 30, and November 30, 2013.<sup>115</sup>

80. *Precautionary detentions ordered.* On October 3, 2005, following the prosecutor's request,<sup>116</sup> the judge of the case ordered the precautionary detention of two individuals linked to the criminal investigation. On August 10, 2006, following a request by one of those subject to precautionary detention, the judge of the case decreed that it be lifted in his case, because "there [was no evidence that] he was linked to the proceedings" and "the investigation [was] not subject to time limits."<sup>117</sup> The file contains no information on the situation of the second person for whom precautionary detention was ordered.

81. *Procedures related to the supposed telephone calls that the presumed victim made and received before her death, and use of telephones.* Following authorization by the judge of the case, on October 18 and 28 and November 9, 2005; July 24 to 26, August 7, October 31 and November 15, 2006; May 7 and 30 and July 5, 2007; March 31 and April 2, 2008; April 13,

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<sup>110</sup> Cf. Statements before the prosecutor and the assistant prosecutor (evidence file, folios 2671 to 2675, 2879 to 2883, 2906 to 2932, 2935 to 2952, 2984 to 2985, 2987 to 2989, 3219 to 3221, 3786 to 3805, 3808 to 3853, 3859 to 3879, 3890 to 3901, 4007, 4012 to 4143, 4949 to 4953, 5653 to 5664, 5677 to 5766, 5772 to 5775, 6146 to 6151, 6194 to 6196, 6183 to 6196, and 6264 to 6268).

<sup>111</sup> Cf. Statement of September 4, 2005, of the administrator of the Texaco "Millennium" Gas Station (evidence file, folio 3806).

<sup>112</sup> Cf. Communication MP001/2005/69430 of October 30, 2007, addressed to the Texaco "Millennium" Gas Station" (evidence file, folios 4522 and 4524).

<sup>113</sup> Cf. Communication MP001/2005/69430 of April 23, 2008, addressed to Star Plus, Sociedad Anónima (evidence file, folio 4550).

<sup>114</sup> Cf. Requests during 2005, 2008, 2011 and 2013 (evidence file, folios 4187, 4188, 4189, 4192 to 4194, 4220, 4238, 4261, 4294, 4391, 4419, 4545, 4553, 5476, 5479 and 6284).

<sup>115</sup> Cf. Communications during 2005, 2006, 2008, 2011 and 2013 (evidence file, folios 4161, 4391, 5010 to 5014, 5019, 5040 to 5045, 5077 to 5122, 5454, 5476, 6221 to 6230 and 6258), and Records of driving license data from 2005, 2006, 2011, and 2013 (evidence file, folios 4984, 5244 to 5253, 5630 to 5647, 6537 to 6543 and 6517 to 6519).

<sup>116</sup> Cf. Communication MP001/2005/69430 of October 24, 2005, addressed to the judge of the case (evidence file, folio 2970), and Communication of the Second Criminal Trial Judge for Drug-trafficking and Environmental Crimes of October 3, 2005 (evidence file, folios 3675 and 3676).

<sup>117</sup> Cf. Communication of the Second Criminal Trial Judge for Drug-trafficking and Environmental Crimes of August 10, 2006 (evidence file, folios 3155 to 3158 and 3759 to 3762).

2009, and April 26, 2012,<sup>118</sup> the assistant prosecutor requested several national telephone companies, banks and universities to provide detailed information on different telephone numbers, user names, list of calls made and received, and other data. Only some of these requests were answered on October 17, 19, 25 and 27, and November 2, 14 and 24, 2005; July 27, 28 and 31, August 2, 3, 9, 10, 11, and 18, October 4, and November 17, 2006; May 22 and 30, and July 5, 2007; April 2, 2008; April 13, 20 to 24, May 4, 5, 11, 13 and 14, and June 5 and 10, 2009, and January 26, February 8, and March 5, 6 and 13, 2012,<sup>119</sup> advising that: (i) their systems did not store text messages; (ii) they had no record of calls made on August 12 and 13, 2005, because, usually, they only kept information for the last three months; (iii) some of the telephone numbers did not correspond to numbers assigned by the Telecommunications Superintendence, and (iv) some numbers corresponded to the pre-paid service and, therefore, the company had no record of the personal data of the user or owner of the telephone line. Finally, on October 27, 2010, the assistant prosecutor asked the Head of the Analysis Department of the Public Prosecution Service to make a thorough analysis of the calls made and received between August 10 and 15, 2005, by various telephones.<sup>120</sup>

82. *Activity of Jorge Rolando Velásquez Durán as joint complainant.* On November 15, 2005, Jorge Rolando Velásquez Durán asked the judge of the case to allow him to intervene provisionally in the proceedings as joint complainant, and on November 28, 2005, the judge agreed to his request.<sup>121</sup> The case file reveals that, at least, in briefs dated July 19, August 3 and 25, and October 12, 2006, January 12, 2007, July 18, 2008 and February 5, 2009,<sup>122</sup> Mr. Velásquez Durán made various observations, comments and recommendations regarding the investigation to the Prosecutor General and to the Head of the Public Prosecution Service. It also reveals that Mr. Velásquez Durán took part in several meetings with the assistant prosecutor and the prosecutor in charge of the investigation.

83. *Procedures to reconstruct the events.* On June 26, 2006, two procedures were conducted to reconstruct the events in the presence of the assistant prosecutor and the crime scene experts responsible for planimetry and photography, as well as with the presence of several individuals.<sup>123</sup> Four individuals who were linked to the criminal investigation at that time took part in this procedure.

84. *Information on individuals who were released from prison on August 12 and 13, 2005.* Following the request of the assistant prosecutor, on July 12 and 13, 2006, the Director General of Prisons requested and received information on individuals who had been released from 15 prisons on August 12 and 13, 2005. According to the information obtained from those prisons, approximately 64 individuals were released on those dates.<sup>124</sup> This information was forwarded to the assistant prosecutor.

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<sup>118</sup> Cf. Communications of the assistant prosecutor 2005, 2006, 2007, 2008, 2009 and 2012 (evidence file, folios 4240, 4242, 4244, 4250, 4257 to 4260, 4420, 4421, 4414 to 4418, 4445 to 4456, 4437, 4491 to 4493, 4546, 4588 to 4597, 4601 to 4604 and 5776).

<sup>119</sup> Cf. Communications of 2005, 2006, 2007, 2008, 2009 and 2012 (evidence file, folios 2783 to 2792, 4957 to 4970, 4976, 5127 to 5242, 5688 to 5694, 5698, 5731 to 5752 and 5757).

<sup>120</sup> Cf. Communication of the assistant prosecutor of October 27, 2006, addressed to the judge of the case (evidence file, folio 4436).

<sup>121</sup> Cf. Letter of November 15, 2005 (evidence file, folios 3043 to 3046), and Decision of the judge of the case of November 28, 2005 (evidence file, folio 3050).

<sup>122</sup> Cf. Letters of July 19, August 3 and 25 and October 12, 2006, January 12, 2007, July 18, 2008, and February 5, 2009 (evidence file, folios 2648 to 2663, 2759 to 2770, and 2773 to 2776).

<sup>123</sup> Cf. Procedures for the reconstruction of the events on June 26, 2006 (evidence file, folios 4008 to 4011).

<sup>124</sup> Cf. Communications regarding individuals who were released from prison on August 12 and 13, 2005, issued by 15 prisons on July 12 and 13, 2006 (evidence file, folios 5262 to 5297). See, also: Communication of the Directorate General of the Prison System of June 28, 2006 (evidence file, folios 4756 to 4759).

85. *Reward offered in the case.* Within the criminal investigation, and with the agreement of the Minister of the Interior, a reward of one hundred thousand quetzals (Q.100,000.00) was offered to anyone providing information leading to the identification and capture of those responsible for the death of Claudina Isabel Velásquez Paiz; this was published in the Guatemalan media on January 16, 2008.<sup>125</sup> Also, on March 6, 2012, an adviser to the office of the Ministry of the Interior sent the prosecutor 500 posters offering a reward for information in this case.<sup>126</sup> On October 28 and November 8, 2011, someone contacted the Public Prosecution Service stating that he had information on the case and was interested in the reward.<sup>127</sup> This individual made a statement before the assistant prosecutor on April 20, 2012, in which he explained that another person was going to provide the information and, also, that the information possessed by the latter was not direct, because yet another person had provided it to him, so that "it was not reliable and more like a rumor."<sup>128</sup>

86. *Report to the 110 emergency number.* Regarding the report received by the PNC via the 110 telephone number referring to a possible sexual assault, the evidence in this case includes a copy of the PNC form identified as "Confidential information and calls for help to the 110 system," which was found in the "closed files" of the CECOM (110 system) and sent by the coordinator of the PNC 110 Division to the Ministry of the Interior's investigator on September 13, 2007. The form merely indicates that at 2.12 a.m. on August 13, 2005, a "neighbor" reported a possible sexual assault on 7<sup>th</sup> street "A" 11-32, Zone 11, Colonia Roosevelt, to the PNC 110 emergency number.<sup>129</sup> The file reveals that, on June 26, 2008, the assistant prosecutor asked PNC Precinct 14 to forward information about the incident reported in this telephone call.<sup>130</sup> In response, on July 18, 2008, the PNC Sub-General Directorate of Public Security advised that: (a) the system for recording emergency calls started in February 2006; (b) since there was no file of any kind, there was no information on the identity of the person in charge or the agents assigned to surveillance and patrols on August 13, 2005, and (c) the logbook for August 12 and 13, 2005, did not record any information on a possible sexual assault on 7<sup>th</sup> Street "A", in front of the building numbered 11-32 in Colonia Roosevelt, Zone 11.<sup>131</sup>

87. *Expert analysis of the ballistic trajectory.* On July 23, 2008, the assistant prosecutor asked the PNC Criminalistics Bureau to perform an expert analysis based on the photographic album of the crime scene, the video on the processing of the crime scene, the autopsy report and its corresponding expansion, and the sketch of the scene of the crime, in order to establish: (1) the ballistic trajectory based on the elements provided; (2) the position of the victim when she received the bullet's impact; (3) the position of the perpetrator when he shot her; (4) the distance between the barrel of the gun and the target; (5) the perpetrator's height; (6) whether the perpetrator was right-handed or left-handed, and (7) any other information that could be obtained and that was considered useful for clarification of the facts.<sup>132</sup> In response, the ballistics expert assigned to the task advised that it was not possible to calculate the ballistic trajectory on the basis of the elements provided, because this had to be calculated at the site where the incident took place.<sup>133</sup> Subsequently, on May 19, 2009, the assistant prosecutor

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<sup>125</sup> Cf. Communication MP001-2005-69430 of February 25, 2008 (evidence file, folios 5301 to 5303), and Decision of the Ministry of the Interior of September 25, 2008 (evidence file, folios 5346 and 5347).

<sup>126</sup> Cf. Communication REF. 23-2012 of March 6, 2012 (evidence file, folio 5753).

<sup>127</sup> Cf. Report of January 12, 2012 (evidence file, folios 5671 and 5672).

<sup>128</sup> Cf. Statement before the Public Prosecution Service on April 20, 2012 (evidence file, folio 5772)

<sup>129</sup> Cf. Copy of report to the 110 number of August 13, 2005, sent by the 110 Division Coordinator of the PNC on September 13, 2007 (evidence file, folios 96 to 98).

<sup>130</sup> Cf. Communications MP001-2005-69430 requesting evidence, dated June 26, 2008 (evidence file, folios 4558 and 4560).

<sup>131</sup> Cf. Communications MP001-2005-69430 with answers dated July 18 and 28, 2008 (evidence file, folios 5007 and 5008).

<sup>132</sup> Cf. Communication of the assistant prosecutor of July 23, 2008 (evidence file, folios 4564 and 4565).

<sup>133</sup> Cf. Undated letter from the Ballistics Expert to the PNC Criminalistics Bureau (evidence file, folio 5009).

asked the INACIF to make an expert analysis of the ballistic trajectory. In response, on June 9, 2009, the INACIF advised that the file contained "a series of reports that were of no use to determine the ballistic trajectory"; accordingly, based on the data at hand, it was not feasible to comply with the request to determine the ballistic trajectory.<sup>134</sup>

88. *Psychiatric profile of victim, perpetrator and crime scene.* On August 7, 2008, the assistant prosecutor asked a medical expert from the Psychiatry Area of the INACIF to prepare a psychiatric profile of victim, perpetrator and crime scene in the case of Claudina Velásquez. In response, on November 24, 2008, the expert issued a forensic psychiatric report in which he included his conclusions on the psychiatric and psychological profile of the victim and the perpetrator as well as an assessment of the crime scene, and considerations on the perpetrator based on the crime scene.<sup>135</sup> On January 15, 2009, the assistant prosecutor asked that the report be expanded.<sup>136</sup>

89. *Regarding the police assigned to the Zone.* On August 24 and October 17, 2011, the prosecutor and the assistant prosecutor requested PNC Precincts 16 and 14 to provide information on the police units assigned to the Precincts on August 12 and 13, 2005, as well as their roles and the services provided with the respective logbooks, among other matters. This information was forwarded to the assistant prosecutor on August 30 and October 17, 19 and 20, 2011.<sup>137</sup>

90. *Certifications of land registration records.* On September 2 and November 2, 2011, the Municipal Land Registration and Nomenclature Section of the IUSI Land Registration and Administration Directorate sent the assistant prosecutor land registration information on 39 buildings located in Colonia Roosevelt.<sup>138</sup>

#### **B.4. Investigation by the Guatemalan Ombudsman**

91. On February 6, 2006, the Guatemalan Ombudsman opened a file on a report filed by Jorge Rolando Velásquez Durán in relation to the criminal investigation into the death of Claudina Velásquez. On July 20, 2006, the Ombudsman issued a resolution in which he declared "the violation of the obligation to respect and ensure the rights to life, personal security, justice within a reasonable time, and effective judicial protection of Claudina Isabel Velásquez Paiz and her next of kin," and also the "[v]iolation of the right of the victim's next of kin who are seeking justice to be treated with dignity and respect."

92. Furthermore, he declared the following authorities responsible for the said violations: (a) the prosecution agent in charge of Prosecution Office No. 10 "for failing to duly coordinate the

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<sup>134</sup> Cf. Communication of the National Institute of Forensic Science of June 9, 2009 (evidence file, folios 4921 to 4923).

<sup>135</sup> Cf. Psychiatric profile of victim, perpetrator and crime scene in the case of the violent death of Claudina Isabel Velásquez Paiz (evidence file, folios 4875 and 4876).

<sup>136</sup> He requested that the report be expanded as follows: (1) develop the psychiatric profile of the perpetrator, because this is not included in the report of November 24, 2008; (2) from a psychiatric perspective, how do you perceive the actions of the perpetrator in relation to the victim's clothes and position? (3) based on the background information, indicate if it is possible to establish whether or not the act was perpetrated by a person who was known to the victim; (4) establish whether trying to hide the victim's brassiere in her jeans indicated that the perpetrator was male; (5) determine whether the crime scene was orderly or disorderly, and (6) determine, based on the perpetrator's profile, whether he was an organized or disorganized criminal. Cf. Communication of the assistant prosecutor of January 15, 2009 (evidence file, folio 4582).

<sup>137</sup> Cf. Communications of August 24, September 9, and October 19 and 21, 2011 (evidence file, folios 5378 to 5402, 5484, to 5542 and 5809).

<sup>138</sup> Cf. Communications of the Municipal Land Registration and Nomenclature Section of the IUSI Land Registration and Administration Directorate of September 5 and November 4, 2011 (evidence file, folios 5407 to 5447, 5618 and 5619).

functional course of the investigation and to ensure that his staff processed the crime scene appropriately [...] including when taking fingerprints, during which they interrupted the mourning process of the Velásquez Paiz family”; (b) the Director of the Judiciary’s Forensic Medicine Service because “he allowed the doctors in his service to conduct deficient procedures when performing forensic autopsies and to present incomplete reports or reports with incorrect information,” and (c) the Judiciary’s forensic physician who performed the autopsy on the body of Claudina Velásquez “owing to serious omissions and inexcusable shortcomings in the performance of the autopsy.” Lastly, he made several recommendations to the Prosecutor General, the Head of the Public Prosecution Service, the Director General of the National Civil Police, the congressional Human Rights Committee and the Judiciary’s Forensic Medicine Service.<sup>139</sup>

### **B.5. Disciplinary procedures in the Head Office for the Prosecution of Crimes against Life and Integrity and in the Criminal Investigation Department**

93. The file reveals that disciplinary procedures were opened in the Head Office for the Prosecution of Crimes against Life and Integrity, as well as in the Criminal Investigation Department, against the assistant prosecutor and three criminal investigation experts who took part in the initial moments of the investigation into the death of Claudina Velásquez.<sup>140</sup> In this regard, on February 11, 2009, the disciplinary procedure against the assistant prosecutor was declared admissible and he was sanctioned with a written reprimand.<sup>141</sup> Moreover, on July 5, 2012, the Criminal Investigation Department advised the prosecutor that, in 2009, two of the criminal investigation experts had been sanctioned with a verbal reprimand and, in the case of the third, it was decided that the procedure against him was without merit.<sup>142</sup>

### **B.6. Disciplinary Procedure in the Disciplinary Regime Unit of the Judiciary’s Human Resources System**

94. On November 6, 2006, the Judiciary’s Internal Audit Office prepared a detailed investigation report as a result of the July 20, 2006, resolution of the Guatemalan Ombudsman (*supra* para. 91).<sup>143</sup> On this basis, on November 8, 2006, the Disciplinary Regime Unit of the Judiciary’s Human Resources System (hereinafter “Disciplinary Regime Unit”) admitted for processing the complaint filed by the Ombudsman against the forensic physician who had performed the autopsy on the body of Claudina Velásquez.<sup>144</sup> At the conclusion of this process, in a decision of November 29, 2006, the Disciplinary Regime Unit declared the forensic physician against whom the complaint had been filed in contempt of court, inhibited itself from hearing the proceeding considering that it referred to a minor negligence, and forwarded a copy of the decision to the Head of the Forensic Medicine Service to continue the respective procedure. According to the Disciplinary Regime Unit, when carrying out his work, the forensic physician “had done so negligently” for the following two reasons:

The forensic physician provided a report to the assistant prosecutor of the Public Prosecution Service, indicating that he had performed an autopsy on an unidentified person of female sex, when this person had already been identified as Claudina Isabel Velásquez Paiz[. Also,] it was proved that, when the defendant expanded the

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<sup>139</sup> Cf. Resolution of the Ombudsman of July 20, 2006 (evidence file, folios 3255 to 3262).

<sup>140</sup> Cf. Communication SUPGMP-953-2011 of the General Supervision Unit of the Public Prosecution Service of August 19, 2011 (evidence file, folio 5331).

<sup>141</sup> Cf. Decision of the Prosecutor for Crimes against Life and Personal Integrity of February 11, 2009 (evidence file, folios 6176 to 6179).

<sup>142</sup> Cf. Communication of the Criminal Investigations Department of July 5, 2012 (evidence file, folio 6142).

<sup>143</sup> Cf. Detailed investigation report of the Judiciary’s Internal Audit Assistant of November 6, 2006 (evidence file, folios 3265 to 3270).

<sup>144</sup> Cf. Decision of the Disciplinary Regime Unit of the Judiciary’s Human Resources System of November 8, 2006 (evidence file, folio 3281).



autopsy report of October 7, 2005, as requested, he indicated that the time of the victim's death had been between seven and eleven hours before the autopsy was performed, which was unrealistic because, at the request of the Public Prosecution Service, he had to correct this because he had acted negligently in the course of his work.<sup>145</sup>

95. The forensic physician and the Ombudsman filed appeals for the review of this decision on November 9 and December 7, 2006.<sup>146</sup> On January 17, 2007, the Judiciary's Office of General Management declared that the appeal filed by the forensic physician was unfounded and the appeal filed by the Ombudsman was partially founded and concluded that the errors committed were minor, serious and extremely serious, and had caused serious harm to the human rights of third parties and to the image of the Judiciary. Consequently, it recommended that the Disciplinary Regime Unit impose the corresponding sanction.<sup>147</sup> On January 25, 2007, the forensic physician filed an appeal to annul<sup>148</sup> the decision of January 17, 2007. In response, on February 1, 2007, the Judiciary's Office of General Management declared that the remedy filed was inadmissible.<sup>149</sup> Against this decision, the forensic physician filed an appeal for annulment on February 12, 2007.<sup>150</sup> The Judiciary's Office of General Management rejected this appeal on March 12, 2007.<sup>151</sup> Then, as a result of the decision of January 17, 2007, on February 12, 2007, the Disciplinary Regime Unit declared the forensic physician in contempt of court and that the complaint filed was admissible because he had provided a forensic report "indicating that he had performed an autopsy on an unidentified person of female sex, when that person had been identified." In addition, it classified the physician's conduct as gross negligence and imposed 20 days' suspension without salary as a sanction.<sup>152</sup> The forensic physician filed appeals to annul this decision on February 21 and October 2, 2007.<sup>153</sup>

96. On September 5, 2007, the President of the Judiciary forwarded a certification of the proceeding to the Disciplinary Regime Unit so that it could issue a decision imposing the respective sanction.<sup>154</sup> In response, on October 16, 2007, the Disciplinary Regime Unit declared the forensic physician in contempt of court, that the complaint filed against him was admissible, and classified his conduct as gross negligence because, when he presented the expanded autopsy report, he had indicated that the time of death of Claudina Velásquez had been between seven and eleven hours before the autopsy had been performed, which he had to correct at the request of the Public Prosecution Service. Accordingly, it imposed a sanction of 20 days' suspension of duties without pay.<sup>155</sup>

97. On October 30, 2007, the forensic physician requested an amendment to the proceeding<sup>156</sup> because the appeal for annulment had not been decided (*supra* para. 95). In response, on October 31, 2007,<sup>157</sup> the President of the Judiciary ordered that the proceeding

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<sup>145</sup> Cf. Decision of the Disciplinary Regime Unit of the Judiciary's Human Resources System of November 29, 2006 (evidence file, folios 3325 to 3331).

<sup>146</sup> Cf. Briefs of the appeal for review of November 9 and December 8, 2006 (evidence file, folios 3337 to 3340 and 3346 to 3349).

<sup>147</sup> Cf. Decision of the Office of General Management of the Judiciary of January 17, 2007 (evidence file, folios 3377 to 3380).

<sup>148</sup> Cf. Brief of the appeal for annulment of January 25, 2007 (evidence file, folios 3394 to 3396).

<sup>149</sup> Cf. Decision of the Office of General Management of the Judiciary of February 1, 2007 (evidence file, folios 3403 and 3404).

<sup>150</sup> Cf. Brief of the appeal for annulment of February 12, 2007 (evidence file, folios 3424 and 3425).

<sup>151</sup> Cf. Decision of the Office of General Management of the Judiciary of March 12, 2007 (evidence file, folio 3437).

<sup>152</sup> Decision of the Disciplinary Regime Unit of the Judiciary's Human Resources System of February 12, 2007 (evidence file, folios 3406 to 3410).

<sup>153</sup> Cf. Briefs of the appeal for annulment of February 21 and October 2, 2007 (evidence file, folios 3442 to 3448 and 3500 to 3510).

<sup>154</sup> Cf. Decision of the President of the Judiciary of September 5, 2007 (evidence file, folio 3494).

<sup>155</sup> Cf. Decision of the Disciplinary Regime Unit of the Judiciary's Human Resources System of October 16, 2007 (evidence file, folios 3515 to 3519).

<sup>156</sup> Cf. Brief requesting an amendment of the proceeding of October 30, 2007 (evidence file, folios 3527 to 3529).

<sup>157</sup> Cf. Decision of the President of the Judiciary of October 31, 2007 (evidence file, folio 3530).

abide by the decision of September 5, 2007 (*supra* para. 96). On October 30 and 31, 2007, the forensic physician and the Ombudsman filed, respectively, appeals for annulment of the decision of October 16, 2007.<sup>158</sup> Specifically, the Ombudsman requested that a sanction of suspension or dismissal should be imposed. On February 25, 2008, the President of the Judiciary declared that the appeals filed were unfounded.<sup>159</sup> On March 13, 2008, the forensic physician filed an appeal against this decision.<sup>160</sup> On February 25, 2008, the Pre-trial and Amparo Chamber of the Supreme Court of Justice, declared that the appeal was unfounded.<sup>161</sup> In this regard, the Supreme Court of Justice considered that the forensic physician's employment relationship had ended on December 5, 2007, because such services had been eliminated throughout the Republic since the INACIF entered into functions. Therefore, it considered that "the disciplinary sanction [was] inapplicable to the said former employee." Despite this, "the responsibility for committing gross negligence attributed to the [forensic physician had been] fully proved and established, and thus it [was] not admissible to annul the contested decision, and this [should] remain on the employment file of the Judiciary's former employee."

98. On October 9, 2008, the forensic physician filed an appeal for amparo against the decision of July 29, 2008. On April 30, 2009, the Constitutional Court acting as a Special Court of Amparo denied the amparo as notoriously improper.<sup>162</sup> Lastly, on July 1, 2009, the Disciplinary Regime Unit ordered the archive of the disciplinary administrative procedure because the forensic physician had terminated his employment relationship with the Judiciary on December 5, 2007.<sup>163</sup>

## **VII MERITS**

99. It has been alleged that the proven facts in this case constitute violations of several rights and obligations recognized in the American Convention, and also in Article 7 of the Convention of Belém do Pará. This allegations will be examined in the following order:

- a) In Chapter VII.I, the arguments referring to the alleged violation of the rights to life, personal integrity and privacy, in relation to Articles 1(1) and 2 of the American Convention and Article 7 of the Convention of Belém do Pará, to the detriment of Claudina Isabel Velásquez Paiz;
- b) In Chapter VII.II, the arguments referring to the alleged violation of the rights to judicial guarantees, judicial protection and equality before the law, in relation to Articles 1(1) and 2 of the American Convention and Article 7 of the Convention of Belém do Pará, to the detriment of the next of kin of Claudina Isabel Velásquez Paiz, as well as the right to freedom of expression, movement and equality before the law, to the detriment of Claudina Velásquez, and
- c) In Chapter VII.III, the arguments referring to the alleged violation of the rights to personal integrity, and to respect for honor and recognition of dignity, to the detriment of the next of kin of Claudina Isabel Velásquez Paiz.

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<sup>158</sup> Cf. Briefs of the appeal for annulment of October 30 and 31, 2007 (evidence file, folios 3533 to 3539).

<sup>159</sup> Cf. Decision of the President of the Judiciary of February 25, 2008 (evidence file, folios 3568 to 3570).

<sup>160</sup> Cf. Brief of the appeal of March 13, 2008 (evidence file, folios 3577 to 3579).

<sup>161</sup> Cf. Decision of the Pre-trial and Amparo Chamber of the Supreme Court of Justice of February 25, 2008 (evidence file, folios 3584 to 3588).

<sup>162</sup> Cf. Decision of the Constitutional Court acting as a Special Court of Amparo of April 30, 2009 (evidence file, folios 3595 to 3601).

<sup>163</sup> Cf. Decision of the Disciplinary Regime Unit of the Judiciary's Human Resources System of July 1, 2009 (evidence file, folio 3607).

**VII.I. Rights to life<sup>164</sup> and personal integrity,<sup>165</sup> in relation to Articles 1(1)<sup>166</sup> and 2<sup>167</sup> of the American Convention and Article 7 of the Convention of Belém do Pará,<sup>168</sup> to the detriment of Claudina Isabel Velásquez Paiz**

**A. Arguments of the Commission and of the parties**

100. The **Commission** indicated that the State had failed to comply with its positive obligation to avoid danger to Claudina Isabel Velásquez Paiz, and to ensure her life and personal integrity, taking into account that, in 2005, it was aware of an increase in the violence against girls and women in the country and, consequently, of a real and imminent risk of a possible sexual assault and murder. It argued that, following the first attempt by the parents of the presumed victim to report her disappearance, there was no indication that the State had adopted immediate and effective measures to find her alive. Indeed, the police agents not only failed to conduct a diligent investigation, but even refused to receive the report during the initial hours, which were of vital importance in the case of a young woman reported missing. Furthermore, they did not take the report or the parent's concern about the disappearance seriously, despite that known context of violence against women and girls. In this case, Claudina Velásquez was found dead with indications of violence and other ill-treatment, including sexual violence. Thus, the State's lack of prevention had an impact on her personal integrity. Accordingly, the Commission concluded that the State had violated "Article 4(1) of the American Convention in relation to Article 1(1) of the Convention, Article 5 of the American Convention in relation to Article 1(1) of the Convention, and Article 7 of the Convention of Belém do Pará."

101. Furthermore, during the hearing and in response to the arguments of the State (*infra* para. 104), the Commission indicated that "the expression 'reasonable possibility of avoiding the consummation of the risk,' according to the original case law of the European Court in the case of *Osman v. The United Kingdom*, meant verifying whether the authorities [...] had taken all the measures within the scope of their powers which, judged reasonably, might have been expected

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<sup>164</sup> Article 4(1) of the Convention establishes: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

<sup>165</sup> Article 5(1) of the Convention establishes: "Every person has the right to have his physical, mental, and moral integrity respected".

<sup>166</sup> Article 1(1) of the Convention establishes: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

<sup>167</sup> Article 2 of the Convention establishes: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms".

<sup>168</sup> Guatemala ratified the Convention of Belém do Pará on January 4, 1995, and deposited its instrument of ratification with the General Secretariat of the Organization of American States on April 4, 1995, without reservations or limitations. Article 7 of this instrument establishes: "The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: (a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; (b) apply due diligence to prevent, investigate and impose penalties for violence against women; (c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; (d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; (e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; (f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; (g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies, and (h) adopt such legislative or other measures as may be necessary to give effect to this Convention."

to avoid this risk. [...] [I]n this case, it is not necessary to determine whether or not Claudina was alive when the authorities became aware of the situation of risk and whether that situation would have an impact on the possibility of finding her. What is necessary, is to determine whether or not the authorities who were informed that Claudina was missing took the measures within the scope of their powers that were or could be expected [...] in order] to avoid that risk.” Moreover, it stressed that the State had had at least one hour to look for Claudina Velásquez and, “[i]n any case, the determination of the exact time of [her] death [...] is an aspect regarding which the authorities incurred in delays and errors that mean that it is still not known with certainty.”

102. The **representatives** argued that, in the context of the facts of the case, the abuses perpetrated against Claudina Velásquez constituted, individually and collectively, violence against women according to the American Convention and the Convention of Belém do Pará. They indicated that the State had violated its obligation to avoid danger to Claudina Velásquez and to ensure her rights to life, personal integrity, honor and dignity; first, before she went missing by not implementing and executing effective policies and programs to prevent and punish violence against women, including a lack of political will resulting in the failure to allocate the necessary resources to address gender-based violence.<sup>169</sup> Second, the State violated these rights following the reports by her parents and before her body was found, because it was fully aware of the dangerous situation in which she found herself owing to the pattern of violence against women and the murder of women in Guatemala. Despite this, it twice refused to receive those reports, requiring a delay of 24 hours to admit them.<sup>170</sup> They also argued that the body of Claudina Velásquez was found with indications of violence and other ill-treatment. In addition, they argued that “the rape of Claudina Isabel constituted, in itself, one of the most aggressive interferences in her privacy as a woman. When she was sexually assaulted, her body was invaded in the most arbitrary manner, affecting her most intimate sphere.”<sup>171</sup> Furthermore, in response to the State’s argument that, at most, it would have had one hour to find Claudina Velásquez (*infra* para. 104), the representatives argued that “there is no doubt that, during this hour, it would have been possible to save her” if, instead of rejecting the family’s report, they had searched for the presumed victim. Consequently, they asked the Court to declare the violation of Articles 4, 5 and 11 of the American Convention, together with non-compliance with the obligations contained in Articles 1(1) and 2 of this instrument and Article 7 of the Convention of Belém do Pará, to the detriment of Claudina Velásquez.<sup>172</sup>

103. Lastly, the representatives argued that, “to determine whether the State had a reasonable possibility of preventing or avoiding the violation of her rights, the time that elapsed between the moment that her parents reported that she was missing [...] and the probable time of her death – determined many months after her body had been found – was of no importance. What was important [...] is the information that the authorities had when the parents made their report: that Claudina Isabel was missing and that there was an extremely high probability that her life and integrity were threatened, given the context of femicide in Guatemala and, following

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<sup>169</sup> In this regard, in their final written arguments, they argued that, regarding the programs that the State said it had adopted to combat femicide, only six measures were established before 2005, when the death of Claudina Velásquez occurred. Added to this, those programs “achieved almost nothing,” because “[t]he Government did not provide the necessary funding to enable them to fulfill their mandates.”

<sup>170</sup> In their final written arguments, they alleged, for the first time, that the State authorities told the parents of Claudina Velásquez that “she’s undoubtedly with her boyfriend,” and that these comments were a direct reflection of the gender stereotypes held by State officials and reveal how they did not taken her disappearance seriously. These arguments will not be considered as they were time-barred.

<sup>171</sup> According the representatives, there are strong indications that Claudina Velásquez was a victim of sexual violence, such as the position of the clothes on the corpse and the semen found in her body.

<sup>172</sup> In their final written arguments, the representatives argued, for the first time, that the sexual violence of which Claudina Velásquez was allegedly a victim, together with the fact that there was a high probability that she had been transferred from one place to another while still alive, constituted cruel, inhuman and degrading treatment that the State failed to prevent. These arguments will not be considered as they were time-barred.

the screams of Claudina Isabel, the abrupt interruption of her telephone call with [ZMB].” They emphasized that, when analyzing whether the State had violated its positive obligation to protect life, the European Court of Human Rights “has always assessed the reasonable nature of the measures taken by the authorities from the perspective of the knowledge they had when they were notified of the danger to the victim. The victim’s actual fate – which can only be known *a posteriori* – does not enter into consideration.”

104. The **State** stressed that, in this case, it is not being argued that a State agent had killed Claudina Velásquez or violated her integrity. It also alleged that the rights to life, personal integrity, and honor and dignity were protected by domestic law. In addition, regarding the time before Claudina Velásquez went missing, it argued that neither the Commission nor the representatives had argued that a threat against her existed, and the Court had acknowledged in the case of *Veliz Franco et al.* that Guatemala had taken steps to deal with the problem of violence against women prior to December 2001. With regard to the time before the discovery of the body, it asserted that it was following 3 a.m., when the police arrived, that it could be indicated that the State became aware of the disappearance of the presumed victim. It clarified that there is no evidence that an attempt was made to file a “missing person” report, and it could be assumed that the police, when they indicated that they would continue their patrol, were also going to continue looking for the young woman. In its final written arguments, the State emphasized that those police agents went immediately to the place where Claudina Velásquez had been seen for the last time and supported the family members in their search in the area of Colonia Panorama and nearby. Thus, the absence of a written report should be assessed as a simple formality, regardless of the conduct and attitude of the police agents. In addition, the State asserted that Claudina Velásquez was probably deceased before it became aware that she was missing, so that it had no possibility of avoiding or preventing the perpetration of a crime. “And, at best, the State would only have had one hour to find her, because her body appeared about two hours after the phone call to the police.” According to the State, the Court should take into account the reasonable nature of the time that it had to protect the life and integrity of Claudina Velásquez. Lastly, it added that the examinations conducted by the doctors of the Judiciary and of the Public Prosecution Service did not determine that Claudina Velásquez had suffered any violation of her integrity before her death. Consequently, the State asserted that it had not violated Articles 4, 5 and 11 of the American Convention,<sup>173</sup> in relation to Articles 1(1) and 2 of this instrument, and Article 7 of the Convention of Belém do Pará.

### **B. Considerations of the Court**

105. In this case it has not been alleged that the State violated its obligation to respect the rights to life, personal integrity and honor and dignity. The dispute has been presented only with regard to the State’s alleged non-compliance with the obligation to ensure those rights; on the one hand, by failing to prevent their violation and, on the other, by failing to investigate the case effectively. In this chapter, the Court will only examine the State’s alleged non-compliance with its obligation to prevent the violation of the said rights. The alleged failure to comply with the obligation to investigate will be examined in the following chapter of this judgment.

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<sup>173</sup> Regarding the alleged violation of the right to honor and dignity, the State also indicated that it had not taken a position that discriminated against the victim or her family, and no order had been issued that a victim should be categorized in order to determine the subsequent investigation procedure. These arguments will be examined in the following chapter on the State’s obligation to investigate.

106. According to Article 1(1) of the Convention, States are obliged to respect and ensure the human rights recognized therein.<sup>174</sup> In particular, in the case of the rights to life, to personal integrity, and to honor and dignity, these obligations imply not only that the State must respect them (negative obligation), but they also require that the State take all appropriate measures to ensure them (positive obligation).<sup>175</sup>

107. This Court has established that the obligation to ensure the rights to life and personal integrity presupposes the obligation of States to prevent violations of these rights. This obligation of prevention encompasses all those measures of a legal, political, administrative or cultural nature that promote the safeguard of human rights and ensure that eventual violations of these rights are truly considered and dealt with as wrongful acts that, as such, may result in punishment for those who commit them, as well as the obligation to compensate the victims for the harmful consequences. It is also evident, that the obligation to prevent is an obligation of means or conduct, and failure to comply with it is not proved by the mere fact that a right has been violated.<sup>176</sup>

108. Article 7 of the Convention of Belém do Pará establishes State obligations to prevent, punish and eradicate violence against women<sup>177</sup> that define and supplement the State obligation to comply with the rights recognized in the American Convention, such as those established in Articles 4 and 5.<sup>178</sup> In this regard, the Court has established that States must adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they must have an adequate legal protection framework that is enforced effectively, and prevention policies and practices that permit an efficient response to complaints.<sup>179</sup> The prevention strategy must be comprehensive; that is, it must prevent the risk factors and also reinforce institutions so that they can provide an effective response to cases of violence against women. In addition, States must adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence.<sup>180</sup> All this must take into account that, in cases of violence against women, States also have the general obligations contained in the American Convention, and specific obligations based on the Convention of Belém do Pará.

109. That said, based on the Court's case law, it is clear that a State cannot be held responsible for every human rights violation committed between individuals subject to its jurisdiction. Indeed, the State's Convention obligation of guarantee does not mean that it has unlimited responsibility in the case of every act or action of private individuals, because its obligation to adopt measures of prevention and protection for individuals in their relations with one another are conditioned by its awareness of a situation of real and immediate risk for an

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<sup>174</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 163, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283, para. 138.

<sup>175</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 165 and 166, and *Case of Gonzales Lluay et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 168.

<sup>176</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 519.

<sup>177</sup> The Convention of Belém do Pará defines violence against women in its Article 1 as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."

<sup>178</sup> Cf. *Case of the Miguel Castro Castro v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 346, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 133.

<sup>179</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>180</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 258, and *Case of Veliz Franco et al. v. Guatemala, supra*, para. 136.

identified individual or group of individuals – or that the State should be aware of this situation of real and immediate risk – and the reasonable possibility of preventing or avoiding this risk.<sup>181</sup> In other words, even though the legal consequence of an individual's act or omission is the violation of certain human rights of another individual, this cannot automatically be attributed to the State because the particular circumstances of the case and the implementation of this obligation of guarantee must be taken into account.<sup>182</sup> In this regard, the Court clarifies that, in order to establish non-compliance with the obligation to prevent violations of the rights to life and personal integrity, it must be verified that: (i) the State authorities knew, or ought to have known of the existence of a real and immediate risk for the life and/or personal integrity of an identified individual or group of individuals, and (ii) these authorities failed to take the necessary measures within the scope of their powers that, judged reasonably, might have been expected to prevent or avoid that risk.<sup>183</sup> This has been the Court's criteria since the delivery of the judgment in the case of *the Pueblo Bello Massacre v. Colombia*,<sup>184</sup> and it has been reiterated in its consistent case law.<sup>185</sup>

110. In the instant case, there are two moments at which the obligation of prevention must be analyzed. The first is before the disappearance of Claudina Velásquez and the second is before the discovery of her body.

*B.1. Before the disappearance Claudina Velásquez: general obligation to prevent the disappearance and murder of women*

111. Regarding the first moment – that is, before the disappearance of Claudina Velásquez, the Court has already established that, in December 2001, there was a context of an escalation of homicidal violence against women in Guatemala, that this increase had grown constantly throughout the country in 2004 and 2005, and that, to this day, the levels continue to be very

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<sup>181</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia, Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 123, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 140. In this regard, the European Court of Human Rights has understood that: "[...] not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materializing. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual [...] from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk." Cf. ECHR, *Case of Kiliç v. Turkey*, No. 22492/93, Judgment of March 28, 2000, paras. 62 and 63, and ECHR, *Osman v. the United Kingdom*, No. 23452/94, Judgment of October 28, 1998, paras. 115 and 116.

<sup>182</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 123, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 140.

<sup>183</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 123, and *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 143.

<sup>184</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, paras. 123 and 124, citing ECHR, *Case of Kiliç v. Turkey*, No. 22492/93, Judgment of March 28, 2000, paras. 62 and 63, and ECHR, *Osman v. the United Kingdom* No. 23452/94, Judgment of October 28, 1998, paras. 115 and 116. The original text of paragraph 116 of the case of *Osman* indicates: "[...] In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. [...] For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge."

<sup>185</sup> See, *Case of González et al. ("Cotton Field") v. Mexico, supra*, paras. 283 and 284; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 155; *Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 188; *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, para. 128; *Case of Luna López v. Honduras. Merits, reparations and costs*. Judgment of October 10, 2013. Series C No. 269, para. 124; *Case of the Human Rights Defender et al. v. Guatemala, supra*, para. 143, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia, supra*, para. 527.

high (*supra* para. 45). It is plain that, at the time of the facts of this case, August 2005, the State had already been alerted to this situation by both national and international agencies, as well as civil society organizations, in documents that date from 2001 to February 2005.<sup>186</sup> It is worth emphasizing that, by January 2003, the Ombudsman's Office, a State organ, had already linked the existence of violent acts committed against women in 2001 to "discrimination, with cultural roots in Guatemalan society," and indicated that this violence was inserted in a context of discrimination against women in Guatemala in different spheres.<sup>187</sup> Moreover, as already indicated, the level of violence against women has increased since then, as have the acts of cruelty inflicted on the bodies of many of the victims. Added to this, the killings of women in Guatemala take place in a context of different forms of violence against them, such as intrafamilial and domestic violence, rape and violation, harassment, exploitation, and other forms of sexual violence (*supra* para. 48).

112. That said, in its judgment in the case of *Veliz Franco et al.*, the Court stressed that, before<sup>188</sup> and after the facts of that case, which took place in 2001, the State had taken various measures aimed at addressing discrimination and violence against women. In this regard, it underlined the Law for the Prevention, Punishment and Eradication of Domestic Violence of November 28, 1996, and the Law against Femicide and Other Forms of Violence against Women (hereinafter also "Law against Femicide") enacted in 2008.<sup>189</sup>

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<sup>186</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, paras. 75, 76 and 78 to 80, citing, *inter alia*: (i) (footnote 88) Inter-American Commission on Human Rights, "Fifth Report on the Situation of Human Rights in Guatemala", OEA/Ser.L/V/II. 111, Doc. Rev., April 6, 2001, Chapter XIII, para. 41. Available at: <http://www.cidh.org/countryrep/Guate01eng/chap.13.htm>; (ii) (footnote 89) The Guatemalan Ombudsman, "Informe Anual Circunstanciado 2001," Guatemala, January 2002, pp. 44 to 46; (iii) (footnote 89) Amnesty International, "Informe de crímenes contra mujeres in Guatemala," August 2004, pp. 11 and 13; (iv) (footnote 75) Inter-American Commission on Human Rights, Press Release 20/04, "The IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination," September 18, 2004, para. 7; (v) (footnotes 85 and 86) Amnesty International, "Guatemala. No protection, no justice: killings of women," June 2005, p. 8, and (vi) (footnote 74) United Nations Economic and Social Council. Commission on Human Rights, sixty-first session, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Mission to Guatemala. UN Doc. E/CN.4/2005/72/Add.3, February 10, 2005, para. 28. The report of the Inter-American Commission of April 2001 states that, at that time, violence against women was "a serious problem in the country," and that "although [at that time it was] difficult to estimate the depth and breadth of the problem with precision, it [was] reported that violence based on gender [was] a leading cause of death and disability among women between 15 and 44 years of age." The State indicated that the "statistics may be correct." Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 79.

<sup>187</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 80, citing, the Guatemalan Ombudsman, "Informe Anual Circunstanciado 2001", Guatemala, January 2002, pp. 44 to 46. This documents indicates that discrimination had "historically [...] excluded [women] from the enjoyment of fundamental rights and, therefore, they are victims of abuse, ill-treatment and violence." Similarly, in a document with data from 2000 to 2003, Amnesty International, considered "the patriarchal culture as a specific cause [of the] phenomenon [of violence]" in Guatemala, explaining that "[t]he patriarchal system constructed under a pattern of a mainly masculine exercise of power and domination easily places women in a situation of vulnerability." Amnesty International, "Informe de crímenes contra mujeres in Guatemala", August 2004, pp. 11 and 13.

<sup>188</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 82 and footnote 93. The Court noted that, prior to December 2001, the State had taken steps related to the problem of violence against women. In 1996, the Law to Prevent, Punish and Eradicate Domestic Violence was enacted, Decree No. 97-1996, November 28, 1996, Guatemala. In 2000 and 2001, this was supplemented by regulations and by the creation of Coordinating Body for the Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI). In 2000, the Presidential Secretariat for Women (SEPREM) was created and, over the period 2001-2006, the National Policy for the Promotion and Development of Guatemalan Women was established, together with its Equal Opportunities Plan. Also, the Law on the Comprehensive Promotion and Dignification of Women was enacted in March 1999 and, in 2001, the Social Development Law was promulgated, by means of congressional Decrees No. 7-99 and No. 42-2001, respectively. In its article 16, the latter law establishes that "social development" and "population" policies shall include measures and actions aimed, *inter alia*, at punishing and eradicating any kind of individual or collective violence, abuse and discrimination against women, in observance of the international conventions and treaties ratified by Guatemala. Coordinating Body for the Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI), "PLANOVI 2004-2014: National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women."

<sup>189</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 82.



113. In this case, the State referred to diverse measures or mechanisms implemented to address the problem of violence against women in Guatemala. The Court notes that the State mentioned: (i) measures implemented before the facts of this case, that is, before August 2005; (ii) measures implemented following the facts of the case,<sup>190</sup> and (iii) measures that Guatemala guarantees have been implemented but regarding which it did not provide clear information on the dates they were implemented.<sup>191</sup> In order to analyze the first moment of the obligation to

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<sup>190</sup> *Public policies*: National Policy for the Comprehensive Promotion and Development of Women (PNPDIM) and Equal Opportunities Plan (PEO) 2008-2023.

*The Judiciary*: Courts with competence for femicide and other forms of violence against women in the departments of Guatemala, Quetzaltenango and Chiquimula (Supreme Court of Justice, Ruling No. 1-2010); Unit/Secretariat for Women and Gender Analysis, Decision No. 69-2012 (April 30, 2012); Criminal Trial Courts and Criminal Sentencing Courts for crimes of femicide and other forms of violence against women in the departments of Huehuetenango and Alta Verapaz; transformation of the Criminal Trial Court and Criminal Sentencing Courts for crimes of femicide and other forms of violence against women of the department of Guatemala into a multi-person court; creation of the Chamber of the Criminal Appeals Court for crimes of femicide and other forms of violence against women of the department of Guatemala (Ruling 12-2012 of the Supreme Court of Justice of March 8, 2012); Criminal Trial Court for crimes of femicide and other forms of violence against women (October 2012); Specialized court for women and child victims (2012); Protocol for initial care in cases of violence against women and sexual crimes in Guatemala City (2008); Protocol for judicial actions in cases of gender-based violence against women (April 2014).

*The Public Prosecution Service*: Specific Protocol entitled "General instructions for the criminal investigation of the crime of femicide" (General Instruction No. 06-2013); the Office for Attention to Victims and the Special Prosecutor's Office for Women's Affairs of the Public Prosecution Service, and the National Institute of Forensic Science (INACIF) have established a network to expedite and facilitate care for women who have been assaulted; Comprehensive Support Centers for Women Survivors of Violence (CAIMUS); the Public Criminal Defense Institute provides support during legal proceedings; use of the Gesell Chamber to avoid re-victimization, safeguard victims, control the evidence and ensure the right to defense of the accused (December 2, 2009); Unit for Investigating Sexual Offenses (August 1, 2012); Professional analyst to make a criminological analysis of violence against women with emphasis on sexual violence (July 2015).

*The Executive*: The Educational Directorate of the Presidential Human Rights Commission (COPREDEH), which coordinates the Executive's human rights policies, has implemented diploma courses for public officials and employees from the Executive and other institutions on the issue of violence against women (2012-2015).

*The National Civil Police*: The Gender Equality Department has organized workshops for members of the institution on the Law on femicide and other forms of violence against women (2012 to 2014); the Sub-General Directorate for the Prevention of Crime has organized workshops for members of civil society on PNC actions to address violence against women (2012 to 2014); Basic Guidelines for addressing the gender perspective, training for instructors of the PNC Academy, and the Training Manual on Security and Gender for members of the PNC (2014); Training for members of the Crime Prevention Committees on violence against women, domestic violence, and gender equality and equity, among other issues (2014).

*The Ministry of the Interior*: Special Office for the area of violence against women (October 2013); National policy for the prevention of violence and crime, public safety and peaceful coexistence (2014-2034).

<sup>191</sup> *Public policies*: National agreement to promote safety and justice; Public policy against people-trafficking and for the protection of victims; inter-institutional coordination for the implementation of public policies to prevent, punish and eradicate violence against women. In this regard, the National Coordinating Body for the Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI), the Presidential Secretariat for Women (SEPREM) and the Office for the Defense of Indigenous Women's Rights (DEMI), in coordination with the Ministry of the Interior and the congressional Committee for Women's Affairs have set up the "Technical Group for the life and safety of women" to coordinate actions and operational plans on the issue; CONAPREVI, SEPREM and DEMI are promoting training actions and activities to disseminate the Law against Femicide among the population; they are also training agents of justice, and organizing awareness-raising campaigns on the issue.

*The Judiciary*: Institutional policy of gender equality and promotion of women's human rights; childcare centers for the children of women involved in court cases on the premises of the Judiciary; Commission for Women's Affairs; Unit for the control, monitoring and evaluation of the special courts for the crime of femicide and other forms of violence against women.

*The Public Prosecution Service*: Special prosecutors exclusively dedicated to the crimes of femicide with a gender-based crime scene protocol; Regulations for the Comprehensive Care Model (MAI) for cases of domestic violence and sexual offenses in the metropolitan area; implementation of the Protocol for attending victims of crimes against sexual liberty, safety and decency in the Offices for Attention to Victims; Prosecutor for Women and Child Victims in other departments with ethnic and cultural relevance; constant training for the staff of the Public Prosecution Service on the issue of violence against women and sexual violence; Program of free legal aid for victims of violence and their families; the Public Defender's Office; offices that provide legal support to indigenous women, such as the Office for the Defense of Indigenous Women's Rights and the National Commission against Racism and Discrimination; incorporation of interpreters into offices involved in applying justice.

prevent, that is, before the disappearance of the presumed victim, the Court will only consider the measures that were implemented before the facts of the case.

114. The briefs and evidence submitted by the State reveal that, in 2000 and 2001, Guatemala created the Coordinating Body for the Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI), which, according to the State is "the agency responsible for coordinating, promoting and providing advice on public policies to reduce violence against women"; its mission is "to eradicate violence against women in Guatemala by promoting, guiding and monitoring public policies in coordination with the institutions working in this area."<sup>192</sup> In 2004, CONAPREVI launched the National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women (PLANOVI) 2004-2014, with the "general objective of reinforcing the State's political and institutional framework in order to address the problem of violence against women in Guatemala effectively, [i]mproving the institutional response and the quality and timeliness of the comprehensive care services, and enhancing awareness-raising and educational processes."<sup>193</sup>

115. Furthermore, in 2000, the Presidential Secretariat for Women (SEPREM) was created. According to the State, this is "the Executive's office that advises and coordinates public policies to promote the holistic development of Guatemalan women and a democratic culture";<sup>194</sup> its "main function is to provide advice and support to the President of the Republic on programs and projects for the promotion and adoption of the necessary public policies for the holistic development of women, encouraging conditions for equality between men and women, based on the country's socio-cultural diversity."

116. In addition, it is uncontested that, before the facts of this case, the State had established the Special Prosecutor's Office for Women's Affairs and a National Policy for the Comprehensive Promotion and Development of Women together with its Equal Opportunities Plan (2001-2006).<sup>195</sup>

117. Regarding the measures taken by the Judiciary, the State indicated that, starting in 2001, the Judiciary's Modernization Unit began to address the issue of violence against women and girls by organizing workshops on interculturality, women's human rights in the context of

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*The Executive:* The Special Office for Women's Affairs (GEM) articulates, coordinates and promotes public policies and programs focused on the holistic development of Guatemalan women.

*The Ministry of the Interior:* the Working Group against Femicide identifies and provides evidence to prove the criminal responsibility for the perpetration of crimes against life and integrity; the Attorney General's Office (PGN) coordinates the Alba-Keneth Law alert system and has a Unit for the protection of the rights of women, the elderly and people with disabilities in order to prevent violence against them, and provide care when this occurs.

*The National Civil Police:* Protocol for dealing with violence against women; organization of communities, through Rural and Urban Development Councils, to establish Crime Prevention Committees in coordination with the Municipal Offices for Women's Affairs; elaboration of local prevention plans with a gender and multicultural perspective, and organization of training sessions on projects and programs to encourage the participation of women.

*The Legislature:* The Commission for Women's Affairs designs and promotes bills for the protection of "vulnerable populations such as women and girls."

<sup>192</sup> See, *Case of Veliz Franco et al. v. Guatemala, supra*, para. 82, footnote 93.

<sup>193</sup> National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women (PLANOVI) 2004-2014 (evidence file, folios 2542 to 2599).

<sup>194</sup> See, *Case of Veliz Franco et al. v. Guatemala, supra*, para. 82, footnote 93.

<sup>195</sup> It is worth noting that, although the Inter-American Commission indicated that, in 2005, the State had created the National Commission for Addressing Femicide, composed of representatives of the Attorney General's Office, the Public Prosecution Service and the Ombudsman, it also indicated that it was only recently, on March 8, 2006, that the "Special Commission for Addressing Femicide in Guatemala was officially launched." However, in the National Report it presented to the Working Group on the Universal Periodic Review of the UN Human Rights Council on August 7, 2012, Guatemala indicated that this commission had been established by Government Decision No. 46-2012. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/157/60/PDF/G1215760.pdf?OpenElement>.

the cultural values of the indigenous peoples, violence against women, the Mayan legal system, and the role of the indigenous authorities.

118. In this regard, the Court notes that, at the time, various reports of national and international agencies and organizations criticized the effectiveness of these State measures and institutions:

- a) In February 2005, the Special Rapporteur on violence against women, its causes and consequences indicated that “[t]here are a number of parallel institutions for the advancement of women with overlapping mandates reflecting the fragmented and divided nature of Guatemalan society.” Also, that “CONAPREVI ha[d] not received the necessary political and budgetary support needed for the fulfilment of its tasks to date.”<sup>196</sup>
- b) In February 2006, the United Nations High Commission for Human Rights asserted in his report on the situation of human rights in Guatemala that, “[i]n addition to the [Special Prosecutor’s Office for Women’s Affairs] there exist other institutions, such as the Presidential Office for Women, the Office for the Defence of Indigenous Women’s Rights, the offices of the PNC on gender equity and victim support, and the recently established Women’s Homicide Unit.” However, he also indicated that some of the main problems related to “[p]oor institutional coordination and the lack of resources to implement its programmes, such as the National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women (PLANOVI 2004-2014).”<sup>197</sup>
- c) In May 2006, the Committee for the Elimination of Discrimination against Women (CEDAW) indicated, with regard to Guatemala, that, “[w]hile noting the steps taken by the State party to strengthen the national mechanisms for the advancement of women, [...] it expresses its concern that the national machinery does not have enough human and financial resources to carry out its mandate [...]. It is also concerned about the limited capacity of the Presidential Secretariat to undertaken effective coordination and cooperation with the legislative and the judicial branches.” The Committee “urge[d] the State party to accord priority attention to the adoption of a comprehensive and integrated approach to address violence against women and girls, [...] and to enact the pending reforms to the Criminal Code to criminalize domestic violence and to allocate the necessary resources to implement [PLANOVI] 2004-2014.”<sup>198</sup>
- d) In September 2004, the Special Rapporteur on the Rights of Women of the Inter-American Commission observed that the State had taken important steps to improve the institutional framework for overcoming the epidemic of violence against women. However, she underlined that “these institutions have scant resources with which to carry out their mission and lack sorely needed inter-institutional coordination.”<sup>199</sup>
- e) In June 2005, the Guatemalan Ombudsman indicated that the Government’s efforts to address violence against women up until then had “achieve[d] measures such as the

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<sup>196</sup> Cf. Report of the United Nations Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to Guatemala, E/CN.4/2005/72/Add.3, February 10, 2005, paras. 49 and 53. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/108/17/PDF/G0510817.pdf?OpenElement>.

<sup>197</sup> Cf. Report of the United Nations High Commission for Human Rights on the situation of human rights in Guatemala, E/CN.4/2006/10/Add.1, February 1, 2006, para. 22. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/105/38/PDF/G0610538.pdf?OpenElement>.

<sup>198</sup> Cf. CEDAW Concluding comments: Guatemala, CEDAW/C/GUA/CO/6, June 2, 2006, paras. 17 and 26 (evidence file, folio 1413).

<sup>199</sup> Cf. Press release 20/04, “The IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination,” September 18, 2004, para. 13. Available at: <http://www.cidh.oas.org/Comunicados/English/2004/20.04.htm>.

creation of agencies to provide support, the enactment of specific laws, and the elaboration of proposals. However, the limited number of direct actions implemented had been insufficient to combat the phenomenon. Moreover, such actions were isolated and were not inserted in a specific policy; therefore, it was difficult to evaluate their results."<sup>200</sup>

- f) In June 2005, in its report "No protection no justice: Killings of women in Guatemala," Amnesty International "acknowledge[d] that some positive steps to prevent violence against women have been taken by the Guatemalan authorities [...]. However, these measures ha[d] frequently not been effectively implemented, monitored or reviewed and have therefore seldom prevented women from suffering violence."<sup>201</sup>

119. In addition, in an expert opinion submitted to this Court, expert Karen Musalo indicated that, even though the Guatemalan Government had launched some initiatives to address violence against women between 2000 and 2005, these were limited, mainly "owing to the failure to allocate the funds needed to meet their objectives" and "the absence of political will."<sup>202</sup>

120. In this regard, the Court notes that, in August 2005 – that is, at the time of the facts of this case – the State had implemented actions aimed at addressing the problem of violence against women. However, both the national and international agencies indicated above, and expert witness Musalo agree that those measures were insufficient to resolve the problem owing to the scant resources allocated to them, and the absence of coordination between the different institutions and a comprehensive protection strategy (*supra* paras. 118 and 119). Accordingly, the Court notes that, in the August 7, 2012, National Report submitted to the Working Group on the Universal Periodic Review of the UN Human Rights Council, the State acknowledged that, among the challenges it faced, was "implementation of a coordinated inter-agency strategy for preventing violence against women in all circumstances."<sup>203</sup>

*B.2. Before the discovery of the body of Claudina Velásquez: specific obligation to prevent violations of the rights to integrity and life of Claudina Velásquez*

121. Regarding the second moment – before the discovery of Claudina Velásquez's corpse – it is necessary, first, to verify the moment when the State authorities knew or ought to have known about the existence of a real and immediate danger to the life and integrity of Claudina Velásquez. In this regard, the case file reveals that, around 2.50 or 2.55 a.m., her parents, Jorge Velásquez and Elsa Paiz, made telephoned the National Civil Police and, in response, a patrol came to the main guardhouse of Colonia Panorama at approximately 3 a.m. At that time, Claudina Velásquez's parents advised the police that they were searching for their daughter who

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<sup>200</sup> Cf. The Guatemalan Ombudsman, Compendium "*Muertes Violentas de Mujeres, 2003 a 2005*," p. 93. Available at: [http://www.acnur.org/t3/uploads/media/COI\\_1343.pdf?view=1](http://www.acnur.org/t3/uploads/media/COI_1343.pdf?view=1)

<sup>201</sup> Cf. Amnesty International, "Guatemala. No protection no justice: Killings of women in Guatemala," June 2005 (evidence file, folio 1365).

<sup>202</sup> "Even though the Guatemala Government had launched some initiatives to address violence against women between 2000 and 2005 – including the Presidential Secretariat for Women (SEPREM) and the Coordinating Body for the Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI) – all of these initiatives were limited or somewhat ineffective, mainly owing to the failure to allocate the funds required to meet their objectives. The lack of funds should not be seen merely as the Guatemalan Government's lack of resources, but also as a reflection of the absence of political will; if the will had existed, the Government would have made this issue an absolute priority and would have found and allocated adequate funds within the national budget." Cf. Expert opinion of Karen Musalo provided by affidavit on April 13, 2015 (evidence file, folio 6658).

<sup>203</sup> National Report submitted to the Working Group on the Universal Periodic Review of the UN Human Rights Council dated August 7, 2012, A/HRC/WG.6/14/GTM/1 para. 58. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/157/60/PDF/G1215760.pdf?OpenElement>.

was missing and that they had information that she could be in danger.<sup>204</sup> Accordingly, in view of the context of an escalation of homicidal violence against women in Guatemala and the increase in the level of violence and cruelty inflicted on the bodies of many of the victims (*supra* paras. 45 to 48), it is clear that, as of this moment, the State was aware that a real and immediate risk existed that Claudina Velásquez could be sexually assaulted, subjected to abuse and/or murdered.

122. The Court has considered repeatedly that, in this context when there are reports of missing women, an obligation of strict due diligence arises as regards searching for them during the first hours and days. Since this obligation of means is very strict, it requires that thorough search activities be undertaken. In particular, the prompt and immediate action of the police, prosecution and judicial authorities is essential, ordering prompt and necessary measures to discover the victim's whereabouts. Appropriate procedures should exist for reports, and these should lead to an effective investigation starting immediately. The authorities should presume that the person missing is still alive until the uncertainty about their fate ends.<sup>205</sup>

123. Accordingly, the Court must now examine the steps taken by the Guatemalan authorities, knowing the context and the nature of the danger reported, in order to determine whether those authorities promptly took the necessary measures within the scope of their powers that could reasonably be expected to prevent or avoid that danger.

124. The repeated statements by Claudina Velásquez's parents reveal that they followed the police patrol looking for their daughter from the main entrance of Colonia Panorama to the entrance of Colonia Pinares, where the police agents told them that they "could not do anything more and would continue patrolling,"<sup>206</sup> informing them also that they would "have to wait at least 24 hours to be able to report that Claudina Velásquez was missing."<sup>207</sup>

125. When the police left, Claudina Velásquez's parents continued their efforts to find her (*infra* paras. 127 and 128). At around 5 a.m., they went to the Ciudad San Cristóbal police station to report their daughter's disappearance; however, once again they were told that they must wait 24 hours.<sup>208</sup> In this regard, during the public hearing before this Court, Jorge

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<sup>204</sup> Jorge Velásquez stated during the public hearing: "We advised them of what had happened; we told them that a woman who had been with us had come and told us that Claudina was in danger; we stressed that she was in danger; we begged them to receive the report in order to start the search." Cf. Statement made before the Inter-American Court by Jorge Rolando Velásquez Durán during the public hearing held on April 21, 2015. See also, Statement by Jorge Rolando Velásquez Durán of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 9); Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folios 3868 to 3869), and Statement by Elsa Claudina Paiz Vidal of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 16).

<sup>205</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 283, and *Case of Veliz Franco et al. v. Guatemala, supra*, para. 141.

<sup>206</sup> Cf. Statement made before the Inter-American Court by Jorge Rolando Velásquez Durán during the public hearing held on April 21, 2015; Statement by Jorge Rolando Velásquez Durán of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 9); Statement by Elsa Claudina Paiz Vidal of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 16); Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 3869), and Interview of Elsa Claudina Paiz Vidal, Investigation report dated October 24, 2005 (evidence file, folio 51).

<sup>207</sup> Cf. Statement made before the Inter-American Court by Jorge Rolando Velásquez Durán during the public hearing held on April 21, 2015; Statement by Elsa Claudina Paiz Vidal of September 22, 2005, before the Prosecutor for Crimes against Life and Integrity (evidence file, folio 3811); Statement by Elsa Claudina Paiz Vidal of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 16), and Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folio 198).

<sup>208</sup> Cf. Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 3871), Psychiatric assessment of Jorge Rolando Velásquez (evidence file, folio 198); Resolution of the Ombudsman of July 20, 2006 (evidence file, folio 124), and the Ombudsman's Report on

Velásquez stated: “we told them, we explained that the situation was very dangerous; my wife even took a photograph of Claudina so that, based on this photograph, they could look for her, but they refused and repeated that the famous 24 hours had to elapse.” Subsequently, they went to PNC San Cristóbal 1651 Sub-Station and, at 8.30 a.m., the police finally made a written report of the disappearance of Claudina Velásquez.<sup>209</sup>

126. Regarding these facts, the Court notes, first, that even though officials of the National Civil Police arrived immediately following the telephone call from Claudina Velásquez’s parents, they only accompanied them from the main guardhouse of one gated community to the entrance to another, following which they told her parents that they would continue their patrol and that they should wait to file the report. In view of the context of violence against women, which the State was aware of (*supra* paras. 45 to 48), the response of the State authorities was clearly insufficient given the possibility that Claudina Velásquez’s personal integrity and life were in danger. This is because there is no record that they even asked for information and a description that would have allowed her to be identified; they failed to undertake a thorough and strategic search, coordinated with other State authorities, investigating the places where it would reasonably have been most probable to find her, and they did not interview people who could reasonably have had information on her whereabouts.

127. To the contrary, it is on record in this case that Claudina Velásquez’s parents were themselves obliged to carry out the activities to search for their daughter that corresponded to the State, such as going to the places where she might have been found, including the main streets of Ciudad San Cristóbal, and the homes of people who might have known of their daughter’s whereabouts; personally telephoning or interviewing people who might have had information on her whereabouts, and making inquiries in hospitals and morgues as to whether someone of their daughter’s description had been brought there.<sup>210</sup>

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verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folio 102).

<sup>209</sup> Cf. Missing person report of August 13, 2005 (evidence file, folio 21); Resolution of the Ombudsman of July 20, 2006 (evidence file, folio 124), and Statement of Jorge Rolando Velásquez Durán before the Head Office for the Prosecution of Crimes against Life and Integrity of January 24, 2006 (evidence file, folio 3872).

<sup>210</sup> First, they went to the home of MTG, one of Claudina Velásquez’s girlfriends, because, before losing contact with their daughter, she had indicated that she was with her. MTG then put them in touch with an unknown individual who apparently had lent a cell phone to Claudina Velásquez at around 1.30 a.m., and had then seen her crossing Boulevard San Cristóbal. Subsequently, Mr. Velásquez returned home and contacted several friends asking them to help search hospitals and morgues, while Mrs. Paiz stayed at MTG’s home. After Mrs. Paiz returned home, several friends of the family came round and, thereafter, helped them inquire about their daughter’s whereabouts.

Following the attempt to file the report at 5 a.m., Claudina Velásquez’s parents drove round the main streets of Ciudad San Cristóbal as far as “Ciudad Peronia.” At approximately 6.30 a.m., they went to the home of one of her main university friends, AUM, to inquire about their daughter’s whereabouts. She undertook to help them look for Claudina by calling everyone with whom Claudina Velásquez had been in contact that night. Subsequently, her parents returned home and remained there, contacting family members and friends to ask them to help in the search and to pray for their daughter to appear.

In one of these calls, Jorge Velásquez spoke to his cousin and told him what had happened and that he was waiting to file the missing person report with the Police. He also asked his cousin to do him the favor of inquiring in hospitals and morgues whether they had received anyone with his daughter’s characteristics.

In addition, that same day, August 14, between 8.30 and 9 a.m., and in order to exhaust every possibility, Claudina Velásquez’s parents went to Mariscal Zone 11, where they had lived for a long time. Mr. Velásquez went to the home of his daughter’s former boyfriend, while Mrs. Paiz went to the home of a friend of both her daughter’s former boyfriend and the presumed current boyfriend.

At around 9 a.m., Claudina Velásquez’s parents and their friends met up with Jorge Rolando Velásquez’s cousin, who told them that he had not found anyone of the description of Claudina Velásquez in either the public or the private hospitals. Then, Jorge Rolando Velásquez decided to call his daughter’s presumed boyfriend, who told him that on leaving a party he had had an argument with Claudina Velásquez; that she had got out of his car and that he had tried to follow her, but this was not possible because she took a pedestrian street. Finally, at around 10.30 a.m., they decided to return to the home of MTG. However, before arriving there, they received a call from a friend of Elsa Paiz’s cousin who told them that they were in the Zone 3 morgue and that there was a corpse with their daughter’s characteristics. At around 11 a.m. Claudina Velásquez’s parents arrived at the morgue and identified the corpse.

128. Furthermore, regarding the moment when it was possible to file a report that Claudina Velásquez was missing, the Court notes that, based on the statements in the case file, it is unclear from when the 24 hours that must elapse before this report is filed should be calculated. In a statement of January 24, before the Head Office for the Prosecution of Crimes against Life and Integrity, Jorge Velásquez indicated that he had been informed that he could not report that his daughter was missing until 24 hours had passed from his last communication with her.<sup>211</sup> Similarly, during the psychiatric assessment made on October 21, 2009, he stated that this period had to elapse from the moment she went missing.<sup>212</sup> According to the case file, the last communication that Claudina Velásquez's parents had with their daughter was at around 11.45 p.m.<sup>213</sup> However, the report of her disappearance was received approximately eight and a half hours after this communication, but 24 hours after Claudina Velásquez had left her home (*supra* para. 52).

129. In this regard, it is worth noting that, during public hearing, the Court asked the State to advise whether there was any rule or practice according to which the State authorities had to wait 24 hours before receiving a report. In its final written arguments, the State indicated that there was no provision in domestic law establishing a period of 24 to 48 hours before filing a missing person report. However, it asserted that, when the police referred to the 24-hour time frame, they were acting pursuant to article 51 of Decree No. 40-90 of the Organic Law of the Public Prosecution Service in force at the time, which established that: "the police and other security forces may not conduct investigations, *ex officio*, except in urgent cases and for crime prevention. In that case, they shall advise the Public Prosecution Service of the actions taken within no more than 24 hours."

130. In this regard, it should be emphasized that the norm cited does not explain the action of the police in the instant case, because it does not even mention the reception of a report or complaint; rather it reflects confusion as to the rules that the police should follow. Indeed, it is clear that the police agents who attended the family were unclear of the procedure to follow to deal with the fact that was reported. Added to this, the reiterated declaration of the officials that it was necessary to wait to file a report shows that, in their opinion, the disappearance reported did not deserve to be treated with any urgency and expediency, even though they had a duty of strict due diligence as regards conducting a search in the initial hours (*supra* para. 122).

131. On this point, in his "Report on verification of violations of the obligation to investigate in the case of Claudina Velásquez, the Guatemalan Ombudsman indicated that:

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*Cf.* Statement of Elsa Claudina Paiz Vidal before the Prosecutor for Crimes against Life and Integrity of September 22, 2005 (evidence file, folios 16 and 17); Statement of LFOZ before the Prosecutor for Crimes against Life and Integrity of August 22, 2005 (evidence file, folio 6321); Statement of MTG before the Prosecutor for Crimes against Life and Integrity of August 22, 2005 (evidence file, folio 6325); Interview of Elsa Claudina Paiz Vidal, Investigation report dated October 24, 2005 (evidence file, folio 51); Interview of Elsa Claudina Paiz Vidal, Report of the investigator Carolina Elizabeth Ruiz Hernández of August 22, 2005 (evidence file, folios 6304 and 6305); Statement of Jorge Rolando Velásquez before the Head Office for the Prosecution of Crimes against Life and Integrity of January 24, 2006 (evidence file, folios 3869 to 3874); Statement of AUM before the Prosecutor for Crimes against Life and Integrity of December 5, 2005 (evidence file, folios 3842 and 3843); Statement of Jorge Rolando Velásquez before the Prosecutor for Crimes against Life and Integrity of September 22, 2005 (evidence file, folios 9 and 10); Statement of JRLB before the Prosecutor for Crimes against Life and Integrity of December 2, 2005 (evidence file, folio 3839), and Statement of PJSM before the Prosecutor for Crimes against Life and Integrity of August 18, 2005 (evidence file, folio 6316).

<sup>211</sup> *Cf.* Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 3871).

<sup>212</sup> *Cf.* Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folio 198).

<sup>213</sup> *Cf.* The Ombudsman's Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folio 102); Statement by Jorge Rolando Velásquez Durán of September 22, 2005, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 6); Statement of Elsa Claudina Paiz Vidal before the Prosecutor for Crimes against Life and Integrity of September 22, 2005 (evidence file, folios 13 and 17), and Interview of Elsa Claudina Paiz Vidal, Investigation report dated October 24, 2005 (evidence file, folio 50).

This situation is a material denial [...] of the State's obligation to open serious and effective investigations as soon as there is evidence of a situation involving the violation of human rights. If the report had been received immediately, effective actions to search for CLAUDINA ISABEL VELÁSQUEZ could have been initiated and might have prevented the violation of her right to life. Requiring a delay of 24 hours to receive a missing person report gives rise, first, to a period of time during which the victim is left in a situation of defenselessness. In addition, it prevents obtaining an appropriate record of the missing person's data in order to identify a corpse as soon as it is found. In this specific case, it prevented the identification of the victim when she was discovered and the start of an immediate investigation into Claudina Isabel's death. The Ombudsman considers it essential to establish an electronic system for the reception of such reports in order to facilitate the identification of missing persons; a system that can be consulted when a corpse is found, so as to be able to contact the victim's next of kin immediately for the formal identification.<sup>214</sup>

132. Consequently, the Court finds that the State authorities failed to take the necessary measures within the scope of their powers that, judged reasonably, could be expected to have prevented or avoided the violation of the rights to life and personal integrity of Claudina Velásquez Paiz, as of the moment at which the State became aware of the danger she faced.

### *B.3. Conclusion*

133. Based on the above, the Court considers that the State has not shown that it implemented the necessary measures, pursuant to Article 2 of the American Convention and Article 7 of the Convention of Belém do Pará, to ensure that the officials responsible for receiving missing person reports had the capacity and the sensitivity to understand the gravity of such reports in the context of violence against women, or the willingness and training to act immediately and effectively. The Court also concludes that the Guatemalan authorities did not act with the required due diligence to adequately prevent the abuse and death of Claudina Velásquez and did not act as could reasonably be expected in the context of the case and the circumstances of the fact reported. This failure to comply with the obligation of guarantee is particularly serious owing to the context known to the State – which placed women in a special situation of risk – and the specific obligations imposed in cases of violence against women by Article 7 of the Convention of Belém do Pará.

134. Based on all the foregoing, the Court finds that the State violated its obligation to ensure the free and full exercise of the rights to life and personal integrity recognized in Articles 4(1) and 5(1) of the American Convention, in relation to the general obligation to ensure rights established in Article 1(1) and also in relation to the obligation to adopt measures of domestic law established in Article 2 of this instrument, as well as the obligations established in Article 7 of the Convention of Belém do Pará, to the detriment of Claudina Isabel Velásquez Paiz.

135. That said, in this case, the body of Claudina Velásquez was found with indications that she had possibly been subjected to sexual violence and/or rape (*supra* para. 56). In this regard, in Chapter VII.II of this judgment, the Court will analyze the alleged responsibility of the State for the failure to investigate the possible sexual violence. Accordingly, it does not find it necessary to analyze the violation of Article 11 of the American Convention, to the detriment of Claudina Velásquez, which the representatives have alleged in the context of this chapter.

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<sup>214</sup> Cf. The Ombudsman's Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folio 3306).



**VII.II. Rights to judicial guarantees,<sup>215</sup> judicial protection<sup>216</sup> and equality before the law,<sup>217</sup> in relation to Articles 1(1) and 2 of the American Convention and Article 7 of the Convention of Belém do Pará, to the detriment of the next of kin of Claudina Velásquez Paiz**

**A. Arguments of the Commission and of the parties**

136. The **Commission** argued that, at the time of the facts, there was a context of violence against women, known to the State, in which acts of violence remained unpunished. Also, the way in which discriminatory stereotyping operated during investigations had already been recorded. In the specific case, the Commission identified a series of irregularities during the investigation into the death of Claudina Velásquez, including flaws in the preservation of the crime scene and the evidence, shortcomings in the handling and analysis of the evidence collected, lack of rigor and delay in the investigation, and omissions and lack of consistency in the investigation reports. It also indicated that the Ombudsman had found that Jorge Rolando Velásquez had sometimes been prevented from accessing the case file. Consequently, it considered that the Guatemala had failed to comply with its obligation to act with due diligence to identify those responsible for the crime, allowing this act of violence to remain unpunished and creating an environment conducive to the chronic repetition of acts of violence against women in violation of Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of this instrument and Article 7 of the Convention of Belém do Pará.

137. The Commission asserted that Claudina Velásquez's death was not investigated as a case of gender-based violence, and no measures were taken or protocols or guidelines used to duly investigate this violence. In this regard, it referred to the absence of investigative procedures based on the suspicion that she had been subjected to sexual violence. Also, it considered that she was the victim of stereotyping because she was young and her body was found in a low-income area, and due to her manner of dress and that she had a pierced navel. As a result, the authorities justified the violence against her and failed to investigate her death appropriately. Consequently, the Commission determined that the State had violated Article 7 of the Convention of Belém do Pará in relation to Article 24 of the American Convention, and in conformity with Article 1(1) of this instrument. It also found that Article 11 of that American Convention had been violated, in relation to Article 1(1) thereof, to the detriment of Claudina Isabel Velásquez Paiz.

138. The **representatives** agreed with the Commission. They added that, even though the doctor who performed the autopsy had been sanctioned for the errors he committed in this regard, errors continue to be committed and the State "has not taken effective measures to improve the autopsy protocols or order the forensic physicians to use the United Nations Manual." They also argued that the State had not been capable of obtaining the testimony of all those who were relevant for the investigation, and that this deficiency arose from the negligence of the prosecutors in charge of the investigation, the fear of the witnesses, and the absence of

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<sup>215</sup> Article 8(1) of the American Convention establishes: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature".

<sup>216</sup> Article 25 of the American Convention establishes: "1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake: (a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; (b) to develop the possibilities of judicial remedy; and (c) to ensure that the competent authorities shall enforce such remedies when granted.

<sup>217</sup> Article 24 of the American Convention establishes: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

effective witness protection programs. They also explained that Jorge Velásquez had become a joint complainant in the proceedings and that “he had been treated improperly and with hostility by the prosecutors, who had re-victimized him, preventing him from having full access to exercise his right to justice.” They argued that there had been “zero” investigation during the first 72 hours and “it began months later, with statements being taken almost one year after,” due to the impetus and constant insistence of Mr. Velásquez. Therefore, they considered that the State had violated the rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, and 7 of the Convention of Belém do Pará, to the detriment of the next of kin of Claudina Velásquez.

139. In addition, the representatives argued that there are patterns of stereotyping in the evaluation of cases that should be investigated, and victims are blamed based on discriminatory criteria; this prevents criminal prosecution and encourages the repetition of killings and misogyny. All this violates the right to equality before the law contained in Article 24 of the American Convention, in relation to Article 1(1) of this instrument. They asserted that the stigmatization of the presumed victim “did not allow a thorough investigation to be made” and gave rise to “complete impunity” in her case, in violation of the right to equality before the law and non-discrimination contained in Articles 24 and 1(1) of the American Convention, in relation to the obligation to ensure the rights recognized in Articles 4, 5 and 11 of that Convention and Article 7 of the Convention of Belém do Pará, to the detriment of Claudina Velásquez, as well as in relation to access to justice recognized in Articles 8 and 25 of the American Convention, to the detriment of her next of kin. They also indicated that, in this case, “the police made erroneous inferences” about the presumed victim, the value of her life, and the importance of investigating her case, based merely on her manner of dress, in violation of Claudina Velásquez’s right to freedom of expression contained in Article 13, in relation to Articles 1(1) and 24 of the American Convention and 7 of the Convention of Belém do Pará. Lastly, they argued that, owing to the prejudices associated with the manner of dress and the place that the corpse was found, a “low-income neighborhood,” the investigation of the crime scene was conducted carelessly, in violation of the right to freedom of movement contained in Article 22, in relation to Articles 1(1) and 24 of the American Convention and 7 of the Convention of Belém do Pará, to the detriment of Claudina Velásquez.

140. The **State** indicated that it had conducted the best investigation within the scope of its possibilities and available resources; that the Public Prosecution Service had not been inactive, and that the failure to identify the perpetrator was because the matter was “so complex.” It affirmed that many of the arguments presented concerning the supposed flaws in the preservation of the crime scene “are totally baseless” because it had been “fully documented” that the State had complied diligently with the procedures required by the said circumstances. In this regard, it defended itself based on two actions: (a) it provided information on the procedures conducted, and (b) it referred to the measures taken to rectify some of the irregularities in the investigation. It also asserted that, according to the standards established in the case of *Veliz Franco*, it had complied with the minimum criteria for an investigation of this type, because it had: (i) identified the victim; (ii) recovered and preserved evidentiary material; (iii) identified possible witnesses and obtained their statements; (iv) determined the manner, location, cause and time of death, and (v) distinguished that it was not a natural death, an accidental death or a suicide. It also denied that it had violated Articles 11,<sup>218</sup> 13<sup>219</sup> and 22<sup>220</sup> of

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<sup>218</sup> Article 11 of the American Convention establishes: “1. Everyone has the right to have his honor respected and his dignity recognized. (2) No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. (3) Everyone has the right to the protection of the law against such interference or attacks.”

<sup>219</sup> Article 13 of the American Convention establishes: “1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.”

the American Convention, in relation to Articles 1(1), 2 and 24 of this instrument and Article 7 of the Convention of Belém do Pará. It indicated that it respected and ensured the right to honor and dignity, freedom of expression, freedom of thought, opinion and information, freedom of movement, and equality before the law, because these are established in domestic law pursuant to the American Convention.

141. In particular, the State asserted that domestic law established a legal framework that protected and guaranteed the life of women, their holistic development, and their participation at all levels of the country, as well as regulating the application of measures of protection, punishment, comprehensive care, and prevention of violence and discrimination against women. The State explained that it had created various institution with the purpose of preventing and punishing the perpetration of crimes against women. In the specific case of Claudina Velásquez, it denied that there had been a lack of due diligence to address a case of gender-based violence, underscoring that its officials acted in keeping with the legal framework in force at the time of the facts. It asserted "that there [was] no document in the proceedings that records [the] fact" that the presumed victim was subject to stereotyping during the investigation and that, at no time, had there been discrimination against the Velásquez Paiz family for reasons of race, beliefs, sex, religion or any other attribute of their personalities. The State argued that, regardless of the shortcomings or the way in which the crime scene was handled, the State's position had never been designed to discriminate against the victim or her family. It indicated that, even though there could have been errors in the autopsy that was performed, actions were taken to determine whether the presumed victim had been raped and, in this regard, vaginal and anal swabs were taken, which established the presence of semen. In addition, it indicated that "there was no action protocol, or order or procedure," in which State officials had indicated any discriminatory opinion of Claudina Velásquez owing to her manner of dress, or her appearance, condition, situation, status or the place where she was found, and that there had never been any attempt to transfer the blame of what happened to the presumed victim. It also argued that the investigation was headed by the Public Prosecution Service, to which the Police are subordinated, so that any opinion issued by a police agent "was made personally, and did not affect the investigation."

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2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

(a) respect for the rights or reputations of others; or

(b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

<sup>220</sup> Article 22 of the American Convention establishes: "1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

2. Every person has the right to leave any country freely, including his own.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.

6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.

7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited."

## **B. Considerations of the Court**

142. The Court has established that, pursuant to the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be implemented in keeping with the rules of due process of law (Article 8(1)), all within the general obligation to ensure the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>221</sup> It has also indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is being done to discover the truth of what happened and to investigate, prosecute and punish, as appropriate, those eventually found responsible.<sup>222</sup>

143. In its consistent case law, this Court has indicated that the obligation to investigate is an obligation of means and not of results, which the State must assume as its legal duty and not as a simple formality preordained to be ineffective, or merely as a measure taken for private interests<sup>223</sup> that depends on the procedural initiative of the victims or their next of kin or on the contribution of probative elements by private individuals.<sup>224</sup> The investigation must be serious, impartial and effective, aimed at determining the truth and the pursuit, capture, prosecution and eventual punishment of the perpetrators of the facts.<sup>225</sup> This obligation remains "whoever the agent to whom the violation may eventually be attributed, even private individuals because, if their acts are not investigated seriously, they would, to a certain extent, be aided by the public authorities, which would engage the international responsibility of the State."<sup>226</sup> Moreover, due diligence requires that the investigative agency takes all the steps and makes all the inquiries needed to obtain the desired result. Otherwise, the investigation is not effective in the terms of the Convention.<sup>227</sup>

144. The Court has also indicated that Article 8 of the Convention reveals that the victims of human rights violations, or their next of kin, must have broad possibilities of being heard and acting in the respective proceedings, in order both to clarify the facts and punish those responsible, and to seek due redress.<sup>228</sup> In addition, the Court has established that the obligation to investigate and the corresponding right of the presumed victim or the next of kin is revealed not only from convention-based norms of international law that are peremptory for the States parties, but also arise from domestic law concerning the obligation to investigate, *ex officio*, certain wrongful acts, and the norms that allow victims or their next of kin to report or

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<sup>221</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile. Merits, reparations and costs*. Judgment of September 2, 2015. Series C No. 300, para. 75.

<sup>222</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 75.

<sup>223</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 75.

<sup>224</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 75.

<sup>225</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 238.

<sup>226</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 238.

<sup>227</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 238.

<sup>228</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 227, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 184.

file complaints, evidence or motions or any other procedure, in order to play a procedural role in the criminal investigation with the aim of establishing the truth of the facts.<sup>229</sup>

145. The Court recalls that, in case of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are supplemented and enhanced for the States parties by the obligations arising from the specific inter-American treaty, the Convention of Belém do Pará.<sup>230</sup> Article 7(b) of this Convention specifically obliges States parties to apply due diligence to prevent, punish and eradicate violence against women.<sup>231</sup> Also, Article 7(c) obliges States parties to enact the legislation required to investigate and punish violence against women.<sup>232</sup> In such cases, State authorities must open, *ex officio* and without delay, a serious, impartial and effective investigation as soon as they become aware of facts that constitute violence against women, including sexual violence.<sup>233</sup> Accordingly, when informed of an act of violence against a woman, it is particularly important that the authorities in charge of the investigation conduct this with determination and efficiency, taking into account society's duty to reject violence against women, and the State's obligation to eradicate it and to ensure that victims have confidence in the State institutions established for their protection.<sup>234</sup>

146. The Court has also indicated that the obligation to investigate is increased in the case of a woman who is killed or suffers ill-treatment, or whose personal liberty is violated in a general context of violence against women.<sup>235</sup> In practice, it is often difficult to prove that a murder or a violent assault against a woman has been perpetrated based on her gender. At times this difficulty arises owing to the absence of a thorough and effective investigation into the violent incident and its causes by the authorities. This is why State authorities have the duty to investigate *ex officio* any possible discriminatory gender-based connotations in an act of violence perpetrated against a woman, especially when there are specific indications of sexual violence of some type, or evidence of cruelty inflicted on the woman's body (mutilation, for example), or when this act occurs in a context of violence against women in a country or a particular region.<sup>236</sup> Furthermore, the criminal investigation should include a gender perspective and be conducted by officials trained in similar cases and in attending victims of gender-based discrimination and violence.<sup>237</sup>

147. The Court has also established that, in cases of suspected gender-based murder, the State obligation to investigate with due diligence includes the duty to order, *ex officio*, the corresponding tests and expertise to verify whether the murder had a sexual motive or whether any type of sexual violence occurred. In this regard, the investigation into a presumed gender-based murder should not be restricted to the victim's death, but should also include other specific violations of personal integrity, such as torture and acts of sexual violence.<sup>238</sup> In a

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<sup>229</sup> Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 104, and *Case of Veliz Franco et al. v. Guatemala, supra*, para. 184.

<sup>230</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215, para. 193, and *Case of Espinoza González v. Peru, supra*, para. 241.

<sup>231</sup> Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 193, and *Case of Espinoza González v. Peru, supra*, para. 241.

<sup>232</sup> Cf. *Case of the Miguel Castro Castro Prison, supra*, para. 344, and *Case of Espinoza González v. Peru, supra*, para. 241.

<sup>233</sup> Cf. *Case of the Miguel Castro Castro Prison, supra*, para. 378, and *Case of Espinoza González v. Peru, supra*, para. 241.

<sup>234</sup> Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 193, and *Case of Espinoza González v. Peru, supra*, para. 241.

<sup>235</sup> Cf. *Case of González et al. ("Cotton Field"), supra*, para. 293, and *Case of Espinoza González v. Peru, supra*, para. 242.

<sup>236</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 187.

<sup>237</sup> Cf. *Case of González et al. ("Cotton Field"), supra*, para. 455, and *Case of Espinoza González v. Peru, supra*, para. 242.

<sup>238</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 188.

criminal investigation into sexual violence the investigative actions must be coordinated and documented and the evidence handled diligently, taking sufficient samples, performing tests to determine the possible authorship of the facts, protecting other evidence such as the victim's clothes, conducting an immediate investigation of the crime scene and ensuring the proper chain of custody.<sup>239</sup>

148. Accordingly, the first stages of the investigation may be especially crucial in cases of a gender-based murder of a woman, because possible errors in procedures such as autopsies and the collection and conservation of physical evidence may prevent or hinder the possibility of proving relevant aspects, such as sexual violence. In the case of autopsies in a context of gender-based murder, the Court has specified that it is necessary to carry out a careful examination of the genital and surrounding areas to look for signs of sexual abuse, and also to preserve oral, vaginal and rectal liquid, and the external and pubic hair of the victim.<sup>240</sup> In addition, the Court has indicated that States have the obligation to enact laws or implement the required measures, in accordance with Article 2 of the American Convention and Article 7(c) of the Convention of Belém do Pará, that allow the authorities to conduct an investigation with due diligence in cases of presumed violence against women.<sup>241</sup>

149. On this basis, taking into account the arguments of the parties and the Commission, the Court must analyze whether the way in which the investigation into the death of Claudina Isabel Velásquez Paiz has been implemented to date constitutes a violation of the obligations arising from the rights recognized in Articles 8(1), 24 and 25(1) of the American Convention, in relation to Article 1(1) of this instrument, as well as Article 7 of the Convention of Belém do Pará. To this end, in this chapter, the Court will examine the following aspects:

- B.1. Irregularities in the investigation following the discovery of the body of Claudina Velásquez Paiz and subsequent actions of the State officials;
- B.2. Lack of due diligence regarding logical lines of investigation, collection and obtaining of evidence, and reasonable time;
- B.3. Discrimination due to stereotyping and an investigation that lacked a gender perspective, and
- B.4. General conclusion

### **B.1. Irregularities in the investigation following the discovery of the body of Claudina Velásquez Paiz and subsequent actions of State officials**

150. The Court has established that, in the context of the obligation to investigate a death, real determination to uncover the truth must be demonstrated starting with due diligence in the initial procedures.<sup>242</sup> On this point, in relation to the processing of the crime scene, the handling and removal of the victim's corpse, the autopsy, and the chain of custody of each piece of

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<sup>239</sup> Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 194, and *Case of Espinoza Gonzáles v. Peru*, *supra*, para. 242.

<sup>240</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 310; *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 188, and United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (*Minnesota Protocol*), UN Doc. E/ST/CSDHA/.12 (1991).

<sup>241</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 388, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 189. This may be done by standardizing protocols, manuals, expert services and the administration of justice used for the investigation of all crimes related to disappearances, sexual violence and the murder of women in accordance with the Istanbul Protocol, the United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and international standards for the search for missing persons based on a gender perspective.

<sup>242</sup> Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 383, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 204.

forensic evidence, the Court has affirmed in its case law<sup>243</sup> and in keeping with the United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol) that various basic and essential measures must be taken to conserve indications and evidence that may contribute to the success of the investigation. In this regard, it has defined the guiding principles that must be observed in an investigation into a violent death.<sup>244</sup>

151. The Court has stipulated that State authorities conducting an investigation of this type shall, at a minimum, seek, *inter alia*: (i) to identify the victim; (ii) to recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible; (iii) to identify possible witnesses and obtain statements from them concerning the death; (iv) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and (v) to distinguish between natural death, accidental death, suicide and homicide. In addition, the scene of the crime must be processed thoroughly, and rigorous autopsies and analyses of human remains must be performed by competent professionals, using the most appropriate procedures.<sup>245</sup>

152. The Court emphasizes that the proper processing of the crime scene is the starting point of the investigation and, therefore, it is determinant to clarify the nature, circumstances and characteristics of the crime, and the participants in the act. This is why it must be processed by professionals aware of the importance of their actions, the preservation of the crime scene, the measures to be taken at the scene, and the recovery and preservation of the evidence.<sup>246</sup> The Court has indicated in its case law that a State may be held responsible for failing “to order, practice or assess evidence that would have been very important for the proper clarification of the murders.”<sup>247</sup> Regarding the scene of the crime, the investigators should, at least, photograph the scene, and any other physical evidence, and the body as it was found and after it has been moved; any samples of blood, hair, fibers, threads or other clues should be collected and preserved; the area should be examined for shoe impressions or any other impressions of an evidentiary nature, and a report should be made detailing any observation at the scene, actions of investigators, and disposition of all evidence recovered. The area around the body should be closed off; only the investigator and his team should be allowed entry into the area.<sup>248</sup> Until this is done, any contamination of the scene must be avoided and permanent custody maintained.<sup>249</sup> One of the most delicate actions at the site of the discovery of the body is the handling of the corpse, which should only be handled in the presence of professionals, who should examine it and move it appropriately, based on its condition.<sup>250</sup>

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<sup>243</sup> Cf. *Inter alia*, *Case of González et al. (“Cotton Field”)*, *supra*, paras. 301 and 310; *Case of Luna López v. Honduras*. Merits, reparations and costs. Judgment of October 10, 2013. Series C No. 269, para. 164; *Case of the Human Rights Defender et al.*, *supra*, para. 204, and *Case of the Santa Bárbara Peasant Community v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 228.

<sup>244</sup> Cf. *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 204.

<sup>245</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 205.

<sup>246</sup> Cf. *Case of the Human Rights Defender et al. v. Guatemala*, *supra* para. 209.

<sup>247</sup> *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*, *supra*, para. 230, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 195.

<sup>248</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico*, *supra*, para. 301, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 206, citing the United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*.

<sup>249</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 192, citing the United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*, and Office of the United Nations High Commissioner for Human Rights. Office for Mexico. *Protocolo Modelo para la investigación forense de muertes sospechosas de haberse producido por violación de los derechos humanos* [Model Protocol for the forensic investigation of deaths suspected of having occurred owing to human rights violations], Proyecto MEX/00/AH/10.

<sup>250</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 192, citing Office of the United Nations High Commissioner for Human Rights. Office for Mexico. *Protocolo Modelo para la investigación forense de muertes sospechosas de haberse producido por violación de los derechos humanos*, *supra*.

153. Similarly, due diligence in a forensic investigation into a death requires maintaining the chain of custody of all the evidence.<sup>251</sup> The Court has indicated that this consists in keeping a precise written record supplemented, as appropriate, by photographs and other graphic elements, to document the history of the evidence as it passes through the hands of the different investigators in charge of the case. The chain of custody may continue beyond the trial and the conviction of the perpetrator, because old evidence, preserved appropriately, could be used to absolve a person who has been convicted erroneously. The exception to this are the remains of victims who have been positively identified and that can be returned to their family for burial, with the reservation that they cannot be cremated and could be exhumed for further autopsies.<sup>252</sup>

154. Regarding autopsies, as the Court has indicated, their purpose is to collect, at a minimum, information to identify the deceased, and the time, date, cause and manner of death. They must respect certain basic formalities, such as recording the date, starting and finishing times and place of the autopsy, as well as the name of the official performing it. In addition, it is necessary, *inter alia*, to photograph the corpse adequately; radiograph the body before it is removed from its pouch or wrappings and before and after undressing the body, documenting any evidence of injury. Any teeth that are absent, loose or damaged should be recorded, as well as all dental work, and the genitalia and surrounding areas examined carefully for sign of sexual abuse. In addition, the United Nations Manual indicates that the autopsy should record the body position and condition, including body warmth or coolness, lividity and rigidity; the deceased's hands should be protected; the ambient temperature noted, and any insects collected.<sup>253</sup>

155. The Court recalls that it is uncontested that, at approximately 8.30 a.m. on August 12, 2005, Claudina Velásquez left her home, accompanied by her brother, to go to the university. According to the members of her family, after Claudina advised them that she was at a party and they had a last telephone call with her around 11.45 p.m., they lost contact with her. Her parents began to look for her when they were advised at around 2 a.m. on August 13, 2005, that she could be in danger by someone who said that she had spoken to her by telephone, and who went directly to the family home to alert them to this situation. At 2.12 a.m. the PNC received a report of a possible sexual assault in Colonia Roosevelt on the 110 number. At around 2.50 or 2.55 a.m., Claudina Velásquez's parents called the PNC. In response, a patrol car came to the main guardhouse of Colonia Panorama at approximately 3 a.m. The parents following the police patrol car looking for their daughter from the main entrance of Colonia Panorama to the entrance of Colonia Pinares, where the police agents told them that they had to "wait at least 24 hours" to be able to report that Claudina Velásquez was missing. From 3 a.m. to 5 a.m., Claudina Velásquez's parents continued to search for her with the help of family members and friends. At around 5 a.m., Claudina's parents went to the police station to report that she was missing. There, they were again told that they should wait 24 hours. At approximately the same time, the Guatemalan Voluntary Fire Service received an anonymous call concerning the discovery of a corpse in Colonia Roosevelt and proceeded to the site. Also, two PNC agents went there at around 5.30 a.m. Around 6.30 a.m., personnel of the Public Prosecution Service also arrived there (*supra* paras. 52 to 55).

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<sup>251</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 301, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 207, citing the United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (*Minnesota Protocol*), *supra*.

<sup>252</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 305, and *Case of the Human Rights Defender et al. v. Guatemala*, *supra*, para. 207.

<sup>253</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, para. 310, and *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 194, citing the United Nations Manual on the Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (*Minnesota Protocol*), *supra*.



156. First, the Court notes that there is no record that any action was taken by the investigators of the Public Prosecution Service and the PNC based on the reports that Claudina Velásquez was missing made by her parents to various PNC agents at approximately 3 a.m., 5 a.m. and 8.30 a.m. Nor is there any record of a police report in this regard, apart from a missing person report prepared at 8.30 a.m. on August 13, 2005 (*supra* para. 54). In fact, the criminal investigation was not opened based on the reports that the victim was missing; rather, the specific time at which it was opened was when the body of Claudina Velásquez was discovered. In addition, this Court has noted irregularities in the initial procedures conducted in the investigation, which will be examined in the following paragraphs.

157. *Failure to make a police record of the discovery of the body.* The evidence in this case reveals that, at approximately 5 a.m. on August 13, 2003, the Guatemalan Voluntary Fire Service received a call from an unidentified person reporting the discovery of the body of a person who was deceased, and they therefore proceeded to the place indicated. Also, two PNC agents went there at around 5.30 a.m. after receiving an order from "the operator of the central communications office" (*supra* para. 55). In this regard, there is no information on how the central communications office found out that a corpse had been discovered; in other words, who found the corpse and in what circumstances. Moreover, there is no record that any inquiries were made about these aspects during the criminal investigation in order to obtain information on the initial moments after the body was discovered.

158. *Tampering with the corpse.* The Court notes that the victim's corpse was tampered with before the arrival of the assistant prosecutor and the members of the Forensic Medicine Service on the site of the discovery. In this regard, the Court notes that the body presented, at least, the following signs of tampering: (a) it was covered by a white sheet, and (b) there were scratches on the left knee and the right side, which, according to the forensic physician, had no vital reaction; in other words, they were injuries caused after death (*supra* para. 56). Since the State made no attempt to investigate these indications, there is no information regarding how much the body was tampered with or who was responsible for this, or the circumstances in which it occurred. This affected the course of the investigation because it is still not clear what happened between the time of the victim's death, the discovery of her body, and its examination by the forensic physician.

159. *Incorrect processing of the crime scene.* The Court notes that the forensic experts collected evidence at the site where Claudina Velásquez's body was found, during the processing of the scene on August 13, 2005. This consisted of a bullet and a bullet casing of unknown caliber, a packet of dehydrated vegetables marked "*Cup Ramen Vegetales*," the pink sweater she was wearing with possible blood stains, a small earring for pierced ear with a pink pearl, and a choker collar of pink material with a medal of Osiris that she was wearing (*supra* para. 57, footnote 53). However, apart from these elements, there is no record that any other effort was made to collect and record evidence that would have helped the investigation. Specifically, fundamental procedures to determine the time of death were overlooked, such as taking the body and the ambient temperature, and measuring the height of the corpse. Furthermore, there is no record that the on-site inspections were carried out with the required thoroughness to identify details such as whether there were any blood stains nearby, or hairs, fibers, threads, prints or other clues, or traces of a vehicle, or any other relevant evidence.

160. *Irregularities in the recording and preservation of the evidence.* The Court noted that, during the investigation, the discovery of a packet of dehydrated vegetables with the description "*Cup Ramen Vegetales*" was recorded. In this regard, although the assistant prosecutor asked the Criminal Investigation Department to examine this packet for fingerprints, this was not possible because it had not been preserved for lofoscopy analysis (*supra* para. 71).

161. *Errors in the collection and preservation of evidence.* It is on record that Claudina Velásquez's body was dressed in: (i) a pair of blue jeans with the zipper undone; (ii) a black blouse back to front; (iii) black sandals; (iv) a bloodstained brassiere (white/pink) that had been placed between her jeans and her hips; (v) bloodstained pink underpants, and (vi) a belt lay nearby. In addition, she had a navel piercing with a ring and a choker-type necklace (*supra* para. 56). Even though all this evidence was recorded in the initial investigation reports, the victim's clothes were not collected as evidence that would have permitted its analysis in the laboratory and a search for fingerprints, hairs or biological elements such as semen and other residues, but were returned to Claudina Velásquez's parents. Also, even though the ring in her navel and the choker-type necklace were recorded, the Court has no information on what happened to them.

162. *Irregularities in the autopsy and the autopsy record.* The Court has verified that the Judiciary's forensic physician who performed Claudina Velásquez's autopsy incurred in irregularities when performing it and omitted relevant information when preparing the respective report on August 16. First, in the autopsy report he failed to indicate the name of the victim, the distance from which the gun was fired, the approximate time and place of death, whether the victim's genitalia showed signs of rape, and the starting and finishing time of the procedure. In view of these omissions, the assistant prosecutor had to request that the report be expanded and corrected several times and it was not until December 2007 – that is, more than two years after the autopsy was performed – that it was possible to obtain precise information about it (*supra* para. 61). Second, in both the autopsy report and in its expanded and corrected versions, the forensic physician failed to refer to the bruising on the left side of the victim's face, information that had already been recorded in the investigation on August 13, 2005,<sup>254</sup> and required a forensic examination. Third, even though the report mentioned that the body of Claudina Velásquez had scratch marks on the right side of her back, on the left knee and the back of the left foot, a forensic examination was not made, and the report did not contain an adequate description of these injuries or indicate the characteristics of form, patterns and signs that could have revealed whether they occurred before or after her death. It should be recalled that, in the course of the criminal investigation, injuries to the victim's body were recorded that were apparently without vital reaction; in other words, they occurred after her death (*supra* paras. 56, 158 and 165).<sup>255</sup> Fourth, during the autopsy, the forensic physician failed to take the victim's fingerprints; thus, that the assistant prosecutor and the criminal investigation experts of the Public Prosecution Service had to go to the funeral home to take the fingerprints.

163. *Irregularities and failure to determine the time of death.* The Court notes that contradictions and irregularities occurred in the course of the criminal investigation in relation to determination of the time of death of Claudina Velásquez and that, ten years later, there is still no certainty about the approximate time it occurred. First, the death certificate issued on August 13, 2005, indicated that the victim died at 6.30 a.m.<sup>256</sup> Second, the report of the forensic medical examination at the scene of the crime on August 30, 2005, indicated that this examination was performed at 8.10 a.m. on August 13, 2005, and that the estimated time since the death of the victim was from one to three hours,<sup>257</sup> which suggests that the approximate

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<sup>254</sup> Cf. Report of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 13, 2005 (evidence file, folios 68 to 71), and Photographic album of the actions taken on August 13, 2005, at the place where the body of Claudina Velásquez was discovered (evidence file, folio 2802). See also, the Ombudsman's Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folio 111).

<sup>255</sup> See, the Ombudsman's Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folio 111).

<sup>256</sup> Cf. Death certificate of Claudina Isabel Velásquez Paiz (evidence file, folio 3016).

<sup>257</sup> Cf. Report on the external medical examination and forensic processing of the crime scene dated August 30, 2005 (evidence file, folios 35 and 36).

time of death was between 5 a.m. and 7 a.m. Subsequently, on June 21, 2006, the forensic physician informed the assistant prosecutor that the correct time the examination was carried out was 6.55 a.m.,<sup>258</sup> which suggests that the time of death was between 4 a.m. and 6 a.m. Third, on December 3, 2007, the forensic physician who performed the autopsy advised that the procedure had started at 11 a.m. and ended at 12 m. on August 13, 2005, and that the victim had been dead for between 7 and 11 hours at that time, which suggests that the victim died between midnight and 4 a.m.<sup>259</sup> Whatever the case, it is plain that at approximately 5 a.m. the discovery of the body of Claudina Velásquez had been reported (*supra* para. 55).

164. *Reference to the victim as "XX" in the 2005, 2006 and 2008 investigation reports, even though she had been identified by her parents on August 13, 2005.* It is on record that, around midday on August 13, 2005, the mother and father of Claudina Velásquez went to the morgue of the Judiciary's Forensic Medicine Service, where they received the body of their daughter after they had identified her (*supra* para. 58). However, the reports prepared following the victim's identification continued to refer to her as "XX" or as "an unidentified person of the female sex." This reveals the failure of the agents who intervened in the investigation, and even of the agents in charge of it, to follow-up on the case and update the information in the file. It should be noted that failure to identify the victim correctly could lead to the loss of information and, consequently, prejudice the progress of the investigation. The said reports were dated August 16, 23 and 30, September 16, 19 and 26 and October 14, 2005, June 7 and 21, 2006, and July 18, 2008, and they were prepared by the forensic physician who examined the body of the victim where it was found, the forensic physician who performed the autopsy, the assistant prosecutor, criminal investigation experts of the Public Prosecution Service, and experts of the Technical and Scientific Department of the Public Prosecution Service.<sup>260</sup>

165. *Irregularities in the forensic medicine examination and the respective report.* The Court notes that the forensic physician who examined the body of the victim at the site where it was found on August 13, 2005, only recently, on January 20, 2009, in a statement made before the assistant prosecutor,<sup>261</sup> mentioned the following details that were not included in his respective report of August 30, 2005: (i) the victim would have been alive when she was taken to the place where she was found and, while standing, was shot at a distance of around 15 centimeters, and the perpetrator was right-handed; (ii) it could be inferred that sexual violence had occurred; (iii) it was probable that the victim knew her attacker and, therefore, he needed to eliminate her to avoid being recognized; (iv) the bruising on the left side of the victim's face had been caused while she was still alive and no more than 24 hours before her death, and (v) the injuries to the left knee and right side had occurred after her death. In this regard, and when questioned about

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<sup>258</sup> Cf. Brief of June 21, 2006 (evidence file, folio 38).

<sup>259</sup> Cf. Report of the forensic physician of the Judiciary of December 3, 2007 (evidence file, folio 5073).

<sup>260</sup> Cf. Autopsy report of August 16, 2005 (evidence file, folios 30 and 31); Report of August 16, 2005, of the Criminal Investigations Expert of the Public Prosecution Service (evidence file, folio 3302); Brief of August 23, 2005, with which the Criminal Investigations Expert forwarded the photographic album of the processing of the crime scene to the assistant prosecutor (evidence file, folios 2795 to 2805); Report on the external medical examination and forensic processing of the crime scene of August 30, 2005 (evidence file, folio 35); Brief of September 19, 2005, in which the Criminal Investigations Expert forwarded the sketch and video of the actions taken at the scene to the assistant prosecutor (evidence file, folios 4611 and 4612); Expert report TOXI-05-2620 of September 16, 2005 (evidence file, folios 93 and 94); Report BIOL-05-1455 of September 26, 2005 (evidence file, folios 90 and 91); Communication BAL-05-1308/1639 of the Criminal Investigations Department of October 14, 2005 (evidence file, folios 3014 and 3015); Brief correcting the autopsy report of June 7, 2006 (evidence file, folio 87); Briefs of June 7, 2006, of the assistant prosecutor, requesting clarifications on the report on the external medical examination and forensic processing of the crime scene (evidence file, folios 88 and 193); Brief of June 23, 2006, in which the forensic physician of the Public Prosecution Service corrected the report on the external medical examination and forensic processing of the crime scene (evidence file, folio 38); Brief of July 18, 2008, in which the Criminal Investigations Expert forwarded 10 discarded photographs and video of the actions taken at the scene to the assistant prosecutor (evidence file, folios 4153 to 4158).

<sup>261</sup> Cf. Statement made before the assistant prosecutor of the Public Prosecution Service on January 20, 2009, by the forensic physician who was present at the site where Claudina Velásquez's body was found (evidence file, folios 2879 to 2883).

the omission of these injuries in the report, he indicated that the function of the forensic physician who goes to the scene of the crime is to assess the manner of death, and that it is the forensic expert in charge of performing the autopsy who should make a precise description of each of those injuries. Consequently, this information was obtained more than three years after Claudina Velásquez's death, affecting the course of the investigation.

166. It should be recalled that, following the Ombudsman's recommendations, a disciplinary procedure was opened against the forensic physician who performed the autopsy. As a result of this procedure, the Disciplinary Regime Unit of the Judiciary's Human Resources System considered that the physician's omission of the name and the exact time of the victim's death were minor, serious and extremely serious errors, and therefore imposed a sanction of 20 days' suspension without pay. However, since the forensic physician had terminated his employment relationship with the Judiciary on December 5, 2007, the Supreme Court of Justice found that the disciplinary sanction was inapplicable (*supra* para. 97). The Court recognizes the measures that the State has tried to implement; however, the disciplinary procedure against the forensic physician did not take into consideration all the irregularities he committed while performing the autopsy and recording it, which have been described in this section.

167. In addition, the Court recalls that disciplinary procedures were opened against the assistant prosecutor and three criminal investigation experts who took part in the initial stages of the investigation conducted by the Head Office for the Prosecution of Crimes against Life and Integrity and also by the Criminal Investigation Department. It is on record that, in the context of these procedures, in 2009, the assistant prosecutor was sanctioned with a written reprimand and two of the criminal investigation experts with verbal reprimands while, in the case of the third expert, it was decided that the procedure against him was unfounded (*supra* para. 93). However, since this Court has no further information, it cannot determine to what point and to what degree these sanctions bear any relationship to the irregularities identified in this section. Also, there is no record of how the procedure opened against the assistant prosecutor in the case concluded.

168. Based on the above, the Court concludes that, in this case, the following irregularities occurred: (i) absence of a police record of the discovery of the body; (ii) failure to investigate the indications that the body had been tampered with; (iii) incorrect handling of the crime scene; (iv) irregularities in the recording and preservation of evidence; (v) failure to collect and preserve evidence; (vi) irregularities in the performance of the autopsy, and in the report; (vii) irregularities and failure to determine the time of death; (viii) reference to the victim as "XX" in investigation reports prepared following her identification, and (ix) irregularities in the external forensic medicine examination and the respective report. It would be hard to rectify the shortcomings in the initial investigation procedures by means of the belated and insufficient evidentiary procedures that the State has tried to conduct. In addition, the loss of evidence is irreparable. Due to all the above, the due diligence and rigor of the investigation was affected.

## **B.2. Lack of due diligence regarding logical lines of investigation, collection and obtaining of evidence, and reasonable time**

169. The Court has established that, to guarantee its effectiveness, the investigation of human rights violations should avoid omissions in gathering evidence and following up on logical lines of investigation.<sup>262</sup> In this regard, the Court has stipulated that, when the facts refer to a violent death, the investigation must be conducted in a way that can ensure the appropriate analysis of

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<sup>262</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 158, and *Case of the Human Rights Defender v. Guatemala, supra*, para. 214.

all the relevant hypotheses about the authorship.<sup>263</sup> On this point, it should be recalled that it is not incumbent on the Court to examine the hypotheses concerning the perpetrators evaluated during the investigation into the facts and, consequently, to determine individual responsibilities, which is the task of the domestic criminal courts; rather, the Court must assess the acts or omissions of State agents based on the evidence presented by the parties.<sup>264</sup> Likewise, it is not for the Court to substitute for the domestic jurisdiction, establishing the specific procedures for the investigation and prosecution of a specific case to obtain a better or more effective result, but rather to verify whether, in the course of the measures taken in the domestic sphere, the State violated its international obligations arising from Articles 8 and 25 of the American Convention.<sup>265</sup> The Court recalls that the result of a lack of diligence is that, as time passes, the possibility of obtaining and presenting pertinent evidence leading to clarification of the facts and determination of the corresponding responsibilities is unduly affected, whereby the State contributes to impunity.<sup>266</sup>

170. The Court has verified that, even though investigations were conducted into the facts surrounding the violent death of Claudina Velásquez Paiz, procedures have been carried out belatedly over 10 years. Thus, although the investigation started on August 13, 2005, the file shows that the prosecutors and assistant prosecutors in charge of the investigation only asked for access to the security videos in one of the places that Claudina Velásquez had presumably been a short time before her death, on September 4, 2005; on December 6, 2005, they received the statement of one of the members of the Voluntary Fire Service, which added information on what was found at the crime scene; on June 26, 2006, they held a reconstruction of the events in the presence of experts from the Public Prosecution Service; on October 30, 2007, and April 23, 2008, they requested information on the bills for instantaneous soups; on June 26, 2008, they asked for information on incidents reported to the PNC 110 number in the early morning hours of August 13, 2005; on July 23, 2008, and May 19, 2009, they asked for expert opinions on the ballistic trajectory; on November 24, 2008, a psychiatric profile of perpetrator, victim and crime scene was drawn up; on January 20, 2009, they received the statement of the forensic physician who performed the examination and forensic procedures at the crime scene, which added information on the findings made at the crime scene and, on August 11, 2011, they requested a laboratory analysis to determine the type of animal whose blood had been found on the victim's hands (*supra* paras. 60, 63, 69, 78, 83, 86 to 88 and 165). The fact that these procedures were so delayed meant that the information that may have been obtained from them was not incorporated into the investigation from the start. Also, in some cases, it was not possible to obtain the information requested from the elements provided and, in other cases, the records were not conserved over time, so that the delay resulted in an irreparable loss of evidence.

171. Added to the above, the Court notes that the procedures were repetitive and delayed the investigation. Thus, on November 18, 2011, an expert report on the test for alcohol was issued, attaching a standard table on blood alcohol levels; however, an expert report on the drug and alcohol tests had already been issued on September 16, 2005. Starting in September 2005,

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<sup>263</sup> Cf. *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 96, and *Case of the Human Rights Defender v. Guatemala, supra*, para. 214.

<sup>264</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 87, and *Case of the Human Rights Defender v. Guatemala, supra*, para. 214.

<sup>265</sup> Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 80, and *Case of the Human Rights Defender v. Guatemala, supra*, para. 214.

<sup>266</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 172, and *Case of the Human Rights Defender v. Guatemala, supra*, para. 214. The Court has defined impunity as the total failure to investigate, pursue, capture, prosecute and punish those responsible for human rights violations. Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Preliminary objections*. Judgment of January 25, 1996. Series C No. 23, para. 173, and *Case of Manuel Cepeda Vargas v. Colombia, supra*, footnote 184.

national telephone companies, and other agencies and universities in the country had been repeatedly asked for detailed information on various telephone numbers. In response, information was provided that there was no record of calls made on August 12 and 13, 2005, text messages were not stored on their systems, the telephone numbers did not correspond to the numbers they had assigned, and there was no record of the personal data of the user or owner of the telephone line. Nevertheless, the requests for information continued up until at least March 2012, without any specific measure being taken to follow up on the answers received. On September 29, 2006, and May 20, 2009, laboratory tests were conducted to compare the genetic profile of Claudina Velásquez with that of Jorge Rolando Velásquez Durán and Elsa Claudina Paiz Vidal, which determined that they were compatible, meaning that she was their biological daughter, and on September 2 and November 2, 2011, land registration information was obtained on some buildings located in Colonia Roosevelt (*supra* paras. 66, 68, 81 and 90). However, the Court is unclear why these procedures were conducted.

172. In conclusion, the Court has verified that more than 10 years have passed since the facts of the case and since the investigation started, and the truth of what happened has still not been determined. The investigation procedures were belated and repetitive, thereby affecting the results. Moreover, in the case of some procedures, it is unclear why they were conducted. Finally, other procedures have continued over time without any concrete results. The lack of due diligence in this case has violated the right of access to justice of the next of kin of Claudina Velásquez, within a reasonable time, in violation of judicial guarantees.

### **B.3. Discrimination due to stereotyping and an investigation that lacked a gender perspective**

173. Regarding the principle of equality before the law and non-discrimination, the Court has indicated that the “notion of equality springs directly from the oneness of the human species and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified.”<sup>267</sup> At the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has become part of *jus cogens*. It underlies the legal structure of national and international public order and permeates the whole legal order. States must abstain from acting in any way that is addressed, directly or indirectly, at creating situation of discrimination *de jure* or *de facto*.<sup>268</sup>

174. The Court has indicated that, while the general obligation of Article 1(1) of the American Convention refers to the duty of States to respect and ensure “without discrimination” the rights contained in this treaty, Article 24 protects the right to “equal protection of the law.”<sup>269</sup> Article 24 of the American Convention prohibits discrimination, *de jure* or *de facto*, not only with regard to the rights established therein, but also with regard to all the laws enacted by the State and their enforcement. In other words, it is not limited to reiterating the provisions of Article 1(1) of the Convention regarding the State obligation to respect and ensure, without discrimination, the rights recognized in this treaty, but establishes a right that also entails an obligation for the State to respect and ensure the principle of equality and non-discrimination in the safeguard of

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<sup>267</sup> Cf. *Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 55, and *Case of Espinoza Gonzáles v. Peru*, *supra*, para. 216.

<sup>268</sup> Cf. *Juridical Status of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2013. Series A No. 18, paras. 101, 103 and 104, and *Case of Espinoza Gonzáles v. Peru*, *supra*, paras. 216 and 220.

<sup>269</sup> Cf. *Case of Apitz Barbera et al. (“First Administrative Contentious Court”) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of Espinoza Gonzáles v. Peru*, *supra*, para. 217.

other rights and in all domestic laws that are enacted.<sup>270</sup> In essence, the Court has affirmed that if a State discriminates in respecting or ensuring a Convention right, it would be violating Article 1(1) and the substantive right in question. If, to the contrary, the discrimination refers to an unequal protection of domestic law or its enforcement, the fact must be examined in light of Article 24 of the American Convention.<sup>271</sup>

175. In the inter-American sphere, the preamble to the Convention of Belém do Pará indicates that violence against women is “a manifestation of the historically unequal power relations between women and men,” and also recognizes that the right of every woman to a life free of violence includes the right to be free of any form of discrimination.<sup>272</sup> From a general standpoint, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter, “CEDAW”) defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>273</sup> In this regard, the United Nations Committee for the Elimination of Discrimination against Women (hereinafter, “the CEDAW Committee”) has declared that the definition of discrimination against women “includes gender-based violence, that is, violence that is directed against a woman [(i)] because she is a woman or [(ii)] that affects women disproportionately.” It also indicated that “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”<sup>274</sup>

176. The Court reiterates that the inefficiency of the judicial system with respect to individual cases of violence against women promotes an environment of impunity that facilitates and promotes the repetition of acts of violence in general, and sends a message that violence against women may be tolerated and accepted. This encourages its perpetuation and the social acceptance of the phenomenon and causes women to feel unsafe and develop a permanent mistrust in the system for the administration of justice.<sup>275</sup> This inefficiency or indifference, in itself, discriminates against women in access to justice. Therefore, when there are specific indications of gender-based violence or it is suspected, the authorities’ failure to investigate the possible discriminatory motives behind the act of violence against a woman, may constitute a form of gender-based discrimination.<sup>276</sup>

177. The statements made by Jorge Rolando Velásquez Durán and Elsa Claudina Paiz Vidal, Claudina Velásquez’s father and mother, are consistent in indicating that, on the day the PNC agent, Carolina Elizabeth Ruiz, came to their home to interview them, she informed them that the crime scene had not been processed professionally because the victim’s origin and status had been prejudged, and she had been categorized “as a loose woman” owing to: (i) the place where her body was found; (ii) the fact that she used a choker necklace and a navel piercing

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<sup>270</sup> Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 186, and *Case of Espinoza González v. Peru, supra*, para. 217.

<sup>271</sup> Cf. *Case of Apitz Barbera et al. (“First Administrative Contentious Court”) v. Venezuela, supra*, para. 209, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 243.

<sup>272</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 396, citing the Convention of Belém do Pará, preamble and Article 6.

<sup>273</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico, supra*, para. 394, citing the Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979, Article 1.

<sup>274</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico, supra*, para. 395, citing the Committee for the Elimination of Discrimination against Women, General recommendation 19: Violence against women, 11<sup>th</sup> session, 1992, UN Doc. HRI\GEN\1\Rev.1 at 84 (1994), paras. 1 and 6.

<sup>275</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico, supra*, paras. 388 and 400, and *Case of Veliz Franco et al. v. Guatemala, supra*, para. 208.

<sup>276</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 208.

with a ring, and (iii) because she was wearing sandals. However, she indicated that, on examining the characteristics of Claudina Velásquez in greater detail, they realized they had prejudged her erroneously and conducted a closer inspection of the crime scene.<sup>277</sup>

178. In this regard, although the State did not deny the foregoing categorically, their defense was based on asserting that, if a police agent had issued any opinion, he or she would have done so “on a personal basis,” without affecting the investigation, and that the Public Prosecution Service was in charge of the investigation (*supra* para. 141).

179. The Court notes that in August 2005, Carolina Elizabeth Ruiz was an investigator for the Unit to Combat Murders of Women of the PNC Criminal Investigation Service and that she was assigned as an investigator in the case relating to the death of Claudina Velásquez. In this regard, it is on record that, in the context of the police investigation, this State agent conducted several investigative procedures, played an important role during the initial moments of the investigation, and addressed investigation reports to the prosecutor dated August 13, 22 and 25, 2005.<sup>278</sup> The participation of the investigator, Carolina Elizabeth Ruiz, was based on articles 304 and 307 of the Code of Criminal Procedure in force at the time of the facts.<sup>279</sup> Consequently,

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<sup>277</sup> Cf. Statement by Jorge Rolando Velásquez Durán of January 24, 2006, before the assistant prosecutor of the Public Prosecution Service (evidence file, folios 3877 and 3878); Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folios 199 and 637); Statement made before the Inter-American Court by Jorge Rolando Velásquez Durán during the public hearing held on April 21, 2015; Affidavit prepared by Elsa Claudina Paiz Vidal on April 9, 2015 (evidence file, folio 6701); Psychiatric assessment of Elsa Claudina Paiz Vidal of December 2, 2010 (evidence file, folio, 206). See also: Affidavit prepared by Pablo Andrés Velásquez Paiz on April 9, 2015 (evidence file, folio 6689); Affidavit made by expert witness Alberto Bovino on April 13, 2015 (evidence file, folio 6669); the Ombudsman’s Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folios 105, 114, 3308 and 3317). In this regard, during the hearing before the Inter-American Commission of March 27, 2012, expert witness Álvaro Rodrigo Castellanos Howell explained that the investigation reports mention a female “investigator in charge of the early investigation of the crime scene who basically commented that it was not worth dedicating more time to investigate the case because it involved an individual who, owing to the characteristics observed at that time at the scene of the crime, they considered, [...] was not worth the effort, referring to someone who had [...] a navel piercing and wore sandals, suggesting [...] by her appearance that she was someone who had even provoked her own murder.” Cf. Statement by expert witness Alvaro Rodrigo Castellanos Howell during the hearing before the Inter-American Commission of March 27, 2012 (evidence file, folios 266 and 2723). Investigator Carolina Elizabeth Ruiz prepared an investigation report on August 22, 2005, in which she indicated that, on August 15, 2005, she had interviewed Elsa Claudina Paiz Vidal in her home. Cf. Report of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 22, 2005 (evidence file, folios 2900 and 2901).

<sup>278</sup> In this regard, it is on record that: (i) on August 13, 2005, and having been tasked with this, she arrived at the crime scene, which was being processed by members of the National Police and the Public Prosecution Service; she interviewed a neighbor, and heard the versions of other neighbors who preferred not to identify themselves; (ii) on August 13, 2005, she drew up a report in which she advised the prosecutor of the Public Prosecution Service that the police had opened a preliminary investigation and forwarded information gathered at the crime scene; (iii) on August 15, 2005, she went to the home of Claudina Velásquez’s parents and interviewed Elsa Claudina Paiz Vidal and José Rodolfo López Barrientos; (iv) on August 18, 2005, Jorge Rolando Velásquez Durán gave her information, by telephone, on where Claudina Velásquez had been on the night of August 12, 2005; (v) on August 22, 2005, she drew up a report that she addressed to the prosecutor and in which she referred to the content of those interviews and to the said telephone call, and provided information on the victim’s personal data, the autopsy, the cause of death, and the identification of the victim at the morgue. In this report, she indicated that the motive for Claudina Velásquez’s death had been: “possibly a crime of passion under the effects of alcohol resulting in someone’s death”; (vi) On August 25 and 28, September 21 and 23, 2005, and March 7, 2006, she interviewed five individuals at their respective homes, and (vii) she advised the prosecutor in the respective report dated August 25, 2005 (*sic*), about the information gathered during these interviews, and through the procedures conducted in the investigation up until that time. Cf. Report of August 16, 2005, of the Criminal Investigations Expert of the Public Prosecution Service (evidence file, folio 56); Reports of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 13, 2005 (evidence file, folios, 68, 69, 2896, 2897, 3223 and 3224); Reports of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 22, 2005 (evidence file, folios 2900 and 2901), and Report of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 25, 2005 (evidence file, folios 4986 to 4993).

<sup>279</sup> Article 304 (Police control) of the Code of Criminal Procedure in force at the time of the facts indicated that: “Police agents and officials who have information on a wrongful act subject to *ex officio* prosecution, shall immediately provide detailed information to the Public Prosecution Service and shall conduct a preliminary investigation to urgently gather or secure the evidence and prevent the suspects from escaping or going into hiding. The magistrates shall



it is plain that her statements were made within the framework of her investigative functions and activities as a State agent and from the significant perspective that she had been present during the processing of the crime scene and witnessed the work of the members of the National Civil Police and the Public Prosecution Service.

180. The Court reiterates that a gender stereotype refers to a preconception of the respective attributes, conducts or characteristics, or roles that are or should be played by men and women,<sup>280</sup> and that it is possible to associate the subordination of women to practices based on socially-dominant and socially-persistent gender stereotypes. In this regard, their conception and use becomes one of the causes and consequences of gender-based violence against women, conditions that are exacerbated when they are reflected, implicitly or explicitly, in policies and practices, and particularly in the reasoning and language of the State authorities.<sup>281</sup>

181. Expert witnesses Christine Mary Chinkin<sup>282</sup> and Paloma Soria Montañez<sup>283</sup> asserted that the actions taken by the authorities in the investigations into the violent death of Claudina Velásquez were influenced by gender stereotypes because they considered that “her profile corresponded to that of a gang member or to that of a prostitute,” “whose death does not have to be investigated.” Expert witness Christine Mary Chinkin<sup>284</sup> indicated that “the factors that contributed to this interpretation included that she had gone missing late at night, having been at a party, [her] clothes and accessories [...], the smell of alcohol at the scene of the crime, the place where her body was found, and the fact that she was a woman.” She indicated that “[t]his application of stereotypes, which characterize women based on their clothes, imposes restraints on women – for example, on their freedom of movement, expression and association – by making them fear for their safety and lack confidence in the possibility of the authorities protecting them adequately,” and that “[t]he climate of impunity created by the inadequate investigations contributed to this.” Meanwhile, expert witness Paloma Soria Montañez<sup>285</sup> indicated that Claudina Velásquez was blamed for her death “because she was young, because her body was found in a low-income area, because of her manner of dress, and because she had a navel piercing.”

182. In this regard, Christine Mary Chinkin explained that, in this case, there was a negative difference in treatment based on a gender stereotype stemming from “the practice of the authorities of considering the victim as a person whose death – a gender-related murder – was not worth investigating.” Such adverse and negative stereotypes were based on prejudices that “prevent the full application of the fundamental principle of equality between women and men.” She asserted that their application “affects the right of women to an impartial and fair trial, because they impose obstacles that women must overcome and that men do not face.” Thus, “they deny women equality before the law and access to justice.” Therefore, “even if Claudina Isabel Velásquez Paiz had been a member of a gang or a prostitute or was dressed in a way that some considered inappropriate, [...] the legal requirement of equality before the law remains

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exercise the same function in places where there are no officials of the Public Prosecution Service or police agents.” Article 307 (Forwarding of procedures) indicated that: “The procedures and the objects seized shall be forwarded to the Public Prosecution Service within three days, without prejudice to the provisions in the case of arrests.”

<sup>280</sup> Cf. *Case of González et al. (“Cotton Field”) v. Mexico, supra*, para. 401.

<sup>281</sup> Cf. *Mutatis mutandis, Case of González et al. (“Cotton Field”) v. Mexico, supra*, para. 401. In this regard, see *mutatis mutandis*, Opinion submitted by affidavit by Christiane Mary Chinkin dated April 13, 2015 (evidence file, folios 6797 and 6798), and Opinion submitted by affidavit by Alberto Bovino dated April 13, 2015 (evidence file, folios 6666 and 6667).

<sup>282</sup> Cf. Opinion submitted by affidavit by Christiane Mary Chinkin dated April 13, 2015 (evidence file, folios 6782 to 6802).

<sup>283</sup> Cf. Opinion submitted by affidavit by Paloma Soria Montañez dated April 16, 2015 (evidence file, folios 6744 to 6781).

<sup>284</sup> Cf. Opinion submitted by affidavit by Christiane Mary Chinkin dated April 13, 2015 (evidence file, folios 6798 and 6799).

<sup>285</sup> Cf. Opinion submitted by affidavit by Paloma Soria Montañez dated April 16, 2015 (evidence file, folio 6771).

and the State must exercise due diligence in the investigation.”<sup>286</sup> Similarly, Paloma Soria Montañez indicated that “being the victim of a violent death [...] places [women] into a derogatory and demeaning category based on gender stereotyping.” She explained that “this meant that the case was not investigated diligently, and appropriate lines of investigation were not followed up on.” Indeed, “the authorities blamed Claudina Isabel and, by their actions, suggested that she had deserved her fate. All this means that, up until today, the violent acts that took place [...] remain unpunished.”<sup>287</sup>

183. The Court recognizes, reveals and rejects the gender stereotype by which, in cases of violence against women, the victims are presumed to fit the profile of a gang member and/or prostitute and/or “loose woman,” and are not considered sufficiently important to be investigated, while also making the woman responsible for or deserving of being attacked. In this regard, it rejects any State practice which justifies violence against women and blames them for this, because appraisals of this nature reveal discretionary and discriminatory criteria based on the origin, condition and/or conduct of the victim merely for being a woman. Consequently, the Court considers that such gender stereotypes are incompatible with international human rights law and measures should be taken to eliminate them whenever they surface.

184. The Court notes that, in this case, these stereotypes were repeated by different State agents during the investigation, as indicated in the following paragraphs.

185. In his Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz,<sup>288</sup> the Guatemalan Ombudsman indicated that “the time spent at the crime scene appears too short to show that it was processed with the necessary thoroughness to achieve positive results for the investigation.” This situation was “corroborated by Agent Carolina Elizabeth Ruiz.” In this way, “[t]he initial indifference to conducting a diligent investigation of the case is explained by the suppose confusion about the identity of the victim” because, “owing to her manner of dress and the place of the crime, it was considered to be a crime that was not worth investigating.” In addition, he noted that “[t]he lack of administrative controls over the activity of the prosecutor influenced the fact that there was no real concern to conduct an adequate investigation, which was a generalized pattern in cases of murder, especially when the victim was stereotyped as marginal.”

186. Added to the above, the Court notes that the report of August 22, 2005, prepared by the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service (*supra* nota 278) indicated that the motive for the death was “possibly a crime of passion under the effects of alcohol resulting in someone’s death.”

187. On this point, expert witness Alberto Bovino<sup>289</sup> affirmed that “the concept of ‘a crime of passion’ is part of a stereotype that justifies violence against women. The term ‘passion’ places the accent on justifying the conduct of the perpetrator.” For example, “‘he killed her because he was jealous,’ ‘in an attack of fury,’ [are] expressions that encourage blaming the woman who suffered the violence. The victim is blamed and the violent action of the attacker is supported.” In this regard, he indicated that, in the case of Claudina Velásquez’s death, “the motive was prejudged, mitigating the responsibility of the possible author, and minimizing the victim’s need for protection.” In addition, he determined that in circumstances such as those of this case,

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<sup>286</sup> Cf. Opinion submitted by affidavit by Christiane Mary Chinkin dated April 13, 2015 (evidence file, folios 6798 and 6799).

<sup>287</sup> Cf. Opinion submitted by affidavit by Paloma Soria Montañez dated April 16, 2015 (evidence file, folio 6771).

<sup>288</sup> Cf. The Ombudsman’s Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folios 104, 105 and 114).

<sup>289</sup> Cf. Opinion submitted by affidavit by Alberto Bovino dated April 13, 2015 (evidence file, folios 6670 and 6674).

“omissive or deficient actions represent a violation of the convention-based obligation of due diligence in the investigation and criminal prosecution of those who commit egregious acts of gender-based violence.”

188. Furthermore, for at least 10 days, confusion existed regarding the nature of a packet found near Claudina Velásquez’s body, which at first was identified as a condom wrapper, an error that was rectified on realizing that it was a torn and empty packet of soup,<sup>290</sup> which was not preserved appropriately (*supra* para. 71). This confusion contributed to the statements and prejudices concerning the victim’s origin and status.

189. Additionally, more than three years after the victim’s death and in the course of the criminal investigation, INACIF prepared a forensic psychiatric report on November 24, 2008 (*supra* para. 88). When referring to the victimization profile of Claudina Velásquez, this report indicated: “It is considered that [she] filled the role of an unwise victim by placing herself in a dangerous situation and not measuring the consequences of walking home alone late at night. This reveals an impulsive, immature and irresponsible attitude, especially if it can be confirmed [or] rejected that she was under the effects of alcohol [or] drugs.” In addition, when describing the psychiatric profile of the victim, it included comments such as: “Claudina Isabel Velásquez Paiz was capable of developing heterosexual and monogamous affective relationships,” that “[in] both personal and social relationships the consumption of alcohol predominated and participation in parties organized by friends or by friends of friends, and these relationships were priorities in her life, while the family circle and her university studies occupied a secondary position; she even missed classes to take part in activities with her friends,” and “she had an oppositional attitude towards family norms and a permissive attitude in her affective relationships.”<sup>291</sup>

190. The Court notes that the attitude assumed by the authorities in the investigation into the death of Claudina Velásquez is not an isolated fact, because it is in keeping with the context of the “tendency of investigators to discredit victims and blame them for their lifestyle or clothes,” and to inquire into aspects of the victims’ personal and sexual relationships, and also the context of the impunity of violent acts resulting in the death of women (*supra* para. 49). It also accords with the attitude of the officials in charge of the investigation in the case of *Veliz Franco et al. v. Guatemala*, in which the Court verified the omission of pertinent evidence to determine the sexual violence, or that this was obtained belatedly and when it was contaminated; the absence of a thorough and effective investigation into the violent incident that resulted in the victim’s death, as well as of possible causes and motives, and declarations by those officials that revealed the existence of stereotypes and prejudices regarding the role of women in society, with a negative impact on the investigation insofar as they transferred the blame for what had happened to the victim and her family, closing other possible lines of investigation into the circumstances of the case and the identification of the perpetrators.<sup>292</sup>

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<sup>290</sup> The Report of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 13, 2005, and the Report on the external medical examination and forensic processing of the crime scene of August 30, 2005, indicates that “a condom wrapper” was found. However, the photographic album of the actions taken at the scene on August 13, 2005, forwarded to the assistant prosecutor on August 23, 2005, records the finding of a packet with the description “Cup Ramen Vegetales apparently of a lemon-yellow color.” Cf. Report of the investigator of the Unit to Combat Murders of Women of the PNC Criminal Investigation Service of August 13, 2005 (evidence file, folios 69 and 70); Report on external medical examination and forensic processing of the crime scene of August 30, 2005 (evidence file, folios 35 and 36), and Photographic album of the actions taken at the scene on August 13, 2005 (evidence file, folio 2804).

<sup>291</sup> Cf. Psychiatric profile of victim, perpetrator and crime scene in the case of the violent death of Claudina Isabel Velásquez Paiz (evidence file, folios 4875 and 4876).

<sup>292</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, paras. 210 to 212.

191. In this case, the Court noted that the crime scene was not processed appropriately, or with the thoroughness required to achieve positive results in the investigation; there were errors in the collection, documentation and preservation of evidence, and irregularities in the forensic medicine examination, in the autopsy and in the respective autopsy report. In addition, the investigation procedures were belated, repetitive and have extended over time and, in the case of some procedures, it is not clear why they were conducted (*supra* paras. 168 and 172). These deficiencies in the investigation are not a casual fact, or collateral to the investigation; they are a direct consequence of a common practice of the investigative authorities to make a stereotypical assessment of the victim, added to the absence of administrative controls on the activity of the State agents who intervened and acted in the investigation based on these stereotypes and prejudices. All this meant that the case was not investigated diligently or with rigor, keeping it in impunity up until today, and this constituted a form of gender-based discrimination in access to justice.

192. That said, it may be assumed that the violent death of Claudina Velásquez Paiz was an expression of gender-based violence in order to apply Article 7 of the Convention of Belém do Pará<sup>293</sup> to the case, taking into account:

- a) the indications that she had probably been raped: she was not wearing her brassiere, which had been placed between her jeans and her hips, the zipper of her jeans was undone, her belt removed, and her blouse on back to front; also the presence of semen in the victim's vagina was recorded (*supra* paras. 56 and 67);
- b) the injuries to the body: an injury around her eye and the left side of her cheek caused before death, and scratches to her right knee and side, apparently caused after death (*supra* para. 56), and
- c) the context of an escalation of homicidal violence against women in Guatemala; the exacerbation of violence against women and the cruelty inflicted on the bodies of many of victims in a context of different forms of violence against women (*supra* paras. 45 and 48).

193. It should be pointed out that the two police agents who went to the site where Claudina Velásquez's body was found were interviewed and, by October 24, 2005, it was on record that they had made specific statements that the victim had possibly been raped. The first agent indicated that "her brassiere was full of blood [and] she was not wearing it, but rather it was inside her jeans, so that [he] presumed that the young woman had been raped." The second agent indicated that "it was presumed that she had been raped because her underclothes were stained with blood and she was not wearing her brassiere."<sup>294</sup>

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<sup>293</sup> Article 1 of the Convention of Belém do Pará defines violence against women as: "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." The Court has established previously that "CEDAW [...] has indicated that 'violence against women is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.'" Cf. *Case of González et al. ("Cotton Field")*, *supra*, paras. 143, 401 and 395. In addition, the Court has indicated that "not every violation of a human right committed against a woman necessarily entails a violation of the provisions of the Convention of Belém do Pará." Cf. *Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 194, para. 279. This does not mean that, in relation to the investigation of acts perpetrated against women, the application of the Convention of Belém do Pará depends on the absolute certainty that the act investigated constituted violence against women in the terms of that Convention. In this regard, it should be emphasized that it is by complying with the obligation to investigate established in Article 7 of the Convention of Belém do Pará that, in many cases, it can be ascertained whether or not the act investigated constituted violence against women. Consequently, compliance with this obligation cannot be dependent on that certainty and, in order to give rise to the obligation to investigate in the terms of the Convention of Belém do Pará, it is sufficient that the act in question has characteristics that, judged reasonably, indicate the possibility that it is an act of violence against women. Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, footnote 254.

<sup>294</sup> Cf. Interview with the two police agents who were present at the site where Claudina Velásquez's body was found, Investigation report dated October 24, 2005 (evidence file, folio 48).

194. Added to this, the INACIF Forensic Psychiatric Report of November 24, 2008, determined, as regards the appraisal of the crime scene and considerations on the perpetrator, that:

[A]t least two individuals, or possibly more, took part [and ...] at least three different sites where the facts occurred can be established: a site where the victim was waylaid, a site where the assault took place, and a site where the victim was abandoned. This suggests that, although the act could have started out circumstantially, it continued methodically, without malice, and with an outcome that would suggest that, the individual who executed the act was knowledgeable about the use of firearms and had experience in committing this type of act. It is evident that she was subjected to some kind of manipulation while undressed, and that someone else dressed her.<sup>295</sup>

195. Added to this, on January 20, 2009, the forensic physician who examined the body at the site where it was found declared that "her brassiere was on top of her clothes, her blouse and sweater were on back to front, her the belt was unbuckled, and the zipper of her jeans undone," also, he could infer "that she had been raped and that it is possible that the victim knew her assailant."<sup>296</sup>

196. In conclusion, the authorities in charge of the investigation were aware that there were indications of possible gender-based violence against Claudina Velásquez from the initial moments of the investigation. Additionally, these indications were mentioned repeatedly during the investigation. Nevertheless, owing to the prejudices and discriminatory statements based on gender stereotyping of the State agents who intervened in the investigation, they failed to conduct the investigation from a gender perspective and Claudina Velásquez's death was investigated as just another murder.<sup>297</sup>

197. In the Court's opinion, there are three essential aspects of the absence of a gender approach in the criminal investigation. First, the fact that the circumstances prior to her death were rendered invisible, while the evidence indicated the existence of an act of violence prior to her death. Second, the way in which death occurred was rendered invisible, even though the evidence suggested the perpetration of an act of violence after her death. Third, the possible sexual violence was rendered invisible. These three aspects reveal a possible repetition of the violence inflicted on the victim while she was missing, which was in addition to the fact of her murder.

198. Based on the foregoing, the State failed to comply with its obligation to investigate *ex officio* the death of Claudina Velásquez with a gender approach and as a possible expression of gender-based violence. To the contrary, the investigation focused merely on the victim's death and continued as a case of murder without taking into account the standards established for this type of case. Thus, evidence such as the victim's clothes was not secured, and the proper chain of custody was not respected; the physical evidence was not conserved; the relevant examinations and tests were not performed; appropriate lines of investigation were not followed, and other possible lines of investigation into the circumstances of the case and the identification of the perpetrators were closed. Accordingly, the State failed to comply with its obligation to investigate with due diligence.

199. In consequence, the Court finds that the investigation into the death of Claudina Velásquez was not conducted with a gender perspective in keeping with the special obligations imposed by the Convention of Belém do Pará. As in the case of *Veliz Franco et al.*, the Court

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<sup>295</sup> Cf. Psychiatric profile of victim, perpetrator and crime scene in the case of the violent death of Claudina Isabel Velásquez Paiz (evidence file, folio 4876).

<sup>296</sup> Cf. Statement made on January 20, 2009, by the forensic physician who was present at the site where Claudina Velásquez's body was found, before the assistant prosecutor of the Public Prosecution Service (evidence file, folio 2880).

<sup>297</sup> Cf. Opinion submitted by affidavit by Christiane Mary Chinkin dated April 13, 2015 (evidence file, folios 6796 and 6797); Opinion submitted by affidavit by Claudia González Orellana dated March 19, 2015 (evidence file, folio 6813), and Opinion submitted by affidavit by Alberto Bovino dated April 13, 2015 (evidence file, folio 6674).

considers that the State has violated both the right to equal protection of the law (Article 24) and the obligation to respect and ensure, without discrimination, the rights recognized in the American Convention (Article 1(1)), because the facts of this case encompass both types of discrimination and, therefore, no distinction need be made.

#### **B.4. General conclusion**

200. The Court considers that, in this case, the State failed to comply with its obligation to investigate the violent death of Claudina Velásquez as a possible expression of gender-based violence and with a gender approach. Also, the existence of gender stereotyping and prejudices, owing to which Claudina Isabel Velásquez Paiz was considered a person whose death did not deserve to be investigated, resulted in the failure to investigate the case diligently and thoroughly. This constituted violence against women and a form of gender-based discrimination in access to justice.

201. In the instant case, the Court has noted that the crime scene was not processed appropriately or with the thoroughness required to achieve positive results in the investigation; there was a failure to gather, record and preserve evidence, and irregularities were committed in the forensic medical examination, as well as in the autopsy and its respective report. These deficiencies in the initial investigation procedures are almost impossible to rectify, added to the loss of evidence that was irreparable. In addition, investigation procedures have been belated and repetitive and have extended over time; also, it is not clear why some of them were carried out. Also, appropriate lines of investigation were not followed. These flaws in the investigation are a direct result of the stereotyped appraisal that the investigating authorities made of the victim and of the absence of a gender perspective in the investigation. Thus, more than 10 years since the facts of the case and since the investigation was opened, the death of Claudina Velásquez remains in absolute impunity, over and above any reasonable time.

202. Based on the foregoing, the State violated the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, and the right to equality before the law recognized in Article 24 of the Convention, in relation to the general obligations contained in Articles 1(1) and 2 of this instrument, and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz, all next of kin of Claudina Isabel Velásquez Paiz.

203. In addition, the Court finds that the alleged violation of Articles 13 and 22 of the American Convention was duly taken into consideration in the legal substantiation set out in this chapter, and that it is unnecessary to issue an autonomous ruling on their alleged violation.

**VII.III**  
**RIGHTS TO PERSONAL INTEGRITY<sup>298</sup> AND PROTECTION OF HONOR AND DIGNITY<sup>299</sup> TO**  
**THE DETRIMENT OF THE NEXT OF KIN**

**A. Arguments of the Commission and of the parties**

204. The **Commission** argued that, in this case, the next of kin of Claudina Velásquez had endured profound suffering and anguish as a result of the irregularities and delays in the investigation into her disappearance and subsequent death, as well as due to the failure to punish those responsible for these facts seven years after her body was found. It also argued that the continuous changes in the prosecutors in charge of the case had been a source of victimization, because it meant that the family had to repeat the facts of the case “countless times” with the attendant pain and emotional suffering. It also referred to the scant concern and sensitivity that State officials showed towards the family’s grief, particularly owing to “the arrival of officials from the Public Prosecution Service to fingerprint the corpse at the wake that the family was holding for the presumed victim,” with “the officials from the Public Prosecution Service even threatening prosecution if the parents refused to allow the procedure.” It also asserted that the Ombudsman had indicated that the family had been subjected to derogatory comments, in the sense that officials had mistaken the victim’s profile because of certain characteristics. The Ombudsman also found that on a number of occasions, Jorge Velásquez was denied access to the case file. Accordingly, the Commission concluded that the State had violated Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz.

205. The **representatives** agreed substantially with the Commission. In addition, they referred to the fact that the violation of the family’s integrity was constituted because the police agents twice refused to receive the reports that the presumed victim was missing and, therefore, failed to investigate her disappearance effectively. Likewise, the inopportune arrival to take fingerprints during Claudina Velásquez’s funeral victimized the family and showed a serious lack of respect for their mental and moral integrity. They also pointed out that the family had suffered owing to the disdain, indifference and negligence of the prosecutors and officials who have been in charge of the case and who obliged them to repeat the same story numerous times, with the resulting pain and emotional distress that this caused. All the foregoing added to the serious errors incurred by the different public officials who have taken part in the investigation process. In their final written arguments, they asserted that Jorge Velásquez had given impetus to the investigative actions aimed at discovering the truth of what happened to his daughter, and that this had caused the family “suffering, anguish, uncertainty, frustration and impotence in the face of the [omissions of the] State authorities.”

206. The representatives also alleged the violation of Article 11, in relation to Article 1(1) of the American Convention, to the detriment of Claudina Velásquez Paiz and her family, owing to the treatment accorded to her mortal remains, because: (i) officials from the Public Prosecution Service had interrupted the family’s wake in the funeral home “in a deplorable way” to take fingerprints from the body; (ii) the corpse had already been tampered with before it was examined officially, as indicated in the report of the forensic physician, and (iii) the officials had

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<sup>298</sup> Article 5(1) of the Convention establishes: “Every person has the right to have his physical, mental, and moral integrity respected.”

<sup>299</sup> Article 11 of the Convention establishes that:

- “1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.”

continued to refer to the corpse as "XX" following its identification. These facts, together with the numerous other alleged errors in the autopsy revealed a complete lack of respect for the honor and dignity of Claudina Velásquez and her family members.

207. The **State** asserted that the right to personal integrity is recognized in its domestic laws. It indicated that the criminal investigation was conducted diligently and in keeping with its resources and that the suffering caused by the facts was "a consequence of their occurrence and was not caused by the State." It advised that it possessed centers that could provide psychological care to the petitioners. However, "there is no record that, at any time, they have requested this support or have been treated"; accordingly, "the State could not even prevent the mental or moral integrity of these people being affected." It rejected the argument that its officials had treated the family with disdain and indifference. On this basis, the State considered that it was not responsible for the violation of the right to personal integrity of the next of kin of Claudina Velásquez.

208. In addition, Guatemala argued, with regard to protection of honor and recognition of dignity, that under no circumstances had Article 11 of the American Convention been violated. It affirmed that fingerprinting was a necessary procedure in the investigation and that, even though it was carried out during the presumed victim's funeral, it was not done in public, and the next of kin had authorized the State officials to conduct this procedure. Regarding the identification of the corpse as "XX" and the alleged errors committed during the investigation, it underlined that they had been rectified and the person responsible sanctioned, and that such errors represented a small percentage of all the procedures that had been conducted during the investigation.

## **B. Considerations of the Court**

209. The Court has indicated on other occasions that the next of kin of victims of human rights violations may also be victims.<sup>300</sup> The Court has considered that the right to mental and moral integrity of some family members has been violated owing to the suffering they have endured as a result of the acts or omissions of the State authorities,<sup>301</sup> taking into account, among other matters, the actions taken to obtain justice and the existence of close family ties.<sup>302</sup> It has also declared the violation of this right based on the suffering resulting from the acts perpetrated against their loved ones.<sup>303</sup>

210. The Court will now analyze whether the presumed violations of personal integrity alleged by the Commission and the representatives have been proved. Subsequently, it will analyze whether the violation of the protection of honor and dignity alleged by the representatives has been constituted.

211. Regarding the presumed violation of the personal integrity of the family members, during public hearing, Jorge Rolando Velásquez Durán stated how "horrifying" he found it to see the agents of the Public Prosecution Service take the fingerprints of Claudina Isabel Velásquez while they were holding the wake for her. He indicated that the horror of this event "cannot be described." In this regard, Mr. Velásquez Durán stated:

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<sup>300</sup> Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 211.

<sup>301</sup> Cf. *Case of Albán Cornejo et al. v. Ecuador. Interpretation of the judgment on merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 183, para. 46, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 211.

<sup>302</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, para. 163, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 211.

<sup>303</sup> Cf. *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 128, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 211.



I felt hurt, I felt outraged, I felt offended. That procedure should not have been done at that moment[. However,] I authorized the procedure under threat; I authorized the procedure because I thought that it was necessary, so that, later, it was not used as an excuse to fail to resolve Claudina Isabel's case. [...] And, as if this wasn't enough, already traumatized by the event, the funeral home staff came and asked me what to do with my daughter's clothes – whether they should put them in the coffin, or if Claudina Isabel's clothes had to be included among the evidence. Everyone knows that the clothes should be conserved. [...] So, full of anger and rage, and thinking that, at some time in the future, they could exhume my daughter's body to correct the error and I wasn't prepared to accept this, I ordered them to be burnt.<sup>304</sup>

212. He also indicated, with regard to the efforts he had made to give impetus to the investigation into his daughter's death, that he had been "criticized," "wounded," "offended" and "humiliated" [and] they had spoken negatively about [his] daughter, owing to [his] action [...] becoming a joint complainant in the case." He asserted that all this had "taken its toll on the family," who ceased to be happy, and the "harm" had been "irreparable."<sup>305</sup> Similarly, Elsa Claudina Paiz Vidal stated that her husband, "since then, has lived for the investigation of the case, [...] he stopped working and maintaining the family [financially], [...] he immersed himself in his pain and did not realize that he was abandoning us."<sup>306</sup>

213. According to Mrs. Paiz Vidal, her daughter's death "caused indescribable sorrow." She indicated that: "that was the worst day of [her] life; it broke [her] heart and it ha[d] been impossible to rebuild [their] lives." Regarding the taking of the fingerprints by agents of the Public Prosecution Service, she stated that "it shocked [her] exceedingly and caused [her] profound anguish." She added that:

The conversation with the investigator [Carolina Ruiz] on the Monday following Claudina Isabel's murder only served to add more pain to the pain already felt. She told us that, at the start, they were not very interested in carrying out the procedure for the removal of her body appropriately and investigating the crime scene thoroughly because they had assumed that Claudina Isabel was 'a loose woman' as she was wearing sandals and a choker necklace, and because she had a navel piercing with a ring. She told us that she thought the ring was in bad taste; she also told us that the investigators had assumed this because of the place where the body was discovered.<sup>307</sup>

214. Mrs. Paiz Vidal also described the obstacles to closing the mourning process with her husband and son, and the rift in the family due to the absence of Jorge Rolando Velásquez, who devoted himself to investigating their daughter's death. In this regard, Mrs. Paiz Vidal indicated that:

We should have been able to face our pain together as a family, but when the State was so negligent in the investigation, my husband had to assume the role of investigator; he spent most days in the offices of the Public Prosecution Service [...]. This prevented us from healing and separated us at a time when we most needed to be together. My relationship with Jorge also suffered; it almost destroyed us as a couple; there were times when I wanted to disappear and escape from everything.<sup>308</sup>

215. Meanwhile, Pablo Andrés Velásquez Paiz, Claudina Isabel Velásquez's brother, stated that he had "stored up all the rage and sadness and never stopped thinking over and over again what would have happened if he had accompanied her to the Law Faculty in the morning or to the party she went to that night." He stated that his "sister's death had affected [him] profoundly," and that he "began to drink until [he] passed out [...] three or four times a week [...] to forget the pain, [and] to stop thinking." At the same time, he "began to have ever stronger suicidal thoughts, to the point that [he] try to kill [himself] driving too fast and, on one

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<sup>304</sup> Cf. Statement made before the Inter-American Court by Jorge Rolando Velásquez Durán during the public hearing held on April 21 and 22, 2015.

<sup>305</sup> Cf. Statement made before the Inter-American Court by Jorge Rolando Velásquez Durán during the public hearing held on April 21 and 22, 2015.

<sup>306</sup> Cf. Affidavit prepared by Elsa Claudina Paiz Vidal on April 9, 2015 (evidence file, folio 6701).

<sup>307</sup> Cf. Affidavit prepared by Elsa Claudina Paiz Vidal on April 9, 2015 (evidence file, folios 6700 and 6701).

<sup>308</sup> Cf. Affidavit prepared by Elsa Claudina Paiz Vidal on April 9, 2015 (evidence file, folio 6702).

of those occasions [he] had an accident.”<sup>309</sup> In this regard, Elsa Claudina Paiz Vidal stated that Pablo Andrés Velásquez fell to pieces, “he almost destroyed himself,” and it was Pablo Andrés who was most affected by the death of Claudina Velásquez, “owing to the closeness of his ties to his sister.”<sup>310</sup>

216. Like his parents, Pablo Andrés Velásquez Paiz expressed his “pain” and “anger” on hearing the investigator who visited the house “justify the negligence in the processing of the crime scene by the fact that [his] sister appeared to be a ‘loose woman’” and, therefore, “they had considered that it was not worth investigating.” According to Pablo Andrés Velásquez, “the words of the investigator hurt me and offended me deeply, and I still feel angry thinking that the State authorities are more interested in making excuses for not having done their work than [...] in investigating.”<sup>311</sup>

217. Lastly, it is worth pointing out that the Guatemalan Ombudsman concluded that “the failure of public servants, including the police, the forensic physician and the Public Prosecution Service to act with due diligence to prevent and to investigate” the facts of the case, “resulted in the violation of the right to legal certainty [and] personal integrity of Claudina Isabel Velásquez Paiz [and] her next of kin.” According to the Ombudsman, the Velásquez Paiz family “had to suffer the indifference, lack of interest and negligence of the prosecutors, which obliged them to repeat the same facts innumerable times, with the consequent pain and emotional harm to the family members.”<sup>312</sup> Similarly, the psychiatrist, Karen Denisse Peña Juárez, stated that:

Unfinished mourning and the need to play an active role in the investigation procedure into the crime against their daughter has been reinforced by the conditions that reigned within the State’s system of justice, which have made them collateral victims of negligence, abuse of power and authority, and indifference. In addition, their safety has not been ensured and their dignity has not been respected. This situation has caused the family to feel that the State lies and also attacks them, and this increases the feeling of helplessness and frustration when the legal situation is not resolved and the truth is not uncovered.

[The expert witness also indicated that the father, mother and brother of Claudina Velásquez] are collateral victims of the crime and have been revictimized peripherally because it is they who have had to provide evidence and urge that the case be resolved, becoming monitors of the whole process and, despite this, they have not obtained answers. Added to this, they have been subject to the opinions of the media and the public, and the indifference towards the case and of the institutions that should provide health care services and justice.<sup>313</sup>

218. Based on the above, the Court concludes that the State violated the personal integrity of the next of kin of Claudina Isabel Velásquez Paiz owing to the way in which the investigation of the case was conducted; in particular, the way in which the agents of the Public Prosecution Service burst into the wake being held for Claudina Velásquez; her categorization as a person whose death did not merit investigation, and the irregularities and deficiencies throughout the whole investigation, in which Mr. Velásquez Durán has been particularly active. All of this constitutes a violation of Article 5(1) of the American Convention, in relation to Article 1(1), to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz.

219. In addition, the Court recalls that Article 11 of the American Convention establishes that “everyone has the right to have his honor respected and his dignity recognized,” prohibits any unlawful attacks on honor or reputation, and imposes on the State the obligation to provide “the

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<sup>309</sup> Cf. Affidavit prepared by Pablo Andrés Velásquez Paiz on April 9, 2015 (evidence file, folios 6690 and 6691).

<sup>310</sup> Cf. Affidavit prepared by Elsa Claudina Paiz Vidal on April 9, 2015 (evidence file, folio 6702).

<sup>311</sup> Cf. Affidavit prepared by Pablo Andrés Velásquez Paiz on April 9, 2015 (evidence file, folio 6689).

<sup>312</sup> Cf. The Ombudsman’s Report on verification of violations of the obligation to investigate in the case of Claudina Isabel Velásquez Paiz (evidence file, folios 3319 and 3320).

<sup>313</sup> Cf. Report of psychiatrist Karen Denisse Peña Juárez provided during the proceeding before the Inter-American Commission (evidence file, folio 203).

protection of the law against such [...] attacks." In general, the right honor relates to self-esteem and self-worth.<sup>314</sup>

220. In previous cases, the Court has established that the care accorded to a person's mortal remains is a form of respecting the right to human dignity. It has also indicated that a person's mortal remains deserve being treated with respect in front of their grieving family members, because of the significance those remains have for them.<sup>315</sup> The Court considers that funeral rites are acts by which the deceased's next of kin pay homage to their loved one in accordance with their beliefs, trying to obtain some small comfort in the final moments they will have in the physical presence of that person. In this case, the agents of the Public Prosecution Service came to the funeral home where a wake was being held for Claudina Velásquez and asked to take her fingerprints, threatening her parents with accusing them of obstruction of justice, even though this procedure should have been carried out before the body was returned to the family. Thus, they burst in on an intimate and painful moment in order to again handle the mortal remains of the daughter of Jorge Rolando Velásquez Durán and Elsa Claudina Paiz Vidal, and sister of Pablo Andrés Velásquez Paiz, violating the right to respect for their honor and recognition of their dignity. Consequently, the State also violated Article 11 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of these members of Claudina Velásquez Paiz's family.

## VIII REPARATIONS

221. Based on Article 63(1) of the American Convention,<sup>316</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make appropriate redress, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>317</sup>

222. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restoration of the previous situation (*restitutio in integrum*). If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the consequences of such violations.<sup>318</sup> Therefore, the Court has considered the need to grant diverse measures of reparation in order to provide full compensation for the harm, so that, in addition to pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.<sup>319</sup>

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<sup>314</sup> Cf. *Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs*. Judgment of January 27, 2009. Series C No. 193, para. 57, and *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 124.

<sup>315</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 81. In this regard, see also *mutatis mutandis*, *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 115.

<sup>316</sup> Article 63(1) of the American Convention establishes que: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>317</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 286.

<sup>318</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 26, and *Case of López Lone et al. v. Honduras, supra*, para. 287.

<sup>319</sup> Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of López Lone et al. v. Honduras, supra*, para. 287.

223. The Court has established that reparations should have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm. The Court must observe the concurrence of these elements to rule appropriately and in accordance with law.<sup>320</sup>

224. Taking into consideration the violations declared in the preceding chapters, the Court will proceed to examine the claims submitted by the Commission and the representatives, together with the arguments of the State, in light of the criteria established in its case law on the nature and scope of the obligation to make reparation,<sup>321</sup> in order to establish measures aimed at redressing the harm caused to the victims.

#### **A. Injured party**

225. The Court reiterates that, pursuant to Article 63(1) of the Convention, it considers that those who have been declared victims of the violation of any right recognized therein to be the injured party.<sup>322</sup> Accordingly, the Court considers that Claudina Isabel Velásquez Paiz, Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz are the “injured parties” and, in their capacity as victims of the violations declared in Chapters VII.I, VII.II and VII.III, they will be the beneficiaries of the measures that the Court establishes below.

#### **B. Obligation to investigate the facts that resulted in the violations and identify, prosecute and punish, as appropriate, those responsible**

226. The **Commission** asked that the State complete a prompt, immediate, serious and impartial investigation to solve the murder of Claudina Isabel Velásquez Paiz and identify, prosecute and, as appropriate, punish those responsible.

227. The **representatives** asked the Court to require the State: (a) to investigate the facts of this case seriously, impartially and independently, using the competent organs, and within a reasonable time; (b) to identify, prosecute and punish appropriately the individuals who took part, either as masterminds or perpetrators, in the murder of Claudina Velásquez, and (c) to investigate and apply the sanctions corresponding to the function-related offenses committed by the public officials in charge of investigating the facts of this case.

228. The **State** asserted that all the investigative procedures conducted had been aimed at identifying the person or persons responsible for the presumed victim’s death, so that, in the near future, it hoped to achieve positive results. It reiterated that the investigation had been continuous, opportune, immediate, serious and impartial from the time of the processing of the crime scene and up until the present and that, regardless of the way in which the Commission had assessed them, the investigation procedures were those that the State was able to conduct with the means available, and they were diligent. The State also indicated that, even though the procedures conducted at the time of the incident were not ideal, over the past decade it has gradually overcome the deficiencies, taking a series of steps that, today, make the procedure for the removal of corpses and gathering of evidence more standardized and orderly by the creation of the National Institute of Forensic Science (INACIF) and its respective protocols. Lastly, it

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<sup>320</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of López Lone et al. v. Honduras, supra*, para. 288.

<sup>321</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of López Lone et al. v. Honduras, supra*, para. 289.

<sup>322</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 233, and *Case of López Lone et al. v. Honduras, supra*, para. 290.

stated that it would keep the investigation open and would continue conducting the investigation diligently until it had identified and individualized those responsible for the murder.

229. The Court appreciates the State's declaration that it would "keep the investigation open and would continue conducting the investigation diligently until it had identified and individualized those responsible for the murder." However, bearing in mind the conclusions of Chapter VII.II of this judgment, the Court establishes that, the State must, within a reasonable time, conduct the investigation effectively and, when applicable, open the required criminal proceedings to identify, prosecute and punish, as appropriate, those responsible for the abuse and murder of Claudina Isabel Velásquez Paiz, in keeping with the guidelines in this judgment, in order to avoid the repetition of the same or similar acts to those of this case. This investigation must include a gender perspective, undertake specific lines of investigation concerning sexual violence, and provide the victim's next of kin with information on progress in the investigation pursuant to domestic law and, when applicable, ensure that they have appropriate participation in the criminal proceedings. Also, the investigation must be conducted by officials trained in similar cases and in dealing with victims of gender-based discrimination and violence. Lastly, it must ensure that those in charge of the investigation and the criminal proceedings, as well as any other persons involved, such as witnesses, expert witnesses, or members of the victim's family, have adequate guarantees for their safety.

230. Furthermore, as it has on other occasions,<sup>323</sup> the Court establishes that, based on the pertinent disciplinary norms, the State must examine the possible procedural and investigative irregularities related to this case and, if appropriate, sanction the conduct of the corresponding public servants without the victims in this case having to file complaints to this end.

### ***C. Measures of rehabilitation and satisfaction, and guarantees of non-repetition***

#### *C.1. Rehabilitation*

231. The **Commission** did not present any specific arguments on this point.

232. The **representatives** asked the Court to order the State to provide medical and psychological care to Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz, for as long as necessary. This care must include the costs of any medication they require. The medical center providing this physical and psychological care must be chosen by mutual agreement with them and must take into account the particular circumstances and needs of each of them.

233. The **State** indicated that, if it had been requested, it would have provided psychological and medical care to the next of kin of the presumed victim in this case. However, they had never indicated that they required psychological support for any member of the family group under the State's programs and institutions. It also indicated that it had not been proved that any member of the family group had suffered physical or psychological harm as a result of the facts of this case. Consequently, it did not consider that it was fair or equitable that the requested medical expenses be charged to the national budget. Lastly, it indicated that, if the next of kin of Claudina Velásquez attended private doctors and health clinics, it was at their own choice, because the State had a public health system that could have provided them with the services required free of cost.

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<sup>323</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 215, and *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 253.

234. In Chapter VII.III of this judgment, the Court declared, *inter alia*, that the State was internationally responsible for violating the personal integrity and the right to respect for honor and recognition of dignity of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz, all next of kin of Claudina Isabel Velásquez Paiz. Therefore, the Court finds, as it has in other cases,<sup>324</sup> that it is necessary to establish a measure of reparation that provides adequate care for the psychological and physical ailments suffered by the victims as a result of the violations declared in this judgment. In order to contribute to redressing this harm, the Court establishes the State's obligation to provide, free of charge, through its specialized health care institutions and immediately, adequately, comprehensively and effectively, medical and psychological and/or psychiatric care to the victims who request this, following their informed consent, and including the supply, free of charge, of any medication they may eventually require based on their respective conditions. This means that the victims must receive a differentiated treatment when following the procedures required to receive care in public institutions. Furthermore, the respective treatment must be provided, insofar as possible, in the centers closest to their places of residence in Guatemala for as long as necessary. In the case of the psychological or psychiatric treatment, this should take into consideration the particular circumstances and needs of each victim, so that they are provided with both family and individual treatment, as agreed with each of them and following an individual evaluation. The victims who request this measure of reparation, or their legal representatives, have six months from notification of this judgment to advise the State of their intention of receiving medical, psychological or psychiatric treatment.

## *C.2. Measures of satisfaction*

### *C.2.1 Publication of the judgment*

235. The **Commission** did not present any specific arguments on this point. The **representatives** asked the Court to require the State to publish the judgement delivered in this case in the Official Gazette and in another national newspaper, and to publish the entire judgment, for at least one year, on an appropriate official website of the State taking into account the characteristics of the publication required.

236. The **State** indicated that, if the Court determined that the State was responsible for any of the alleged violations and decided that the judgment it handed down should be published, the State would publish it as considered appropriate.

237. The Court establishes, as it has in other cases,<sup>325</sup> that the State shall publish, within six months of notification of this judgment: (a) the official summary of this judgment prepared by the Court, once, in the official gazette; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation in Guatemala, and (c) this judgment in its entirety, available for at least one year, on an official website of the Public Prosecution Service, well as on official websites of the Judiciary and the National Civil Police of Guatemala.

### *C.2.2. Public act to acknowledge international responsibility*

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<sup>324</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of the Santa Bárbara Campesino Community v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 308.

<sup>325</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of López Lone et al. v. Honduras, supra*, para. 303.

238. The **Commission** did not present any specific arguments on this point. The **representatives** asked the Court to order the State to organize a public act to acknowledge international responsibility for the facts of this case and to hold it within one year of notification of the judgment. The implementation of this public ceremony and other details should be previously and duly consulted with the next of kin of Claudina Velásquez, and senior representatives of the Guatemalan Judiciary must take part in it.

239. The **State** indicated that, since it did not acknowledge its international responsibility for the facts of the case, it did not accept that a public act was required in that regard.

240. The Court finds that the State must organize an act of public apology with regard to the facts of this case that occurred to Claudina Isabel Velásquez Paiz and their subsequent investigation. During this act, the State must refer to the human rights violations declared in this judgment. The act must be held by means of a widely publicized public ceremony. The State must ensure the participation of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz, if they so wish, and invite to the event the organizations that represented Claudina Isabel Velásquez Paiz's family members before the national and international courts. The organization and other details of this public ceremony must be previously and duly consulted with the said family members. The State authorities present or taking part in this act must be senior State officials. It will be for the State to define who it entrusts with this task. The State has one year from notification of this judgment to comply with this obligation.

*C.2.3. Request for funds to create the "Claudina Isabel Velásquez Paiz - Guatemala" Foundation*

241. The **Commission** did not present any specific arguments on this point. The **representatives** asked that, as a measure of satisfaction and dignification of Claudina Velásquez, the Court require the State to provide a sum of money to her family to allow them to create the "Claudina Isabel Velásquez Paiz – Guatemala" Foundation, which would establish support mechanism for vulnerable populations, programs for the education and training of young students in Guatemala, and for divulgation of women's rights, including programs using the internet. The amount that the State was required to pay for this concept should be determined by the Court, based on equity. The **State** opposed this and reiterated that it had not incurred responsibility with regard to the life of Claudina Velásquez, so that it would not be appropriate for the Court to establish measures of reparation "implicitly linked to this right."

242. In view of the other measures of reparation ordered in this judgment, the Court does not find it necessary to order this additional measure.

*C.3. Guarantees of non-repetition*

243. The **State** reiterated that it was not responsible for any of the alleged violations and, consequently, it was not required to make reparation to the presumed victims. It noted that most of the reparations claimed were focused on the prevention, punishment and eradication of violence against women. In this regard, it affirmed that, in this case, it had not been proved that the incident had been motivated by the victim's gender, and that not all crimes against women were due to the victims being women. It clarified that it had already taken prevention and punishment measures with the main purpose of eradicating violence against women. Nevertheless, it claimed that the existence of patterns of human rights violations was not sufficient to declare a violation.

244. The Court will examine the measures requested by the Commission and the representatives, taking into account the violations declared in the chapter of this judgment on

the merits. In addition, it will take into account the State's arguments on the "prevention and punishment measures" taken in order to "eradicate violence against women."

*C.3.1. Educational programs on non-discrimination and violence against women*

245. The **Commission** asked the Court to require the State to introduce reforms in the State's educational programs, starting in the early formative years, to promote respect for women as equals and also respect for their rights to non-violence and non-discrimination. Meanwhile, the **representatives** asked the Court to require the State to establish, in the Universidad Nacional de San Carlos de Guatemala and/or other public higher education establishments, a course on women's rights entitled "*Cátedra Claudina Isabel Velásquez Paiz*" to honor her memory in her alma mater, and contribute to the dissemination of women's rights in Guatemala and, thereby, to the eradication of violence against women. The course should be offered every year starting with the academic year following notification of the judgment in this case.

246. The **State** indicated that its educational programs "already include promotion of respect for women as equals, and also their rights." According to Guatemala, for more than a decade, the Ministry of Education has promoted programs that have contributed to enhancing the dignity of girls and women, and cited in this regard: (1) the program "Educating girls"; (b) the pilot project "To educate girls"; (c) the project "A new world for girls"; (d) the campaign "Educated girl, mother of development"; (e) the program of "Scholarships for indigenous girls in rural areas"; (f) "Global project for educating girls"; (g) the program for "Bilingual education," and (h) the program to provide comprehensive care for children under the age of seven years. It also stressed that the design and implementation of the strategy of Comprehensive Education on Sexuality and Prevention of Violence is carried out by the General and Departmental Directorates with the support of the Unit for Gender Equity with Ethnic Relevance attached to the Educational Planning Directorate. In this regard, the State considered that the measures requested by the Commission and the representatives "had already been implemented."

247. The Court has verified that the facts of this case occurred in a context of an escalation of homicidal violence against women in Guatemala, that the levels of such violence continue to be elevated and that there has even been an increase in the level of violence against women and the cruelty inflicted on the bodies of many of the victims (*supra* paras. 45 and 48). When this type of situation exists, the Court has ordered the implementation of educational programs addressed at the general population to overcome discrimination against women.<sup>326</sup>

248. Even though Guatemala has indicated that it already has educational programs to promote respect for women's rights, the Court notes that, of the programs described by Guatemala, only one addresses the prevention of violence against women: the "strategy" for "prevention of violence," presumably carried out by the General and Departmental Directorates with the support of the Unit for Gender Equity with Ethnic Relevance attached to the Educational Planning Directorate. However, the State has not provided any information on the content, scope or implementation of this "strategy." Consequently, bearing in mind the situation of discrimination and violence against women that has been verified, the Court requires the State, within a reasonable time, to incorporate into the curriculum of the national education system, at all educational levels, a permanent program of education on the need to eradicate gender discrimination, gender stereotyping, and violence against women in Guatemala, in light of international law in this regard and the case law of this Court. To this end, for three years, the State must present an annual report indicating the actions taken to this end. The Court does not

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<sup>326</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para., 543.



find it necessary to require, additionally, the course on women's rights requested by the representatives.

*C.3.2. Institutional strengthening for the investigation of cases of violence against women*

249. The **Commission** requested that the State adopt and/or, as appropriate, adapt protocols for the investigations and expert services used in all crimes related to the disappearance, sexual violence or murder of women in accordance with international standards on such matters and with a gender perspective. It also asked that the State reinforce the institutional capacity to combat impunity in cases of violence against women, through effective criminal investigations conducted with a gender perspective and with constant judicial control, thereby ensuring proper punishment and redress.

250. The **representatives** indicated that the Guatemalan system of justice continued to suffer from serious structural problems that prevented the effective investigation of acts of violence against women. Accordingly, they asked the Court to require the State to carry out a strategic reinforcement of the public entities that participate in the investigation and prosecution of cases of violence against women, including the Public Prosecution Service and the Guatemalan National Institute of Forensic Science (INACIF), among other agencies. This reinforcement should also include education and training for the authorities responsible for the judicial proceedings in cases of violence against women that included a strategy to investigate patterns of violence of this type and raised awareness of the appropriate treatment of the victims of this type of incident and their families, as well as ensuring them adequate access to justice. This should also include strengthening the existing institutional and legal framework to combat femicide in Guatemala by standardizing protocols, investigation guidelines and methods, and forensic actions, as well as in the administration of justice in cases relating to the disappearance and murder of women or other types of violence against women, in light of applicable international standards. According to the representatives, the existing training and awareness-raising programs for government agents, particularly in the legal sector and law enforcement, should be strengthened. They also indicated that training courses on combating gender-based violence and on a gender-sensitive approach in law enforcement should be included in the training of all the agents of the National Civil Police and national defense forces. The training should include raising awareness of applicable laws, such as the Law against Femicide and the Law against Sexual Violence. They indicated that a gender-sensitive approach should be incorporated into the code of conduct for all prosecutors and other agents of justice involved in the investigation stage. Statistics on the number of trained officials in each department should be made public and complaints on misconduct by the police and other Government officials should be investigated in a complete, impartial and transparent manner.

251. The **State** indicated that programs aimed at strengthening the institutional capacity to combat impunity in cases of violence against women had been implemented in different institutions that participated in the investigation, prosecution and punishment of such crimes. It also emphasized that the Commission had not defined the precise aspects that it considered had not been reinforced. It indicated that it had complied with the adaptation and adjustment of protocols for the investigations and expert services used in all crimes related to the disappearance, sexual violence or murder of women, in accordance with relevant international standards, based on a gender perspective. It also affirmed that "domestic legislation includes criminal laws for the punishment of any perpetration of criminal acts, [...] and there are specific laws aimed at dealing with situations of violence to which a woman could be exposed." In particular, the State referred to the following measures and institutions that it considered had been strengthened: (a) the Ministry of the Interior, which had created the Special Task Force against Femicide; (b) the Attorney General's Office (PGN), which coordinated the early warning system under the Alba-Keneth Law and has a Unit for the Protection of the Rights of Women,

the Elderly and People with Disabilities; (c) the Judiciary, which has had a Criminal Trial Court for crimes of femicide and other forms of violence against women since October 2012, with the Unit for Women and Gender Analysis that trains and advises Judiciary staff, and hears crimes of domestic violence and violence against women, and also special courts and tribunals with jurisdiction in the area of femicide and other forms of violence against women created in 2010; (d) the Legislature, whose working committees include the Committee for Women's Affairs; (e) the Public Criminal Defense Institute and its efforts to implement the Program of free legal aid for victims of violence and their families; (f) the creation of the National Institute of Forensic Science (INACIF) on September 8, 2006, which began operating on July 19, 2007.<sup>327</sup> Similarly, the State referred to the following measures and institutions established within the Public Prosecution Service: creation of the Special Prosecutor's Office for Women's Affairs and the special prosecutors' offices that exclusively examine crimes of femicide; the Special Prosecutor's Office for Women and Children Victims for other departments with ethnic cultural relevance to respond to indigenous women; the Holistic Care Model (MAI) for cases of domestic violence and sexual offenses in the metropolitan area; the Gesell Chamber; a mobile magistrate's court to provide immediate protection for women and children victims of sexual offenses; the Unit for Investigating Sexual Offenses established on August 1 2012. It also indicated that, the special protocol "General instructions for the criminal investigation of the crime of femicide" was being used by the Public Prosecution Service, under General Instruction 06-2013;<sup>328</sup> the Prosecutor General and the Head of the Public Prosecution Service had established "strategic criminal prosecution, interinstitutional coordination, care and protection for victims and witnesses, and institutional strengthening" as part of their institutional policies for 2011-2014; a series of directives had been implemented aimed at adapting the work of criminal investigation and prosecution to the relevant international standards;<sup>329</sup> actions to protect and provide care to victims and witnesses had been promoted,<sup>330</sup> and personnel were receiving constant training.

252. As in the case of *Veliz Franco et al.*, the Court appreciates the efforts made by the State to enact legislation, adopt other legal acts, and establish institutions and public policies aimed at combating gender-based violence, as well as its efforts to improve its criminal investigation system. These advances constitute structural indicators in relation to the adoption of measures that, in principle, are aimed at combating violence and discrimination against women, or their application contributes to this.<sup>331</sup>

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<sup>327</sup> According to the State, from the time INACIF came into operation, protocols and guidelines were created and implemented that updated autopsy practices and that go much further than the mere identification of corpses. The most significant change is that its main function is to obtain scientific evidence that subsequently serves to press charges and prove the possible link between the accused and the injuries to the corpse. The State indicated that the use of these protocols has been improved over the years. Accordingly, it considered that it had complied with the Commission's recommendation regarding the adoption/adaptation of investigation protocols and expertise, and underscored that the Commission had not provided sufficient or specific elements as regards which part of the protocols implemented is not satisfactory.

<sup>328</sup> This protocol is aimed at institutionalizing the working methodology to strengthen and guide the criminal investigation and prosecution of the crimes of femicide and attempted femicide by officials of the Public Prosecution Service, and its purpose is to ensure that every murder or attempted murder of a woman is investigated immediately, in an orderly and thorough manner, taking into consideration the legal framework for protection of the lives of women, female adolescents and girls.

<sup>329</sup> The purpose of these directives is as follows: (i) to reinforce the Crime Scene Unit; (ii) to create the Manual of norms and procedures for processing the crime scene, and (iii) to issue a series of general instructions during 2006, 2007, 2008 and 2013 that regulated and provided guidelines on criminal investigation and prosecution, processing the crime scene, collection and preservation of evidence, and enforcement of the Law against Femicide and other forms of violence against women.

<sup>330</sup> They include, the Model for the comprehensive care of the victim; implementation of the model for care of the victim (7-2008); implementation of the Protocol for stabilizing the victim during the first visit (8-2008); implementation of the Protocol for care of children and adolescents, direct and collateral victims, and implementation of the Protocol for attending victims of crimes against sexual liberty and safety and decency in the Offices for Attention to Victims (10-2008).

<sup>331</sup> Cf. *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 264.

253. Nevertheless, and as this Court has indicated (*supra* para. 49), the facts of this case took place in a context in which the levels of impunity of violent acts against women remained high in Guatemala. In this regard, the representatives mentioned that the Guatemalan system of justice continued to suffer from serious structural problems that hindered the effective investigation of acts of violence against women. On this point, expert witness Karen Musalo indicated the need to implement the following measures immediately:<sup>332</sup> (a) improve investigations;<sup>333</sup> (b) create specialized courts;<sup>334</sup> (c) train, monitor and discipline public officials; (d) allocate adequate funds for these activities, and (e) collect reliable data.

254. In this regard, the Court notes, first, that in the case of *Veliz Franco et al.*, it ordered the State to draw up a scheduled plan to reinforce the National Institute of Forensic Science (INACIF). In that case, the Court established that the satisfactory operation of that entity was important to ensure that cases of attacks on women could be investigated properly. Also, it found that verified data from 2012 indicated the need for INACIF to be allocated increased resources, and this had also been indicated by the entity's authorities in 2010.<sup>335</sup> In this case, and as in the case of *Veliz Franco et al.*, the State has not provided the Court with information showing that this situation has changed.<sup>336</sup> Therefore, the Court finds it pertinent to again order that, within a reasonable time, the State draw up a scheduled plan to reinforce the National Institute of Forensic Science (INACIF) that includes an adequate allocation of resources to expand its activities over national territory and fulfill its mandate.

255. Second, in the case of *Veliz Franco et al.*, the Court determined that article 15 of the 2008 Law against Femicide established the "creation of specialized jurisdictional organs." Also, its article 14 established that "the Public Prosecution Service shall create the Office for the Prosecution of Crimes against the Life and Physical Integrity of Women, specializing in the investigation of the crimes defined by [the said] law, with the budgetary, physical, material, scientific and human resources that allow it to fulfill its mandate." Moreover, articles 22 and 23 of this law established a period of 12 months for "creating" "the specialized jurisdictional organs referred to in article 15 [...] throughout the Republic," as well as "[the] prosecutor's office referred to in article 14."<sup>337</sup>

256. In the case of *Veliz Franco et al.*, the State reported that "the Guatemalan Supreme Court of Justice, in decision 1-2010" had approved the creation of specialized courts in some of

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<sup>332</sup> Cf. Expert opinion of Karen Musalo provided by affidavit on April 13, 2015 (evidence file, folios 6662 and 6663).

<sup>333</sup> She indicated the need to "improve investigation of the crime scene, chain of custody controls, training and coordination of police, investigators, prosecutors and judicial officials; develop systems that allow the authorities to respond more promptly and effectively to crimes against women; avoid contamination of important evidence, and facilitate the necessary follow-up. This also includes the establishment of laboratories for forensic crimes and programs to train forensic experts in collecting evidence in cases of femicide and other gender-related criminal cases and in collecting, processing and preserving DNA evidence to facilitate the identification and prosecution of perpetrators, and in preserving evidence for the future if necessary. In addition, this would include the adoption of relevant protocols such as the creation of a protocol to differentiate between femicide and the murder of women that does not meet the definition of femicide." Expert opinion of Karen Musalo provided by affidavit on April 13, 2015 (evidence file, folio 6662).

<sup>334</sup> She indicated the need to "provide adequate funding and other resources required to bring into operation the specialized courts for crimes against women and femicide, authorized by the 2008 Law. This would include the assessment of whether the number and distribution of the specialized courts was sufficient and whether or not the creation of additional courts should be authorized." Expert opinion of Karen Musalo provided by affidavit on April 13, 2015 (evidence file, folio 6662).

<sup>335</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, paras. 267 and 268.

<sup>336</sup> Regarding the reinforcement of the INACIF, in its final written arguments the State merely referred to the existence of a postgraduate program for personnel of this entity, together with other agents of justice and State institutions, as well as "a coordinated effort among the three branches of State (Executive, Legislature and Judiciary)" to promote "a democratic State criminal policy," "in order to tackle four basic aspects of crime: (1) prevention; (2) investigation; (3) punishment and (4) social rehabilitation." The State did not provide any documentation in this regard.

<sup>337</sup> Cf. *Case of Veliz Franco et al. v. Guatemala, supra*, para. 269.

the country's departments. However, the Court determined that, from the information provided, it was not clear whether this had been done in the remaining departments of Guatemala. In particular, it established that, in 2010, the Supreme Court of Justice approved the creation of "courts and tribunals for femicide and other forms of violence against women" in the departments of Guatemala, Chiquimula and Quetzaltenango. Subsequently, in 2012, it approved the creation of another two specialized courts and tribunals in the departments of Huehuetenango and Alta Verapaz. However, there is no evidence that specialized courts were created in the other 17 departments of Guatemala.<sup>338</sup>

257. In this case, the State has advised that it "has" a Special Prosecutor's Office for Women's Affairs, responsible for criminal prosecution of domestic violence and violence against women, as well as 12 special prosecutors in seven departments who exclusively examine crimes of femicide.<sup>339</sup> Nevertheless, the Court has no information on the possible creation of the Office of the Prosecutor for Crimes against the Life and Physical Integrity of Women mentioned in articles 14 and 23 of the Law against Femicide, and the information provided fails to reveal whether the jurisdictional organs mentioned by the State (*supra* paras. 251 and 256) were established in compliance with the provisions of articles 15 and 22 of this law; in other words, in all the departments of Guatemala. Consequently, and taking into account the provisions of the Law against Femicide, the Court finds it pertinent to again require the State, within a reasonable time, to ensure the full functioning of the "specialized jurisdictional organs" throughout the Republic of Guatemala, and also the special prosecutors' offices.

258. Lastly, and third, even though, in this case, the State has referred to training on prevention and eradication of violence against women presumably provided by the Judiciary,<sup>340</sup> the Legislature, the Ministry of the Interior,<sup>341</sup> the National Civil Police (PNC),<sup>342</sup> the Public Prosecution Service, and the Presidential Human Rights Commission (COPREDEH),<sup>343</sup> it failed to

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<sup>338</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 269 and footnote 354.

<sup>339</sup> According to the State, the specialized agencies are located as follows: Agencies 6 and 7 for Crimes against Life, in Guatemala City, Villa Nueva Municipal Prosecutor's Office, Mixco Municipal Prosecutor's Office, Chiquimula Departmental Prosecutor's Office, Quetzaltenango Departmental Prosecutor's Office, Coatepeque Departmental Prosecutor's Office, Huehuetenango Departmental Prosecutor's Office, Santa Catarina Pinula Municipal Prosecutor's Office, Chimaltenango District Prosecutor's Office, Escuintla District Prosecutor's Office and Cobán District Prosecutor's Office.

<sup>340</sup> The State indicated that the Supreme Court of Justice had facilitated the created of various courts, as well as units to train judges on the issue of sexual violence against women and girls. This training was aimed at ensuring that the services offered by the Judiciary were provided efficiently, in complete compliance with the law and without any hint of discrimination. Specifically, the State referred to the Judiciary's Unit for Women's Affairs and Gender Analysis created to train and provide advisory services on the issue to the judges, legal assistants and administrative personnel of this entity, and to prosecute and punish crimes of domestic violence and violence against women. This Unit had supposedly implemented the following diploma training courses on gender: "Semi-virtual diploma on upgrading and specialization in relation to femicide and other forms of violence against women within the framework of human rights"; "Semi-virtual diploma on social work relating to justice, human rights and gender," and program on "Gender mainstreaming and normative analysis in the Judiciary on violence against women."

<sup>341</sup> In October 2013, the Ministry of the Interior established the Special Committee on the issue of violence against women and offered a diploma course on "Gender equality, citizenship, security, and public policies; methodological contributions towards the work of the State."

<sup>342</sup> According to the State, PNC female staff have been given training on the laws in force in the country that protect them within and outside the institution. From 2012 to 2014, the PNC Gender Equality Department organized 82 workshops for 3,521 members of the institution on the Law against Femicide and other forms of violence against women, who also received training to improve the quality of attention to women victims and survivors of violence. From 2012 to 2014 also, the Sub-General Directorate for the Prevention of Crime organized 49 workshops on PNC actions when dealing with violence against women, and trained a total of 10,931 women and 11,647 men from civil society. In 2014, the members of the Committee for the Prevention of Crime in 13 departments, 115 municipalities and 280 communities were trained in their own language on issues relating to: public safety; public participation, participative planning, the process for filing complaints, violence against women, domestic violence, rights of the indigenous peoples, and gender equality and equity.

<sup>343</sup> It implemented diploma courses for employees and public officials from the Executive and other institutions on the issue of violence against women, including: in 2015, "The human rights and citizenship of indigenous women," with

provide any documentation that would allow the Court to assess the appropriateness and continuity of this training. Therefore, and taking into account, the elements ordered by this Court in the case of *Veliz Franco et al.*,<sup>344</sup> the Court establishes that the State must, within a reasonable time, implement permanent programs and courses for public officials from the Judiciary, the Public Prosecution Service and the National Civil Police, who work in the investigation of the murder of women on standards for the prevention, punishment and eradication of the murder of women, and train them in the proper enforcement of the relevant international standards and case law of this Court.

### C.3.3. Measures to prevent violence against women: State policies

259. The **Commission** asked the State, as a measure of non-repetition, to introduce a comprehensive and coordinated State policy, backed by sufficient public funds, for prevention of violence against women. It also asked that the State adopt comprehensive public policies and institutional programs designed to eliminate discriminatory stereotypes about the role of women and to promote the eradication of discriminatory socio-cultural patterns that prevented women's full access to justice; this should include training programs for public officials in all sectors of government, including the education sector, those involved in the administration of justice and the police, as well as comprehensive policies on prevention.

260. The **representatives** asked the Court to require the State to take the necessary affirmative measures to ensure that existing laws and policies on violence against women were implemented immediately and effectively to prevent and punish this type of violence and guarantee that victims received sufficient and prompt care, protection and compensation.<sup>345</sup> They also asked that the State take the necessary measures to change the socio-cultural patterns of conduct and stereotyping that exacerbate violence against women, in order to support the prevention of violence. This effort should include criminalizing sexual assault, awareness-raising campaigns and educational programs to promote gender equality in Guatemala, training sessions for journalists on the coverage of cases of femicide and other forms of violence against women, and the implementation of a cooperation agreement or strategy with the media and publicity agencies to help combat the gender stereotypes portrayed in the mass media. In addition, they asked that the State play a role in campaigns to disseminate information on women's rights, and publicize the services and mechanisms that exist for victims of violence.

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the participation of the following institutions: the Attorney General's Office (PGN), the National Indigenous and Campesino Coordinator (CONIC), the Ministry of Culture and Sport (MICUDE), the Ombudsperson for Indigenous Women (DEMI), the Ministry of the Interior (MINEGOB), the Solidarity Fund, the Ministry of Finance (MINFIN), the Ministry of Labor (MINTRAB), the Penitentiary System General Directorate, the National Disaster Reduction Coordinator (CONRED), the Ministry for Social Development (MIDES), the National Civil Service Office (ONSEC), and the National Institute of Tourism (INGUAT). Also, "Women's human rights," with the participation of the following institutions: the Ministry of Finance (MINFIN), the Ministry of Defense (MINDEF), the Ministry of Education; the Ministry for Social Development (MIDES), the Ministry of Culture and Sport (MICUDE), the Presidential Secretariat for Women (SEPREM), the Ministry of Labor (MINTRAB), the National Office for Women's Affairs (ONAM), the Judiciary's Unit for the Community Prevention of Violence, the Guatemalan Indigenous Development Fund (FODIGUA), the National Institute of Statistics (INE), the Public Criminal Defense Institute (IDPP), and the Office of the General Comptroller. Lastly, the State provided information on the postgraduate course for agents of justice and other State institutions, specifically the Attorney General's Office (PGN), the Public Prosecution Service (PM), the Ombudsman's Office (PDH), the Ministry of Defense (MINDEF), the National Civil Police (PNC), the Public Criminal Defense Institute (IDPP), the Judiciary(OJ), the Guatemalan National Forensic Instituted (INACIF), the Presidential Human Rights Commission (COPREDEH), and the Presidential Commission against Discrimination and Racism (CODISRA).

<sup>344</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 275.

<sup>345</sup> The indicated that, at a minimum, women and girls in all the departments should have prompt access to Government support structures and to emergency response mechanisms; to special courts that dealt with gender violence, and to shelters for victims of violence. Each program or law should receive adequate funding, and the Government should evaluate the progress made in the implementation of each program and law each year and publicize the data and statistics on this progress.

261. The **State** indicated that this measure of non-repetition requested by the Commission had already been implemented to meet the obligations assumed under international conventions and to enforce the laws in force on the prevention, punishment and eradication of violence against women. It also indicated that the Court had already required implementation of this measure in the eleventh and twelfth operative paragraph of the 2014 judgment in the case of *Veliz Franco et al.*<sup>346</sup> Furthermore, the State provided details of the creation, structure, functions and work carried out by the Coordinating Body for the Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI), the Presidential Secretariat for Women (SEPREM) and the Special Office for Women's Affairs (GEM). In addition, it referred, in detail, to the following public policies in the area of prevention, attention, punishment and eradication of violence against women, implemented to combat violence against women: the National Policy for the Comprehensive Promotion and Development of Women (PNPDIM) and the Equal Opportunities Plan (PEO) 2008-2023, and the National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women (PLANOVI) 2004-2014. It also referred to inter-institutional coordination to implement these policies. In this regard, it referred to the creation of the "Technical group to promote the life and safety of women," composed of CONAPREVI, SEPREM and the Office for the Defense of Indigenous Women's Rights (DEMI), in coordination with the Ministry of the Interior and the congressional Committee for Women's Affairs. It also referred to a network to provide care to women who had been attacked, established by the Office for Attention to Victims and the Special Prosecutor's Office for Women's Affairs of the Public Prosecution Service, and also the National Institute of Forensic Science (INACIF). Additionally, it had Comprehensive Support Centers for Women Survivors of Violence (CAIMUS). Lastly, it referred to the implementation of the Action Protocol to address violence against women of the National Civil Police (PNC).

262. With regard to the elimination of discriminatory stereotypes, the State indicated, among other matters, that the measures implemented to ensure access to justice included: creation of institutions to provide legal support to indigenous women; creation of the Office for the Defense of Indigenous Women's Rights, attached to the National Commission against Racism and Discrimination, and Indigenous Defenders attached to the Public Criminal Defense Institute; incorporation of interpreters in institutions related to the administration of justice; signature of an agreement between the DEMI and the Office of the United Nations High Commissioner for Human Rights and the Presidential Commission against Discrimination and Racism; increase in the number of complaints filed before the DEMI by indigenous women with regard to acts of violence against them; implementation by the Educational Directorate of the Presidential Coordinating Commission for the Executive's Human Rights Policy (COPREDEH) of diploma course on relevant issues for employees and public officials of the Executive and other institutions; two in 2012, nine in 2013 and fourteen in 2014.

263. The Court appreciates the different measures taken by the State, including the creation of diverse agencies, addressed at the prevention of violence against women and the eradication of discriminatory socio-cultural patterns.

264. Nevertheless, in this case, the Court has established that, according to the reports of various national and international organisations, as well as expert witness Karen Musalo, the measures implemented by the State to address the problem of violence against women up until

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<sup>346</sup> "11. The State shall, within a reasonable time, bring into operation the "specialize jurisdictional organs" and the special prosecutor's office, [...]. 12. The State shall, within a reasonable time, implement programs and courses for public officials, members of the Judiciary, the Public Prosecution Service and the National Civil Police, who are involved in the investigation of the murder of women on standards with regard to prevention, and the eventual punishment and eradication of the murder of women, and provide them with training on the proper enforcement of the relevant laws and regulations [...]."

the time at which the facts of the case occurred were insufficient to resolve the problem because they were allocated insufficient resources, and owing to a lack of coordination between the different institutions and a comprehensive protection strategy. In addition, the Court has verified that, in its last National Report presented to the Working Group on the Universal Periodic Review of the UN Human Rights Council, dated August 7, 2012, the State acknowledged that, among the challenges it faced, was "implementation of a coordinated inter-agency strategy for preventing violence against women in all circumstances." For the purposes of this case, the Court has also established, specifically, that the State had not proved that it had implemented the necessary measures to ensure that the officials responsible for receiving missing person reports had the capacity and sensitivity to understand the gravity of such reports in the context of violence against women, and the willingness and training to act immediately and effectively (*supra* paras. 120 and 133). That said, in its answer to the submission of the case, the State mentioned the creation of the "early warning system of the Alba-Keneth Law," coordinated by the Office of the Attorney General (PGN) (*supra* para. 251), which "seeks to provide better protection for children and adolescents against kidnapping, trafficking, sale and smuggling [...]." <sup>347</sup> However, it did not indicate whether a similar system existed in its domestic law for the situation of adult women reported missing in the context of this case.

265. The Court has verified that, on October 11, 2012, a group of members of Congress of the Republic of Guatemala filed a "bill on the immediate search for missing women." In the justification for this initiative, the case of Claudina Isabel Velásquez Paiz was cited as an example in which "the delay in taking immediate actions to search for missing persons, especially women, may assist the perpetrators who cut short their life."<sup>348</sup> It also cited the Guatemalan Ombudsman's report on the case of Claudina Velásquez, in which he criticized the 24-hour delay for receiving a missing person report, because this created a lapse of time during which the victim was left defenseless and prevented the establishment of an adequate record of missing persons for the purposes of their subsequent identification (*supra* para. 131). On March 18, 2014, the congressional Committee on Legislation and Constitutional Matters issued a favorable report on this bill, considering that "there is no coordination mechanism that allows for an appropriate response to the disappearance of women," "that, despite the efforts made concerning safety and justice, the level of violence against women in Guatemala is high and is increasing year by year," and that "the level of impunity in cases of the death of women is over 90%."<sup>349</sup> This bill has not been approved by the Guatemalan Congress.

266. Consequently, taking into account that the need to regulate the search for missing women in Guatemala has been identified, the Court deems it pertinent to require the State to adopt a national strategy, system, mechanism or program, by legislative or other means, to ensure the immediate and effective search for missing women, and that ensures that in cases of reports of this nature, the corresponding authorities receive them immediately, without the need for formalities and, at the same time, initiate actions to locate the possible victims and prevent the violation of their rights to life and to personal integrity. All this, within a reasonable time and with the respective allocation of institutional and budgetary resources.<sup>350</sup>

#### C.3.4 Request for a statistical information system

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<sup>347</sup> Cf. Law on the Alba-Keneth Early Warning System. Decree No. 28-2010. Cf. *Case of Veliz Franco et al. v. Guatemala*, *supra*, footnote 357.

<sup>348</sup> Bill on the immediate search for missing women", p. 6. Available at: <http://www.congreso.gob.gt/manager/images/4097B3FD-E522-0547-3042-D05791A99602.pdf>.

<sup>349</sup> Cf. Report No. 03-2014 of the congressional Committee on Legislation and Constitutional Matters on the "Law on the immediate search for missing women," pp. 6, 8 and 10. Available at: <http://www.congreso.gob.gt/manager/images/91E9DEF7-5D94-7146-29A0-8AB105E3FC92.PDF>.

<sup>350</sup> See, *mutatis mutandis*, *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 506.

267. The **Commission** asked that the State implement a system to produce disaggregated statistics allowing the design and evaluation of public policies on the prevention, punishment and elimination of violence against women. The **representatives** asked that the State establish a system to produce disaggregated statistics on violence against women that identified trends and patterns; to design and implement public policies for the prevention, punishment and eradication of violence against women, and to design programs providing adequate care for women. Also, and together with the production of statistical information, the State should publicize, at least on an annual basis, the degree of implementation and compliance with the measures taken to respond to femicide and other forms of violence against women. These reports should be based on indicators, and in order to establish the latter, the State should consult civil society and experts in women's rights, sexual violence and other forms of discrimination against women. The foregoing as a supplement to the system to produce disaggregated statistics on violence against women of the National Institute of Statistics.

268. The **State** indicated that the system to produce information referred to by the Commission in its recommendations had already been implemented. It explained that the National System of Information on Violence against Women (SNIVCM) was the responsibility of the National Institute of Statistics (INE) and the National Coordinating Body for the Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI). This system had been created in compliance with article 20 of the Law against Femicide and other forms of violence against women, owing to the national interest and need to have statistics on violence against women which responded to the demand for timely and reliable information that permitted the elaboration and evaluation of sustainable public policies.

269. In the case of *Veliz Franco et al. v. Guatemala*, the Court took into consideration that article 20 of the Law against Femicide established that the National Institute of Statistics was obliged to generate statistical indicators and information, and should create a national system of information on violence against women. Furthermore, the Court has verified that the webpage for consulting this national information system<sup>351</sup> contains data and information on violence against women in Guatemala. Accordingly, the Court does not find it necessary to require the creation of a system to compile and produce statistics.<sup>352</sup> In the instant case, it has not been proved that this system suffers from problems that render it ineffective or inadequate. Consequently, the Court will not require this measure of reparation on this occasion.

#### **D. Compensation**

270. The **Commission** did not present any specific arguments on this point.

##### *D.1. Non-pecuniary damage*

271. The **representatives** requested the payment of non-pecuniary damage of US\$500,000 in favor of Claudina Isabel Velásquez Paiz owing to the failure to ensure her rights. This amount should be divided equally and delivered to Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz. They also requested the payment of US\$75,000 in favor of each of the following: Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz, based on the distress caused by losing their daughter and sister, as well as the psychological anguish and suffering owing to the lack of justice and lack of knowledge about the murder of Claudina Velásquez.

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<sup>351</sup> See, Guatemalan National Institute of Statistics. Available at: <http://www.ine.gob.gt>

<sup>352</sup> Cf. Case of *Veliz Franco et al. v. Guatemala*, *supra*, para. 276.



272. The **State** indicated that it did not owe any type of monetary reparation for non-pecuniary damage because it had conducted a serious and diligent investigation and had sanctioned the forensic physician whose negligence had led to a delay in the investigation. Also, even though several years had passed since the facts of the case, the family members had not requested any psychological assistance or indicated that there was an impediment to their emotional recovery and it was only now that they had asked for monetary reparation, without mentioning that they had received psychological treatment of any kind. Therefore, it asked the Court “not to allow this to become an action for unjust enrichment.” Lastly, it asked that, if the Court concluded that it should make reparation for non-pecuniary damage to the family, this amount be established in equity, without taking into account the exorbitant amounts requested.

273. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this “may include both the suffering and anguish caused by the violation and the impairment of values that are very significant for the individual and any alternation, of a non-pecuniary nature, in the living conditions of victims.”<sup>353</sup> Since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of providing full reparation to the victim, by the payment of a sum of money or the delivery of goods and services having a monetary value, which the Court determines in reasonable applicable of sound judicial criteria and in terms of equity.<sup>354</sup>

274. In Chapters VII.I, VII.II and VII.III, the Court established, on the one hand, in relation to Claudina Isabel Velásquez Paiz, the international responsibility of the State for the failure to prevent acts that violated her rights to life and to personal integrity. On the other hand, it has been established that various deficiencies in the investigation of those acts affected access to justice, and the Court declared the violation of the rights to personal integrity and to respect for the honor and recognition of the dignity of the members of her family. In addition, it was verified that Jorge Rolando Velásquez Durán had played an active role in the domestic investigation. Based on the foregoing, the Court establishes, in equity, for non-pecuniary damage, the sum of US\$60,000.00 (sixty thousand United States dollars) in favor of Claudina Velásquez Paiz; the sum of US\$18,000.00 (eighteen thousand United States dollars) in favor of Jorge Rolando Velásquez Durán; the sum of US\$15,000.00 (fifteen thousand United States dollars) in favor of Elsa Claudina Paiz Vidal, and the sum of US\$12,000.00 (twelve thousand United States dollars) in favor of Pablo Andrés Velásquez Paiz. The amount established in favor of Claudina Velásquez Paiz shall be divided equally between, and delivered to, Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz.

#### *D.2. Pecuniary damage*

275. The **representatives** requested payment of US\$692,424.44 for loss of earnings in favor of Claudina Velásquez and US\$588,031.44 for loss of earnings in favor of Jorge Rolando Velásquez. In this regard, they indicated that, at the time of her death, Claudina Velásquez was in the fourth semester of her law studies in the Faculty of Legal and Social Sciences of the Universidad de San Carlos, “one of the most prestigious in Guatemala.” She was completely bilingual and had plans to specialize in criminal law in Spain. Added to this, they asked that her age and life expectancy be taken into account. In the case of the victim’s father, Jorge Rolando Velásquez Durán, they argued that he had had to abandon his professional activities with which he maintained his family to devote himself to expediting the judicial investigation into his daughter’s murder, despite the fact that this investigation should have been expedited, ex

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<sup>353</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of López Lone et al. v. Honduras, supra*, para. 320.

<sup>354</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. para. 53, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288, para. 286.

*officio*, by the State. They also requested the payment of indirect damage because, from the time of Claudina Velásquez's death, her family had been forced to incur a series of extra-procedural expenses including: funeral and burial expenses amounting to approximately US\$1,800; psychiatric treatment from 2007 to date for Pablo Andrés Velásquez Paiz owing to the trauma resulting from the murder and prolonged denial of justice amounting to approximately US\$515 monthly, and the payment of the fees of experts for the psychological appraisal of Elsa Claudina Paiz Vidal and Jorge Rolando Velásquez Durán. In this regard, they asked the Court to establish the respective amount, in equity, owing to the "difficulty of the family to estimate the exact amounts of these expenses."

276. The **State** reiterated that it had not violated any right in this case, so that it was not responsible for redressing any pecuniary damage. It also argued that the petitioners had not submitted documents proving the indirect damage alleged in relation to funeral and medical expenses. Regarding loss of earnings, the State argued that the actuarial reports submitted as evidence by the representatives did not reflect the national reality. It explained that, if the Court ordered this, Guatemala could request specific information on what a law-school graduate earned based on the fee scale that exists for this purpose and on the reality reported by this type of professional to the Tax Administration Superintendence (SAT). In the case of Jorge Rolando Velásquez Durán, it indicated that the evidence did not reveal that he suffered from any health condition as a result of this case that prevented him from working, but rather that his health was very good. Consequently, the State did not have to compensate him for loss of earnings.

277. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes "the loss or detriment to the earnings of victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case."<sup>355</sup>

278. With regard to the alleged loss of earnings of Jorge Rolando Velásquez Durán, the Court notes that the representatives presented as evidence a document drawn up by a public accountant in which "he certifies" that, as a result of the violent death of his daughter, Claudina Isabel Velásquez Paiz, [Mr. Velásquez Durán] was obliged to abandon his company from which he obtained an income [...] to devote himself to managing [the] investigation in person, [...] abandoning his business activities, from which he estimates that he derived an income" of US\$588,031.44 (five hundred and eighty-eight thousand and thirty-one United States dollars and forty-four cents).<sup>356</sup> Similarly, regarding the compensation for loss of earnings in favor of Claudina Isabel Velásquez Paiz, the Court notes that the representatives presented a document drawn up by a public accountant in which "he certifies" that "according to a declaration by the next of kin of [...] Claudina Isabel Velásquez Paiz," the global sum determined amounted to US\$692,424.44 (six hundred and ninety-two thousand four hundred and twenty-four United States dollars and forty-four cents), for the "total annually-increasing income expected over the period that Claudina Isabel Velásquez Paiz would have been economically active, starting at 25 years of age (the date that her economically active professional life would have started), and ending at 75 years of age (the generally accepted age of retirement for an independent professional)."<sup>357</sup> In this regard, the Court notes that the amounts established by the public accountant who prepared these documents on loss of earnings in favor of Claudina Velásquez and her father were apparently based on declarations and calculations of Claudina Velásquez's family and the accountant himself. In other words, there is no record that, to arrive at these

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<sup>355</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*, *supra*, para. 43, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 302, para. 314.

<sup>356</sup> Cf. Report of the Independent Actuary of July 31, 2014 (evidence file, folios, 2683 to 2685).

<sup>357</sup> Cf. Report of the Independent Actuary of July 31, 2014 (evidence file, folios, 2679 to 2681).

amounts, the accountant based himself on documents that proved the income derived from Mr. Velásquez Durán's commercial activities in the past or, in the case of Claudina Velásquez, on any document that indicated the probable earnings of a lawyer in Guatemala. Nevertheless, from the statements made by Jorge Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz,<sup>358</sup> it can be concluded that, for an indeterminate time, Mr. Velásquez Durán devoted himself to expediting the investigation into his daughter's death. In the case of Claudina Isabel Velásquez Paiz, it is uncontested that she was a young law student at the Universidad de San Carlos de Guatemala. Consequently, the Court establishes, in equity, the sums of US\$10,000.00 (ten thousand United States dollars) for loss of earnings in favor of Jorge Rolando Velásquez Durán and US\$145,500.00 (one hundred and forty-five thousand five hundred United States dollars) in favor of Claudina Isabel Velásquez Paiz for the same concept. The amount established in favor of Claudina Velásquez Paiz shall be divided equally between, and delivered to, Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz.

279. With regard to the amounts for indirect damage, the representatives mentioned the following items: (a) the funeral and burial expenses of Claudina Velásquez; (b) the payment of services for psychiatric treatment, from 2007 to date, for Pablo Andrés Velásquez owing to the trauma resulting from the murder and prolonged denial of justice, and (c) the payment of the fees of experts for the psychological appraisal of Elsa Claudina Paiz Vidal and Jorge Rolando Velásquez Durán, among other expenditure. However, "owing to the family's difficulty to provide an estimate of the exact amounts of the expenses incurred by the Velásquez Paiz family that fall within the concept of indirect damage," the representatives asked that an amount be established based on the principle of equity. In this regard, the Court notes that the representatives did not submit any evidence of the disbursements made for the payment of the said expenses. Nevertheless, it is evident that the Velásquez Paiz family had to incur funeral expenses. Also, the case file shows that Jorge Velásquez and Elsa Paiz underwent psychological appraisals,<sup>359</sup> and that their son received psychiatric treatment<sup>360</sup> in relation to the facts of this case. Consequently, the Court establishes, in equity, the sum of US\$9,000.00 (nine thousand United States dollars) for the concept of compensation for indirect damage in favor of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz.

### ***E. Costs and expenses***

280. The **Commission** did not present specific arguments in this regard. The **representatives** requested the payment of US\$60,000 in favor of Jorge Rolando Velásquez Durán for the costs and expenses he had incurred to obtain justice at both the national and the international level.

281. The **State** indicated that not a single document had been submitted that proved the supposed expenses incurred in the processing of this case, which was suspicious because it related to a situation to which the petitioners had devoted practically their whole lives. Consequently, it opposed the Court taking into account the request for costs and expenses presented by the representatives.

282. The Court reiterates that, based on its case law, costs and expenses form part of the concept of reparation, because the actions taken by the victims to obtain justice at both the

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<sup>358</sup> Cf. Statement made before the Inter-American Court by Jorge Rolando Velásquez Durán during the public hearing held on April 21 and 22, 2015; Affidavit prepared by Elsa Claudina Paiz Vidal on April 9, 2015 (evidence file, folio 6701), and Affidavit prepared by Pablo Andrés Velásquez Paiz on April 9, 2015 (evidence file, folio 6689).

<sup>359</sup> Cf. Psychiatric assessment of Jorge Rolando Velásquez Durán of October 21, 2009 (evidence file, folios 197 to 204); Psychiatric assessment of Elsa Claudina Paiz Vidal of December 2, 2010 (evidence file, folios 205 to 211).

<sup>360</sup> Affidavit prepared by Elsa Claudina Paiz Vidal on April 9, 2015 (evidence file, folios 6702 and 6703), and Affidavit prepared by Pablo Andrés Velásquez Paiz on April 9, 2015 (evidence file, folios 6690 and 6691).

national and the international level entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment against it. In the case of reimbursement of expenses, it is for the Court to assess their scope prudently and this includes the expenses arising before the authorities of the domestic jurisdiction, and also those arising in the course of the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the equity principle and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable.<sup>361</sup> As it has indicated on other occasions, the Court recalls that it is not sufficient to forward probative documents; rather the parties must present arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.<sup>362</sup>

283. In this case, the victims' representatives did not provide any evidence that would prove the expenses that were alleged. Nevertheless, the Court finds it reasonable to presume that Mr. Velásquez Durán made disbursements starting in November 2005, the year in which he became a joint complainant in the investigation. The Court also notes that the victims' representatives incurred expenses to attend the public hearing of the case held in Cartagena, Colombia, as well as in relation to the exercise of their legal representation, such as mailing and communications expenditure during the proceedings before this Court. On this basis, and in view of the lack of vouchers for this expenditure, the Court determines, in equity, that the State must deliver the sum of US\$5,000.00 (five thousand United States dollars) to Jorge Rolando Velásquez Durán; US\$10,000.00 (ten thousand United States dollars) to representative Carlos Pop; US\$5,000.00 (five thousand United States dollars) to the *Asociación de Abogados y Notarios Mayas*, and US\$5,000.00 (five thousand United States dollars) to the Robert F. Kennedy Center for Justice and Human Rights.

#### ***F. Method of complying with the payments ordered***

284. The State shall make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein, within one year of notification of this judgment, in accordance with the following paragraphs.

285. If the beneficiaries should be deceased before they receive the respective compensation, this shall be made directly to their heirs, pursuant to the applicable domestic law.

286. The State shall comply with its pecuniary obligations by payment in quetzals or the equivalent in United States dollars, using the exchange rate in force on the New York Stock Exchange (United States of America) the day before the payment to make the calculation. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it was not possible to pay the established amounts within the time frame indicated, the State shall deposit those amounts in their favor in a deposit account or certificate in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable financial conditions allowed by banking practice and law. If the corresponding compensation is not claimed after 10 years, the amounts shall be returned to the State with the interest accrued.

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<sup>361</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, *Case of Omar Humberto Maldonado Vargas et al. v. Chile*. Merits, reparations and costs. Judgment of September 2, 2015. Series C No. 300, para. 181.

<sup>362</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of the Santa Bárbara Campesino Community v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 347.

287. The sums allocated in this judgment as compensation and to reimburse costs and expenses shall be delivered to the persons indicated in full, as established in this judgment, without any deductions resulting from possible taxes or charges.

288. If the State incurs a delay, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Guatemala.

289. In accordance with its consistent practice, the Court reserves the authority inherent in its attributes and derived, also, from Article 65 of the American Convention, to monitor full compliance with this judgment. The case will be closed when the State has complied fully with the provisions of this judgment.

290. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures taken to comply with it.

## **IX OPERATIVE PARAGRAPHS**

Therefore,

### **THE COURT**

### **DECIDES,**

Unanimously,

1. To reject the preliminary objection concerning the alleged lack of jurisdiction *ratione materiae* filed by the State, in accordance with paragraph 19 of this judgment.

2. To reject the preliminary objection concerning the alleged failure to exhaust domestic remedies filed by the State, in accordance with paragraphs 23 to 28 of this judgment.

### **DECLARES,**

Unanimously, that:

3. The State violated its obligation to ensure the free and full exercise of the rights to life and personal integrity recognized in Articles 4(1) and 5(1) of the American Convention on Human Rights, in relation to the general obligation to ensure rights established in Article 1(1) and in relation to the obligation to adopt domestic legal provisions established in Article 2 of this instrument, as well as to the obligations established in Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Claudina Isabel Velásquez Paiz, in accordance with paragraphs 105 to 134 of this judgment.

Unanimously, that:

4. The State violated the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, and the right to equality before the law recognized in Article 24 of the Convention, in relation to the general obligations established in Articles 1(1) and 2 of this instrument, and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Elsa Claudina Paiz Vidal, Jorge Rolando Velásquez Durán and Pablo Andrés

Velásquez Paiz, all next of kin of Claudina Isabel Velásquez Paiz, in accordance with paragraphs 142 to 202 of this judgment.

Unanimously, that:

5. The State violated the rights to personal integrity and to respect for honor and recognition of dignity, recognized in Articles 5(1) and 11 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal and Pablo Andrés Velásquez Paiz, in accordance with paragraphs 209 to 220 of this judgment.

By six votes to one, that:

6. It was not necessary to rule on the alleged violations of Articles 13 and 22 of the American Convention on Human Rights, to the detriment of Claudina Isabel Velásquez Paiz, in accordance with paragraph 203 of this judgment.

Dissenting Judge Roberto F. Caldas.

Unanimously, that:

7. It was not necessary to rule on the alleged violation of Article 11 of the American Convention on Human Rights, to the detriment of Claudina Isabel Velásquez Paiz, in accordance with paragraph 135 of this judgment.

**AND ESTABLISHES,**

Unanimously, that:

8. This judgment constitutes, *per se*, a form of reparation.

9. The State shall, within a reasonable time, conduct the investigation effectively and, as applicable, open the corresponding criminal proceedings to identify, prosecute and punish, as appropriate, those responsible for the abuse and murder of Claudina Isabel Velásquez Paiz, in keeping with the guidelines in this judgment, in order to avoid a repetition of the same or similar acts as those of this case. Also, based on the pertinent disciplinary norms, the State shall examine the possible investigative and procedural irregularities related to this case and, as appropriate, sanction the conduct of the corresponding public servants. The foregoing, in accordance with paragraphs 229 and 230 of this judgment.

10. The State shall provide, free of charge and immediately, through its specialized health care institutions, adequate, comprehensive and effective medical and psychological or psychiatric treatment to victims who request this, following informed consent, including the supply, free of charge, of any medication they may require, taking into consideration the ailment of each of them, as established in paragraph 234 of this judgment.

11. The State shall, within six months of notification of this judgment, make the publications indicated in paragraph 237 hereof, as indicated in that paragraph.

12. The State shall, within one year of notification of this judgment, organize an act of public apology in relation to the facts of this case and their subsequent investigation, in accordance with paragraph 240 of this judgment.

13. The State shall, within a reasonable time, incorporate into the curriculum of the national education system, at all educational levels, a program of permanent education on the need to eradicate gender discrimination, gender stereotyping, and violence against women in Guatemala, in light of the respective international standards and the case law of this Court, as established in paragraphs 247 and 248 of this judgment.

14. The State shall, within a reasonable time, elaborate a scheduled plan to reinforce the National Institute of Forensic Science (INACIF), which includes an adequate allocation of resources to expand its activities over national territory and fulfill its mandate, as established in paragraph 254 of this judgment.

15. The State shall, within a reasonable time, implement full operation of the "special jurisdictional organs" throughout the Republic of Guatemala, together with the special prosecutor's offices, as established in paragraph 257 of this judgment.

16. The State shall, within a reasonable time, implement permanent programs and courses for public officials of the Judiciary, the Public Prosecution Service and the National Civil Police, whose functions include the investigation of the murder of women, and train them in the proper application of the respective international law and this Court's case law, as established in paragraph 258 of this judgment.

17. The State shall, within a reasonable time, adopt a national strategy, system, mechanism or program, by legislative or other means, to institute the immediate and effective search for missing women, as established in paragraphs 263 to 266 of this judgment.

18. The State shall, within one year of notification of this judgment, pay the sums established in paragraphs 274, 278, 279 and 283 as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, in accordance with paragraphs 284 to 290 of this judgment.

19. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures taken to comply with it.

20. The Court will monitor full compliance with this judgment in exercise of its attributed and in compliance with its obligations under the American Convention on Human Rights, and will consider this case concluded when the State has complied fully with all its provisions.

Judge Roberto F. Caldas advised the Court of his Partially dissenting opinion, which is attached to this judgment. Judges Eduardo Vio Grossi and Eduardo Ferrer Mac-Gregor Poisot advised the Court of their respective Concurring opinions, which are also attached to this judgment.

Judgment on Preliminary objections, merits, reparations and costs in the case of Velásquez Paiz *et al.* v. Guatemala.

Humberto Antonio Sierra Porto  
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García-Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Humberto Antonio Sierra Porto  
President

Pablo Saavedra Alessandri  
Secretary



**PARTIALLY DISSENTING OPINION OF JUDGE ROBERTO F. CALDAS**

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF VELÁSQUEZ PAIZ *EL AL.* V. GUATEMALA**

**JUDGMENT OF NOVEMBER 19, 2015**

***(Preliminary Objections, Merits, Reparations And Costs)***

**I. Introduction**

1. The purpose of this opinion, precisely and partially dissenting from the grounds and conclusions indicated by the majority of the honorable judges of the Inter-American Court with regard to operative paragraph 6 of the judgment, is to declare - in addition to all the violations indicated in the ruling to which I adhere - the violation also of freedom of expression through clothing, particularly women's clothing, in situations such as those of this case in which the use of clothes becomes an element that identified the victim with a social class that is especially vulnerable and continually stigmatized
2. Initially, I would like to emphasize my agreement with the judgment and the conclusions reached by the Court, and also the resulting reparations. I only differ, because I would add the violation of Articles 13(1) (freedom of expression) and 22(1) (freedom of movement or freedom to come and go), in relation to Article 1(1), all of the American Convention on Human Rights (hereinafter "the Convention").

**II. Violation of freedom of expression through clothing and freedom of movement**

3. It has been fully proved that "the police made erroneous suppositions" about the victim, the value of her life and the importance of investigating her case, based merely on her appearance and her clothes, in violation of her right to freedom of expression through clothing, contained in Article 13(1) of the Convention. Moreover, owing to the prejudices associated with the place where the body was found, a "lower middle-class district," the investigation of the crime scene was conducted carelessly, which also violated Article 22 of the Convention.
4. The victim's clothing was the subject of discriminatory comments by the authorities, as frequently occurs to many women. In the investigations, it was said that she was dressed as a "gang member" or "a loose woman," the latter term signifying "prostitute." This was how the authorities considered her and that stereotype affected the way in which the subsequent investigation was conducted. In that situation, it should be established that the State's actions also denied the right to freedom of expression, which can only be exercised in an environment free of coercion. It will be seen that this denial of freedom of expression existed and was perpetrated by the State's actions, which reveal that a woman's safety will not be guaranteed if she merely appears to exteriorize, through her clothing, a certain sexual or cultural identity, or her membership of certain feminine groups. Therefore, I would add to the analysis that has been made unanimously by the full Court, the evident violation of Article 13(1), in relation to Article 1(1), both of the American Convention on Human Rights, considering that the way a

woman dresses is an integral part of the expression of the human personality, particularly a woman's personality.

5. In this regard, Article 13 of the American Convention on Human Rights establishes:

Article 13 – Freedom of Thought and Expression

1. Everyone has the right to **freedom** of thought and **expression**. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through **any other medium of one's choice** (bold added).

6. The above article establishes that everyone has the right to freedom of thought and expression, a right that may be exercised by any means chosen by the individual. The expression of his or her socio-cultural identity through the use of certain types of clothing is protected by the provision cited, by means of an interpretive development that integrates implicit rights, or those that are not explicitly included, as is inherent in abstract texts such as national constitutions or international treaties, acts that are designed to endure. In other words, it is not necessary to state expressly that clothing is part of freedom of expression for this to be protected by the State and by the Inter-American Court, when the text was explicitly left open by using the expression emphasized: "any other medium of one's choice."

7. And this guarantee is entirely similar to the one established Article 19(2) of the International Covenant on Civil and Political Rights of the universal system of human rights, which reads:

Article 19

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or **through any other media of his choice**. (Bold added)

8. The above articles should be interpreted in the sense that an individual's way of dressing is a legitimate means of exercising the right to freedom of expression. The link with freedom of expression results from the fact that the individual choice of clothes and accessories that modify a person's physical appearance serves to externalize the connection to a particular group or culture, an expression that, in itself, has relevant political content.

9. It can thus be inferred that the State has the obligation to protect the individual right of those who express their identity, regardless of the means they use, so that the right to freedom of expression can be exercised fully and without coercion. Thus, it is the State's obligation to ensure a safe environment so that every woman who decides to express her control of her own body by using clothes that differ from those favored by society can do so.

10. Owing to the existence of a known context of violence against women, the choices that women make as regards their clothing deserve special protection, because the external appearance – mainly the clothing – can be used to unfairly categorize women, often to their detriment.

11. The selective thoroughness of the investigation based on the victim's clothing reveals the existence of an informal dress code, reinforced by the actions of the authorities who exacerbate the vulnerability of the victim when they consider that her clothes reflect her membership of a particularly marginalized female group, as is the case of women who dress as they choose, who express their identity through their outfits, which are often not considered appropriate from a patriarchal, chauvinistic and sexist standpoint.

12. In general, this case is similar to a 2011 case in Canada, which had major repercussions in the international media and in social and feminist movements in several countries, when the Toronto police force, when referring to a series of rapes on a university campus, suggested that women should avoid dressing like prostitutes, blaming the victims themselves for contributing to the rape they had suffered. The reaction in the feminist and human rights media was immediate, resulting in the creation of the transnational non-governmental organization "SlutWalk," which defended a woman's right to dress as she wishes, and the right to go wherever she wants, without the risk of being harassed, assaulted or raped. The name of the movement was purposely strident because many women, especially young ones, identified with the victims in that they preferred to use short, sensual clothes, but in no way wanted to assume risks for this reason. Thus, they considered that, if the victims appeared to be prostitutes, this is what they would call themselves in solidarity, to protest in favor of their right to freedom of movement and freedom of dress (expression). And, they expected that men should behave correctly and lawfully, without committing any criminal violence, and the State should provide protection from the perspective of respect for women.

13. When such dress codes perpetuate sexist gender stereotyping, and render violence against women invisible or allow it to go unpunished – frequently with an especially perverse impact on women – the State's opinion of a victim's clothing becomes a tool by which the State appropriates the right to control a woman's body, finding justification based on the supposed moral values of the community. Requirements as regards clothing are even used to justify underlying discriminatory attitudes and to permit the external control of female sexuality, objectivizing women by denying them their autonomy.

14. By deliberately being negligent and failing to act with due diligence in the respective criminal investigation, the State ends up by penalizing the woman who has already been victimized once. According to the State's perspective that is revealed in this case, the woman who chooses to dress in a certain way loses, even though informally, the right to judicial guarantees, because she is not considered worthy of them while she supposedly belongs to a socially marginalized group of women who are prostitutes or from a low-income class. By expressing her socio-economic position through her clothing, she exposed herself to the State's indifference to an eventual violation of any of her rights. Thus, it becomes dangerous to express oneself through one's clothes and accessories, and that danger ends up by closely constituting the curtailment of the right to freedom of expression. It is not possible to fully exercise freedom of expression if some expressions are punished, even habitually, by the State.

15. In keeping with this interpretation, the United Nations Human Rights Committee, in its General Comment No. 34, of July 29, 2011, established that the freedom of expression established in Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) should be interpreted to include the right to choose what clothes to wear and that this choice should be made free of State pressure. The relevant part reads as follows:

11. Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be

regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.

12. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms includes spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, **dress** and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression (bold added).

16. The problem of coercion, either by the use of violence such as, for example, in Uganda where women were attacked merely because they used short skirts,<sup>1</sup> or more subtly, by the certainty that their safety will not be guaranteed by the State, has the effect of real prior censorship, felt even before a women chooses or buys the clothes she will use revealing how she presents herself physically to the world.

17. Just as an illustration – since no record of a specific study on Guatemala could be found – this perception that women who express some degree of autonomy or sexual freedom through their clothing may be subject to violence is reflected, for example, in a 2014 study conducted in Brazil by the Instituted for Applied Economic Research (IPEA),<sup>2</sup> which noted that 26% of those interviewed agreed, partially, with the statement that “women who use clothes that show off their body deserve to be attacked.” Similarly, research conducted by the United Nations Commission on the Status of Women (CSW) indicated that 95% of women in Delhi do not feel safe in public spaces, while 75% of the men interviewed agreed with the statement that “women provoke men by the way they dress.”<sup>3</sup>

18. With particular relevance for the case examined, it should be underscored that this scenario of insecurity is equally serious in Guatemala. The report “*Guatemala: Memoria del Silencio*” of the Commission for Historical Clarification (CEH) indicated that, during the armed conflict, women were victims of all forms of human rights violations, including specific gender-based violence. The CEH concluded that the debasement of women was absolute, and this allowed members of the Army to perpetrate this violence with total impunity, a process that did not stop with the end of the conflict;<sup>4</sup> a situation already verified by the Court in the context of the case of *Veliz Franco et al.*

19. It is important to clarify that this opinion does not affirm or argue that gender-based violence has an umbilical link to clothing. There is an abundance of data that reveal that women are routinely victims of violence and assault regardless of the modesty of their clothes. United Nations data indicate that one in three women have experienced physical or sexual violence,<sup>5</sup> which the Commission on the Status of Women (CSW) referred to as a global pandemic; although it did not propose – in this or any other global forums – that a change in clothing could have any impact on this number. The alarming data gathered by the UN underscores that 2.6 billion women live in countries where rape committed by their husband is not criminalized, so that not even institutions traditionally linked to decorum – such as marriage – offer effective protection against violence. According to European Union data, between 45% and 55% of women suffer sexual harassment starting when they are 15 years of age.

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<sup>1</sup> <http://www.theguardian.com/fashion/fashion-blog/2014/feb/28/uganda-miniskirt-ban-attacks-women>

<sup>2</sup> [http://www.ipea.gov.br/portal/images/stories/PDFs/SIPS/140327\\_sips\\_violencia\\_mulheres\\_novo.pdf](http://www.ipea.gov.br/portal/images/stories/PDFs/SIPS/140327_sips_violencia_mulheres_novo.pdf)

<sup>3</sup> <http://www.unwomen.org/en/news/stories/2013/2/un-women-supported-survey-in-delhi>

<sup>4</sup> Cf. *Case of Veliz Franco et al. v. Guatemala*, para. 68. Citing the Commission for Historical Clarification, “*Guatemala: Memoria del Silencio*”, volume III, June 1999, pp. 13 and 27. Available at: [http://www.iom.int/seguridad-fronteriza/lit/land/cap2\\_2.pdf](http://www.iom.int/seguridad-fronteriza/lit/land/cap2_2.pdf)

<sup>5</sup> <http://www.unwomen.org/en/digital-library/multimedia/2015/11/infographic-violence-against-women>

20. That said, it has been shown that gender preconceptions have an undue impact on investigations, revealing that the punishment of aggressors may depend on an opinion founded on the victim's physical appearance, her clothing. We are faced with a scenario in which women are unable to express their culture, individuality, ideas and religious beliefs without suffering coercion.

21. The normalization and frequent impunity of the violence specifically experienced by women whose clothes differ from those normally worn by members of society prevents clothing being used as a form of freely expressing the individuality, identity, social or political position of women. The implicit message of the ineffectual investigation in these cases is that expressing control of one's own body by the free choice of clothes may place a woman in a situation of special vulnerability.

22. The choice of clothes may be considered not only as the exercise of a general personal right, but also as a right to freedom of expression. Thus, a judgment made on the clothes chosen has an impact on respect for a woman's identity; and this, in turn, is connected to her conception of the world, her lifestyle and her identification with a specific social group.

23. In this case, the conduct of the State authorities determining the diligence in the investigation in keeping with directives based on the way the victim chose to express her identity, has the impact of pressuring other women to conform to standards of clothing considered appropriate, at the risk of experiencing maximum discrimination. Indeed, associating clothes not only with a woman's status, but also with her membership of a socially and economically marginalized sector because she had a navel piercing and wore sandals, resulted in exposing the victim to multiple discriminations based on gender, social condition, age and economic status. Establishing a relationship between the protection of judicial guarantees and the way in which a woman decides to present herself to the world is a way of preventing the full exercise of freedom of expression and ideas owing to the evident punishment imposed.

24. Lastly, it is worth pointing out that the attitude of the State authorities revealed another serious error, because it did not relate to the reality of this case. It made clear that, if the victim had been a prostitute or gang member, she would not have deserved the same State protection against abuse and rape. It should be placed on record that it is evident that everyone has the right to equal protection of the State.

25. Thus, in addition to the considerations and conclusions of the judgment, with which I agree, I would add that there was also a violation of Articles 13(1) and 22(1), in relation to Article 1(1), of the American Convention on Human Rights.

### **III. Concluding considerations**

26. Based on the foregoing, it is undeniable that clothing is an important, even essential, dimension of human expression, whether cultural, national, regional, group, generational, gender, racial, spiritual or individual. In the latter sphere, it may be a component of a person's identity, of personality, of individuality, of diversity and even of their sensuality. In the specific case of women, these characteristic traits may be accentuated and should not only be tolerated, but also accepted; and not just accepted, but respected; and not just respected, but protected and even promoted as a distinctive trait, provide this is what the woman decides. Any restriction, discrimination or stigmatization becomes abusive and to be condemned, especially if it is perpetrated by State agents, who have the obligation to educate, respect and protect the way women express themselves in society, and are definitively prohibited from denying assistance, or lessening the quality of the assistance, based on the clothing worn by a woman, revealing a sexist or unequal attitude. In different societies, women use clothing with colors,

sizes, lengths, openings, styles, trimmings, necklines, decorations, jewelry, accessories, cosmetics, to express themselves aesthetically, and this merits special respect.

27. Despite my position that fully concurs with the judgment, with the exception of the two points described above, and my personal conviction that, when possible, differences that are merely conceptual should be avoided – which has not happened in this case – I was unable to remain silent concerning the majority decision expressed in the sixth operative paragraph that “it was not necessary to rule on the alleged violations of Articles 13 and 22 of the American Convention.” I have set out these additional considerations in the belief that it is essential to recognize that the said two articles were violated, to strengthen the effectiveness of freedom of expression through clothing and of freedom of movement, matters that the Court has not examined previously. Undoubtedly, the Court’s case law is the appropriate medium to undertaking the mission to declare and expand the content of the human rights contained in the American Convention. I attach this opinion in the hope that the national jurisdictions and the case law of the Court may soon evolve to recognize these rights that are so fundamental, promoters of real gender equality between women and men.

Roberto F. Caldas  
Judge

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI**

**INTER-AMERICAN COURT OF HUMAN RIGHTS  
CASO VELÁSQUEZ PAIZ ET AL. V. GUATEMALA,  
JUDGMENT OF NOVEMBER 19, 2015**

***(Preliminary objections, merits, reparations and costs)***

This concurring opinion to the judgment in reference is issued to leave express record that the undersigned supports the decision indicated therein to reject the preliminary objection filed by the State concerning the alleged failure to exhaust domestic remedies, basically because, on the one hand, the initial petition lodged in this case had already asserted the non-applicability of the requirement to file and exhaust such remedies before lodging the petition and, on the other hand, the State's answer to the petition, when arguing that this requirement had not been complied with, made no mention of which remedies had not been exhausted, nor demonstrated whether they were available and adequate, appropriate and effective.

Thus, in the opinion of the undersigned, these facts were sufficient to reject the objection filed by the State. Moreover, as I have affirmed in other separate opinions on the same issue,<sup>1</sup> this is based on the fact that the ruling of the Inter-American Commission on Human Rights concerning the petition's admissibility should be made, in accordance with the provisions of Article 46(1) of the American Convention on Human Rights and its own Rules of Procedure, on the basis of the petition "lodged"; in other words, just as it was and not based on what may have happened subsequently.

And this is so because, if it were to be accepted that the ruling on the petition's admissibility was made in relation to what had happened after it was lodged and after the corresponding answer by the State, this could constitute an incentive – that could

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<sup>1</sup> Dissenting opinion of Judge Eduardo Vio Grossi, *Case of the Santa Bárbara Campesino Community v. Peru*, Judgment of September 1, 2015 (preliminary objections, merits, reparations and costs); Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Wong Ho Wing v. Peru*, Judgment of June 30, 2015 (preliminary objection, merits, reparations and costs); Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Cruz Sánchez et al. v. Peru*, Judgment of April 17, 2015 (preliminary objections, merits, reparations and costs); Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Liakat Ali Alibux v. Suriname*, Judgment of January 30, 2014 (preliminary objections, merits, reparations and costs), and Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Díaz Peña v. Venezuela*, Judgment of June 26, 2012 (preliminary objection, merits, reparations and costs).

be perverse – for submissions to be made to the Inter-American Commission even when the said requirement had not been met as mandated by the aforementioned article of the Convention, in the hope that it could be met subsequently; in other words, prior to the Commission’s ruling on admissibility. In addition, situations of evident injustice or arbitrariness would arise insofar as the proper moment to comply with the said requirement would depend not on the victim or the petitioner, as provided for in Article 46(1)(a) of the American Convention, but rather on the decision of the Commission when determining the admissibility or inadmissibility of the petition.

Eduardo Vio Grossi  
Judge

Pablo Saavedra Alessandri  
Secretary



**SEPARATE OPINION OF  
JUEZ EDUARDO FERRER MAC-GREGOR POISOT**

**CASE OF VELÁSQUEZ PAIZ ET AL. V. GUATEMALA**

**JUDGMENT OF NOVEMBER 19, 2015**  
**(Preliminary objections, merits, reparations and costs)**

INTRODUCTION:

"OBLIGATION OF PREVENTION" IN GENDER-BASED VIOLENCE

1. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") is the regional instrument that has elicited the greatest consensus among the countries of the Americas, and has been signed, and ratified or adhered to by 32 of the 35 OAS Member States. Since its entry into force in 1995, it has reflected the concern of the States parties that "violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men"; while affirming that "violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms."<sup>1</sup>

2. More than 20 years after it entered into force, it is a cause for concern that the culture of discrimination and violence against women,<sup>2</sup> continues to be present in the region, achieving its maximum expression in "femicide" or "feminicide"; that is, the "gender-based murder of women," as the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") first underlined in the case of *González et al. ("Cotton Field") v. Mexico* in 2009,<sup>3</sup> and reiterated in the case of *Veliz Franco et al.*, and in the present case of *Velásquez Paiz et al.*, both against Guatemala.<sup>4</sup> The term "feminicidio" was incorporated into the latest edition of the *Diccionario de la Lengua Española*, published by the *Real Academia Española* in October 2014,<sup>5</sup> almost 10 years after the lamentable facts of the case that gives rise to this separate opinion.

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<sup>1</sup> Preamble of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará"), adopted on June 9 1994, during the twenty-fourth General Assembly of the OAS, entered into force on May 5, 1995.

<sup>2</sup> Understood as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." Article 1 of the "Convention of Belém do Pará."

<sup>3</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 143.

<sup>4</sup> In the judgments in both cases, the terms "feminicide" and "femicide" were used interchangeably to refer to the "gender-based murder of women." Also, the two judgments underlined that, in May 2008, Guatemala had enacted the Law against Femicide and other forms of violence against women (Decree No. 22-2008), which criminalized "femicide," defining this as the "violent death of a woman, occurring in the context of the unequal power relations between women and men, in exercise of gender-based power against women." See *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 71, footnote 68; and *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015, Series C No. 307, para. 45, footnote 26.

<sup>5</sup> "Femicide": from the lat. *femīna* 'woman' and *-cidio*. 1.m. *Asesinato de una mujer por razón de su sexo*. Available at: <http://dle.rae.es/>

3. The persistence of this problem in the region – despite diverse actions by the States as noted in the instant case – underscores the urgent need to pay special attention to the “obligation of prevention” referred to in Article 7 of the “Convention of Belém do Pará”<sup>6</sup>; an obligation that, I consider, is of the greatest relevance to avoid the barbarity of the phenomenon of “femicide” and, in general, all forms of violence against women.

4. Consequently, I submit this concurring opinion in order to highlight some issues that were relevant in the study and analysis made in this case of the State obligation of prevention, because I consider it pertinent to observe carefully the moment in the facts analyzed in the judgment at which the State’s international responsibility was constituted for failing to comply with its obligation of prevention – with special emphasis on the proven “context” of an increase in the disappearance and violent murder of women.

5. I consider that this analysis should differ from the one made by the Court in previous cases,<sup>7</sup> and accord greater relevance to the “first moment” of this general obligation of prevention (State actions before the victim went missing), which evidently conditioned the State’s actions during the “second moment” (State actions between the time of the family’s report and the discovery of the victim’s body), as I will try to explain in this opinion. And I will do so, based on the criterion of the “two moments” of the obligation of prevention established in the two previous cases on this matter, interpreted in light of the State’s obligations established in the American Convention and particularly in Article 7 of the “Convention of Belém do Pará,” bearing in mind that Guatemala ratified this treaty on January 4, 1995, with no reservations or limitations.

6. For greater clarity, this opinion is divided into the following sections: I. The “Convention of Belém do Pará” in the case law of the Inter-American Court (paras. 7 to 16); II. The “obligation of prevention” and its “two moments” in the cases of *González et al. (“Cotton Field”) v. Mexico* (2009), and *Veliz Franco et al. v. Guatemala* (2014) (paras. 17 to 31); III. The “obligation of prevention” in the case of *Velásquez Paiz et al. v. Guatemala* (2015) (paras. 32 to 49), and IV. Conclusions (paras. 50 to 58).

#### I. THE “CONVENTION OF BELÉM DO PARÁ” IN THE CASE LAW OF THE INTER-AMERICAN COURT

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<sup>6</sup> “Article 7: “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:  
(a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;  
(b) apply due diligence to prevent, investigate and impose penalties for violence against women;  
(c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;  
(d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;  
(e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;  
(f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;  
(g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and  
(h) adopt such legislative or other measures as may be necessary to give effect to this Convention.”

<sup>7</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277.

7. Based on the competence that Article 12 of the “Convention of Belém do Pará” grants the inter-American system for the protection of human rights to examine violations of Article 7 of this regional instrument,<sup>8</sup> the Inter-American Court has examined the phenomenon of violence against women in different circumstances,<sup>9</sup> placing special emphasis on the State’s obligation to “condemn all forms of violence against women [and to adopt], by all appropriate means and without delay, policies to prevent, punish and eradicate such violence,”<sup>10</sup> and this, in addition, to the specific measures indicated in that provision – some of which have been examined by the Inter-American Court in its case law.

8. The interpretation and application of the provisions of the “Convention of Belém do Pará” first took place in 2006, in the case of the *Miguel Castro Castro Prison v. Peru*.<sup>11</sup> Based on the facts of the case, the Court declared the violation of Article 7(b) of this instrument, concerning the State obligation “to apply due diligence to prevent, investigate and impose penalties for violence against women.” In that case, the Court indicated that the State obligation to investigate the facts that had occurred meant that the State should “take into consideration the seriousness of the facts that constitute violence against women, taking into account the obligations imposed on it by the treaties it has ratified on this matter.”<sup>12</sup> Consequently, the Inter-American Court declared the violation of Article 7(b) of the “Convention of Belém do Pará” together with the right to judicial guarantees and judicial protection (Articles 8(1) and 25 of the American Convention) because the domestic proceedings instituted in that case did not constitute “effective remedies to guarantee a true access to justice by the victims, within a reasonable time, that [would] include the elucidation of the facts, the investigation and punishment, as appropriate, of those responsible and the reparation of the violations to the right to life and integrity.”<sup>13</sup>

9. In 2009, in the case of *González et al. (“Cotton Field”) v. Mexico*, the Court again had the occasion to examine facts that involved obligations under the “Convention of Belém

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<sup>8</sup> In the instant case, the State questioned the Court’s competence *ratione materiae*. Based on its precedents, the Inter-American Court rejected this preliminary objection in the understanding that “it seems clear that the literal meaning of Article 12 of the Belém do Pará Convention grants competence to the Court, by not excluding from its application any of the norms and procedural requirements for individual communications”, and also, that in other contentious cases against Guatemala, the Court had declared that the State was responsible for the violation of Article 7 of the Convention of Belém do Pará and found no evidence to change its case law. See paras. 16 to 19 of the judgment.

<sup>9</sup> I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160; *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205; *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010 Series C No. 216; *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250; *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252; *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289.

<sup>10</sup> Article 7 of the “Convention of Belém do Pará,” see *supra* nota 6.

<sup>11</sup> I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160.

<sup>12</sup> I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 394.

<sup>13</sup> I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 408.

do Pará.” The case related to the context of gender-based violence in Mexico, and the Inter-American Court examined Articles 4, 5 and 7 of the American Convention and the obligations arising from Articles 7(b) and 7(c) of the “Convention of Belém do Pará” in relation to the general obligation to ensure rights (Art. 1(1) of the American Convention) and the obligation to adopt domestic legal provisions (Art. 2 of the Pact of San José) to the detriment of the three women victims in the case. Consequently, in its judgment in that case, the Court established that the State had not acted with “the due diligence required to adequately prevent the attacks on the victims and their deaths,” an omission that had resulted in non-compliance with its obligation to ensure rights – placing the women victims in a situation of vulnerability – and the enhanced obligations imposed in cases of violence against women by Article 7(b) of the “Convention of Belém do Pará.”<sup>14</sup> Furthermore, with regard to Article 7(c) of this instrument, it determined that the State had not proved that it had adopted legislation or implemented the necessary measures, “pursuant to Article 2 of the American Convention and Article 7(c) of the “Convention of Belém do Pará” that would have allowed the authorities to provide an immediate and effective response to the missing person reports and adequately prevent violence against women”; moreover, it had not proved that it had “adopted norms or taken measures to ensure that the officials responsible for receiving reports had the capacity and the sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.”<sup>15</sup>

10. The same year, the Court again invoked the “Convention of Belém do Pará” in the judgment in the case of the *Las Dos Erres Massacre v. Guatemala*,<sup>16</sup> as a result of the violations of life, torture and acts of violence against women victims perpetrated during the massacre;<sup>17</sup> considering that Articles 8(1) and 25(1) of the American Convention, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and 7(b)) of the “Convention of Belém do Pará” had been violated to the detriment of 155 victims, owing to the impediment for the victims to obtain access to justice and full reparation, as a result of the failure to investigate, prosecute and punish those presumed to be responsible for the massacre.<sup>18</sup>

11. In 2010, in the cases of *Fernández Ortega et al.*<sup>19</sup> and *Rosendo Cantú et al.*,<sup>20</sup> both against Mexico, the Court, for the first time, declared the violation of paragraph (a) of Article 7 of the “Convention of Belém do Pará” as a result of rape perpetrated by soldiers.<sup>21</sup> In both cases, the Court also declared the violation of Articles 8(1) and 25(1) in relation to Article 1(1) of the Convention and Article 7(b) of the “Convention of Belém do Pará,” due to

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<sup>14</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 284.

<sup>15</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 285.

<sup>16</sup> I/A Court HR, *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211.

<sup>17</sup> I/A Court HR, *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 139 a 141.

<sup>18</sup> I/A Court HR, *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 153.

<sup>19</sup> I/A Court HR, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010 Series C No. 215.

<sup>20</sup> I/A Court HR, *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010 Series C No. 216.

<sup>21</sup> I/A Court HR, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010 Series C No. 215, para. 131, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010 Series C No. 216, para. 121.

the lack of due diligence in the investigation of the rape and acts of torture inflicted on the victims.<sup>22</sup>

12. Subsequently, in 2012, the Court examined violations of Article 7(b) of the "Convention of Belém do Pará" while hearing the cases of the *Río Negro Massacres v. Guatemala*,<sup>23</sup> the *Massacres of El Mozote and neighboring places v. El Salvador*<sup>24</sup> and *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*,<sup>25</sup> due to the failure to investigate facts related to torture, rape and other acts of violence against women.<sup>26</sup>

13. Following these rulings, in 2013, in the case of *J. v. Peru*,<sup>27</sup> the Court declared a failure to comply with the obligation to ensure rights owing to an ineffective investigation into threats, and physical and sexual violence (which constituted violations of Articles 5(1), 5(2), 11(1) and 11(2) of the American Convention),<sup>28</sup> in relation to Article 1(1) of this instrument, and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7(b) of the "Convention of Belém do Pará."

14. In 2014, in the case of *Veliz Franco et al. v. Guatemala*<sup>29</sup> — related to the State's failure to provide an effective response to the report of the disappearance of María Isabel Veliz Franco, 15 years of age, as well as the flaws in the investigation into the facts that involved the discovery of her body — in addition to declaring the violation of Article 7(b) of the "Convention of Belém do Pará"<sup>30</sup> for the second time in its case law, the Court established the violation of Article 7(c) of this instrument, owing to failure to conduct the investigation with a gender perspective, due to the possibility that the murder had been committed for reasons of gender; deficiencies in the State's actions (as a result of the inexistence of laws and protocols concerning this type of facts), and actions with a

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<sup>22</sup> I/A Court HR, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215, paras. 197 and 198, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010 Series C No. 216, paras. 181 and 182.

<sup>23</sup> I/A Court HR, *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250.

<sup>24</sup> I/A Court HR, *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252.

<sup>25</sup> I/A Court HR, *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253.

<sup>26</sup> I/A Court HR, *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250, para. 227 and 236; *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252, paras. 2 and 252, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253, paras. 2 and 281.

<sup>27</sup> The case related to the unlawful and arbitrary detention of J., and the home searches conducted on April 13, 1992, by State agents who had presumably perpetrated acts of torture and cruel, inhuman and degrading treatment, including sexual violence. I/A Court HR, *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275.

<sup>28</sup> I/A Court HR, *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of 2 November 7, 2013. Series C No. 275, paras. 365 to 368.

<sup>29</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277.

<sup>30</sup> In that case, the Court declared the violation of Articles 7(b) and 7(c) of the "Convention of Belém do Pará." It also declared the violation of Articles 4(1) and 5(1) of the American Convention, in relation to Articles 19 and 1(1), as well as 7(b) of the "Convention of Belém do Pará" based on "the lack of due diligence in the investigation, from the outset, which resulted in the impunity of the facts" in reference to the initial hours after the report that María Isabel Veliz was missing. I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 157.

discriminatory bias, as well as failure to respect a reasonable time frame in the initial stage of the investigation and the substantiation of the facts.<sup>31</sup>

15. That same year, in the case of *Espinoza González v. Peru*,<sup>32</sup> the Court again determined violations of Article 7(b) of the "Convention of Belém do Pará." On the one hand, together with violations of Articles 8(1) and 25, and 1(1) of the American Convention, and also of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the State's failure to comply with the obligation to investigate the sexual violence that was clear from the facts that occurred to the victim during her detention in the Yanamayo Prison, and those that occurred in the DIVISE and the DINCOTE;<sup>33</sup> and, on the other hand, together with violation of Articles 5(1), 5(2) and 11, as well as Articles 8(1), 25 and 2 of the American Convention, and 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the stereotyped assessment of the evidence by the Judiciary, which constituted gender-based discrimination in access to justice,<sup>34</sup> and also due to the sexual violence and torture suffered by the victim.<sup>35</sup>

16. As can be appreciated from this brief overview, the Court's case law has not remained on the sidelines of the problem of violence against women in the region. To the contrary, it has examined this on various occasions as a result of an interpretation of the provisions of the American Convention in relation to Article 7 of the "Convention of Belém do Pará," establishing invaluable standards for State obligations in cases of gender-based violence, especially – and based on the matter which is the purpose of this opinion – on the "obligation of prevention" to which I will refer below.

## II. THE "OBLIGATION OF PREVENTION" AND ITS "TWO MOMENTS" IN THE CASES OF GONZÁLEZ ET AL. ("COTTON FIELD") V. MEXICO (2009), AND VELIZ FRANCO ET AL. V. GUATEMALA (2014)

17. In two of its outstanding case on gender-based violence,<sup>36</sup> the Inter-American Court has established important standards concerning compliance with the State obligations to respect and to ensure human rights in order to combat violence against women. Particularly, when analyzing the obligation to ensure rights such as to life, to personal integrity and to personal liberty, it has made a detailed examination of the State's obligation of prevention,<sup>37</sup> emphasizing the criterion of the "two moments" in the obligation of prevention in order to determine the international responsibility of States.

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<sup>31</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 225.

<sup>32</sup> That case relates to the alleged unlawful and arbitrary detention of Gladys Carol Espinoza González, as well as the alleged rape and other acts that constituted torture that she was a victim of while in the custody of State agents. I/A Court HR, *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 1.

<sup>33</sup> I/A Court HR, *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 287.

<sup>34</sup> I/A Court HR, *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 288.

<sup>35</sup> I/A Court HR, *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 229.

<sup>36</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277.

<sup>37</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, paras. 249 to 286, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 133 to 158.

18. This criterion has permitted the Court to make a detailed examination of the obligation of prevention – and, when appropriate – determine international responsibility – in cases in which the facts concerned the disappearance and subsequent death of the victims, as in the cases that preceded the one that has motivated this opinion: *González et al. ("Cotton Field") v. Mexico* (2009), and *Veliz Franco et al. v. Guatemala* (2014).

19. Regarding the obligation of prevention, in the case of *González et al. ("Cotton Field") v. Mexico*,<sup>38</sup> the Court established that States “must adopt comprehensive measures to comply with due diligence in cases of violence against women,” particularly with regard to “an adequate legal protection framework and its effective enforcement, and prevention policies and practices that permit effective actions when reports are received.”<sup>39</sup> Also, regarding the characteristics of the prevention strategy, the Court has indicated that “this must be comprehensive; that is, it must prevent the risk factors and also reinforce the institutions so that they can provide an effective response to cases of violence against women,” underlining the obligation of States “to adopt preventive measures in specific cases in which it is evident that specific women and girls may be victims of violence.”<sup>40</sup>

20. In the said case, the Court established, for the first time, that there were two key moments at which the obligation of prevention should be analyzed in relation to the disappearance and death of the victims, indicating that the first moment was “before the disappearance of the victims” and the second was “before their bodies were discovered.”<sup>41</sup>

21. When examining the “first moment” (before the victim’s disappearance), the Inter-American Court considered that “the failure to prevent the disappearance d[id] not *per se* result in the State’s international responsibility because, even though the State was aware of the situation of risk for women [particularly] in Ciudad Juárez,” – given that a context of violence against women had been proved – it was not aware of a real and imminent danger for the victims in this case. It also indicated that, “[e]ven though the context of this case and the State’s international obligations impose[d] on it a greater responsibility with regard to the protection of women in Ciudad Juárez, [...] these factors d[id] not impose unlimited responsibility for any unlawful act against [them].” Consequently, it indicated that the Court could “only note that the absence of a general policy” with regard to the pattern of violence against women, had constituted “a general failure [...] to comply with its obligation of prevention.”<sup>42</sup>

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<sup>38</sup> This case related to the disappearance and subsequent death of the adolescents, Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez, whose bodies were found in a field of cotton in Ciudad Juárez on November 6, 2001, as well as the lack of due diligence on the part of the authorities. I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205.

<sup>39</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 258 and, 108.

<sup>40</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 258; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 136 and 108.

<sup>41</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 281 and ff; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 138 and 110 of the judgment.

<sup>42</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 282.

22. In relation to the “second moment” (before the discovery of the bodies), the Court decided to make a more detailed examination, establishing that, since the State was aware that “there was a real and imminent risk that the victims would be sexually abused, subjected to ill-treatment and killed,” “an obligation of strict due diligence ar[ose] with regard to reports of missing women,” which required “that exhaustive search activities be conducted.”<sup>43</sup>

23. In this regard, the Court determined that owing to the State’s lack of due diligence to prevent the deaths of the victims at that moment, as well as State’s failure to adopt the necessary laws or measures “that would have allowed the authorities to provide an immediate and effective response to the reports of disappearance,”<sup>44</sup> it had violated the rights to life, personal integrity and personal liberty, in relation to the general obligation to ensure rights established in Article 1(1) of the American Convention and the obligation to adopt domestic legal provisions contained in Article 2 thereof, as well as the obligations established in Articles 7(b) and 7(c) of the Convention of Belém do Pará, to the detriment of [the victims].<sup>45</sup>

24. Subsequently, in the case of *Veliz Franco et al. v. Guatemala*,<sup>46</sup> the Court also examined the obligations of guarantee, considering the obligation of prevention as an expression of these obligations that “encompasses all those measures of a legal, political, administrative and cultural nature that ensure the safeguard of human rights, and that any possible violation of these rights is considered and treated as an unlawful act [...]”;<sup>47</sup> reconfirming this in the case of *González et al. (“Cotton Field”) v. Mexico*<sup>48</sup> in relation to the characteristics of the strategy for the obligation of prevention.

25. Furthermore, based on the criterion of the “two moments” used in *González et al. (“Cotton Field”) v. Mexico*,<sup>49</sup> the Court determined in the “first moment” – as it had already done in the above case – that the failure to prevent the disappearance “d[id] not *per se* result in the State’s international responsibility” because, although it was aware of the increase of violent acts against women and girls, it was not aware of a real and immediate risk for the victim in that case and, also – contrary to its case law precedent – it recognized

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<sup>43</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 283.

<sup>44</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 284 and 285.

<sup>45</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 284 and 286.

<sup>46</sup> This case relates to the disappearance of subsequent death of María Isabel Veliz, as well as the absence of an effective response by the State when she was reported missing, and the subsequent deficiencies in the investigation of the facts. I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277.

<sup>47</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 135. See, similarly: *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 252 and 107.

<sup>48</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 136, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>49</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 138, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 281.



State actions (taken prior to the date of the facts) with regard to the problem of violence against women,<sup>50</sup> considering the analysis of that moment concluded.

26. With regard to the “second moment” (the time elapsed between the report and discovery of the body), the Court sought to elucidate the existence of the State’s international responsibility by, first, evaluating whether “the State [had been], or should have been, aware of the situation of real and immediate danger of [the victim]”; second, “whether, being aware, it had a reasonable possibility of preventing or avoiding the perpetration of the crime” and, third, “whether it exercised due diligence with measures or actions to avoid the violation of the rights of this child.”<sup>51</sup>

27. To this end, the Court divided its analysis into two moments, the first with regard to the “[e]xistence of a situation of risk for [the victim],”<sup>52</sup> and the second with regard to the “[p]ossibility of diligent action by the State to prevent the risk and its implementation.”<sup>53</sup> Regarding the first moment, the Court determined that, following the report made by the victim’s mother, the State was aware of the dangerous situation of the victim given the context in Guatemala<sup>54</sup> and, regarding the second moment, that, despite being aware of the missing person report, the State had not taken any substantive action to investigate what had happened or to avoid possible violations of the victim’s rights.<sup>55</sup>

28. Accordingly, the Court concluded that Guatemala had incurred State responsibility because it had failed to comply with its obligation to ensure the rights to life and personal integrity recognized in Articles 4(1) and 5(1) of the American Convention, in relation to Article 19 (Rights of the Child) and 1(1) of this instrument, as well as its obligations under Article 7(b) of the “Convention of Belém do Pará.”<sup>56</sup>

29. As can be observed in the two cases examined, in its case law, the Court has established State responsibility as a result of the analysis of the “second moment” of the obligation of prevention, where it has examined the State’s awareness of the dangerous situation, as well as the actions and measures taken based on its obligation to act with diligence in the specific case.

30. However, it may be noted that, when analyzing the “first moment” — which I am intending to emphasize in this opinion — it has opted to rule that, despite the context of violence against women, the lack of prevention did not *per se* result in the State’s international responsibility, since the State was unaware of a real and immediate danger for the victims before they went missing, as well as the impossibility for the State to respond unrestrictedly for every wrongful act against the victims.<sup>57</sup>

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<sup>50</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 139.

<sup>51</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 142.

<sup>52</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 155.

<sup>53</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 144.

<sup>54</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 154.

<sup>55</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 155.

<sup>56</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 158.

<sup>57</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 282, and *Case of Veliz Franco et al. v.*

31. Regardless of the foregoing, the Court has also concluded in its analysis of the said “first moment” — in the case of *González et al. (“Cotton Field”) v. Mexico* — that, in light of the pattern of violence against women, the absence of a general policy constitutes a violation of the general duty under the obligation of prevention.<sup>58</sup> Meanwhile, in the case of *Veliz Franco et al. v. Guatemala*, it recognized previous actions taken by the State in relation to the problem of the context.<sup>59</sup> I consider that these considerations should be taken into particular consideration in the analysis and conclusions of the case *sub judice* (which gives rise to this separate opinion), when examining the “first moment” of the State’s obligation of prevention, as will be seen in the following section.

### III. THE “OBLIGATION OF PREVENTION” IN THE CASE OF *VELÁSQUEZ PAIZ ET AL. V. GUATEMALA (2015)*

32. The facts of the case relate to the disappearance, abuse and death of Claudina Velásquez Paiz in 2005, as well as the failure of the State to act diligently and the inconsistencies in the subsequent investigation of the facts, a situation which took place in a “context” of an escalation of violence against women<sup>60</sup> that the State was already aware of and the Court had examined in case of *Veliz Franco et al. v. Guatemala*, decided in 2014.

33. In general, it is worth mentioning that, as can be seen throughout the judgment, given that the facts of this specific case bear a sequential relationship to the facts of the case of *Veliz Franco et al. v. Guatemala*, the Court’s considerations in that case were constantly cited in this judgment, especially with regard to the establishment of a “context” of an escalation of violence against women.

34. I consider that this “context” is of fundamental importance for the analysis of the State obligation of prevention, particularly when examining the “first moment”; in other words, the general obligation to prevent the disappearance and murder of women. That is why I consider it essential to emphasize the significance of the context of this case, and then to examine in greater detail the State’s duty to guarantee rights by means of the obligation of prevention, which will be examined using the criterion of the “two moments” of this obligation, already used by the Court in the two cases of violence against women highlighted in the preceding section.

#### III.1 The context of violence against women in Guatemala

35. The context represents a useful and necessary tool for understanding the specific facts of the case and determining the responsibility of the State. It should be mentioned that, when establishing the context of this case, various aspects of the context found in the case of *Veliz Franco et al. v. Guatemala* were referred to as a result of the sequential relationship between the two cases.<sup>61</sup> In this regard, the present judgment referred back to the context in which the facts of the case of *Veliz Franco et al.* occurred, indicating that, starting in December 2001, there was a “context of an escalation of homicidal violence

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*Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 139.

<sup>58</sup> I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 282.

<sup>59</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 139.

<sup>60</sup> Paras. 45 to 48 of the judgment.

<sup>61</sup> Paras. 45 and ff.

against women in Guatemala” that the State was aware of;<sup>62</sup> it also referred back to the figures for the murder of women in subsequent years up until 2004,<sup>63</sup> data that was supplemented by the figures from 2005 to 2015 provided as evidence in the instant case, which were consistent with the increase in the murder of women.<sup>64</sup>

36. The foregoing, allowed the Court to observe the contextual situation in Guatemala – in which the facts took place – in *Veliz Franco et al.*, in order to compare this with the context of the instant case. This revealed that, in addition to showing a sustained increase in 2004 and 2005 (the year in which the facts of the instant case occurred), the escalation of homicidal violence against women has remained high up until 2015, with the result that the number of violent deaths of women increased by 20% more than the number of violent deaths of men between 1995 and 2004.<sup>65</sup> The Court also underlined aspects of the context established in the previous case, such as the “exacerbation of the level of violence against women and the cruelty inflicted on the women’s bodies”;<sup>66</sup> the “high levels of general impunity [...] in relation to different types of crimes” including crimes against women,<sup>67</sup> and also the tendency of authorities and investigators to discredit and blame the victims for their lifestyle or clothing.<sup>68</sup>

37. In this situation, it is admissible to consider that, at least since 2001 (as noted in the judgment in the case of *Veliz Franco et al.*), the State was aware of a context of an escalation of violence against women – including the phenomenon of “femicide”; a situation that should have resulted in State actions to take measures or create mechanisms that would have an impact on combating this context; irrespective of the measures taken prior to 2001.<sup>69</sup>

38. Thus, the Guatemalan State’s awareness of the context of an escalation of violence against women that went back to at least 2001, as revealed in the case of *Veliz Franco et al. v. Guatemala*, leads to the presumption that the State was or should have been aware of the phenomenon of femicide at the time of the facts that occurred in 2005, years after that case.

39. In this hypothesis, I consider that the context of which the State was already aware regarding the problem of gender violence in Guatemala is essential for understanding the analysis of the “first moment” of the obligation of prevention, also referred to in the judgment as the “general obligation to prevent the disappearance and murder of women” in *Guatemala*, as will be noted in the following section.

### III.2 The “two moments” of the obligation of prevention

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<sup>62</sup> Paras. 45 of the judgment. Citing: I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 73, 81 and 152.

<sup>63</sup> Paras. 46 of the judgment. Citing: I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 76.

<sup>64</sup> Paras. 46 of the judgment.

<sup>65</sup> Paras. 45, 46 and 47 of the judgment.

<sup>66</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 78 and 48.

<sup>67</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 89 and 49.

<sup>68</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 90, 212 and 49.

<sup>69</sup> I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 82.

40. To establish non-compliance with the obligation to prevent violations of the rights to life and personal integrity, the Court referred to the case of *the Pueblo Bello Massacre v. Colombia*, to indicate the factors that must be verified as regards the obligation of prevention, which were the State's awareness of the real and immediate risk for those rights, and the adoption of measures by the authorities to prevent or avoid that risk.<sup>70</sup> Subsequently, the Inter-American Court repeated the criterion of the "two moments" of the obligation of prevention in the present judgment, indicating that this must be analyzed with regard to the "first moment" (before the disappearance Claudina Velásquez: general obligation to prevent the disappearance and murder of women), and the "second moment" (before the discovery of the body of Claudina Velásquez: specific obligation to prevent violations of the rights to integrity and life of Claudina Velásquez"), in order to corroborate the existence of Guatemala's international responsibility.<sup>71</sup>

41. Regarding the "first moment" — before the disappearance Claudina Velásquez — I consider it pertinent to underline the Court's analysis regarding the existence, in 2001, of a context of an escalation of homicidal violence against women in Guatemala.<sup>72</sup> Also, the subsequent mention of the measures taken by the State following the case of *Veliz Franco et al. v. Guatemala*, as well as the measures and mechanisms implemented by the State before and after the facts of the case examined in this judgment,<sup>73</sup> which it then compared with reports of national and international agencies and organizations that criticized the effectiveness of such measures and institutions,<sup>74</sup> while acknowledging the State's initiative of implementing "actions aimed at addressing the problem of violence against women," but revealing the insufficiency of such measures.<sup>75</sup> In this regard, I should stress that the analysis of this "first moment" does not conclude with a ruling by the Court, which I consider should have been made owing to its importance and the special consequences on the following moment (the "second moment").

42. When examining the "second moment" — before the discovery of the body of Claudina Velásquez — the Court analyzed, on the one hand, the moment at "which the State authorities knew or ought to have known about the existence of a real and immediate danger to the life and integrity of Claudina Velásquez" determining that this was the moment at which the authorities received the telephone call from the victim's parents;<sup>76</sup> and, on the other hand, "the steps taken by the Guatemalan authorities, knowing the context and the nature of the danger reported, [and also whether they] promptly took the necessary measures within the scope of their powers" to prevent or avoid that danger.<sup>77</sup>

43. In this regard, and following an analysis of the facts already described in the judgment, it determined that the response of the authorities had been "clearly insufficient given the possibility that the [victim's] personal integrity and life were in danger,"<sup>78</sup> and also the lack of clarity in the law regarding the proper moment to file a report,<sup>79</sup> considering

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<sup>70</sup> Para. 109 of the judgment.

<sup>71</sup> Para. 110 of the judgment.

<sup>72</sup> Para. 111 of the judgment.

<sup>73</sup> Paras. 112 and *ff.* of the judgment.

<sup>74</sup> Para. 118 a 120 of the judgment.

<sup>75</sup> Para. 120 of the judgment.

<sup>76</sup> Para. 121 of the judgment.

<sup>77</sup> Para. 123 of the judgment.

<sup>78</sup> Para. 126 of the judgment.

<sup>79</sup> In this regard, it is worth mentioning, first, that the Court noted the lack of clarity as to the moment as of which the 24-hour period before presentation of the report that Claudina Velásquez was missing should have been calculated. Second, in response to its request to the State for information concerning the existence of any law or practice according to which it was necessary to wait 24 hours to receive missing person reports, the State indicated

that the action of the authorities had not involved the adoption of the necessary measures to prevent or avoid the danger reported by the victims.<sup>80</sup> Consequently, the Court considered that Articles 2 of the American Convention and 7 of the "Convention of Belém do Pará" had been violated owing to the lack of capacity, sensitivity, willingness and training to respond to missing person reports in the Guatemalan context, as well as the absence of immediate and effective actions.<sup>81</sup> The Court also declared the violation of Article 7 of the "Convention of Belém do Pará" as a result of the failure to ensure the free and full exercise of the rights to life and to personal integrity.<sup>82</sup>

44. The foregoing reveals, at first sight, that based on the absence of a ruling by the Court on concluding its analysis of the general obligation of prevention – in other words, during the "first moment" of this obligation (before the disappearance of Claudina Velásquez) – the State's responsibility is constituted by the Court's analysis of the specific obligation of prevention, establishing the international responsibility of Guatemala as a result of the analysis of the "second moment" – before Claudina Velásquez's body was found – as a result of the failure of the authorities to take measures aimed at preventing the danger reported by the victim's parents.

45. I consider that this has a negative impact on the analysis of the obligation of prevention *as a whole* and, subsequently, on the determination of international responsibility, because the failure of the authorities to adopt measures and take diligent actions – during the "second moment" of the State's obligation of prevention that, in this specific case, had the purpose of preventing the danger and avoiding the injuries suffered by Claudina Velásquez – was a result of the lack of clarity in the laws that should have defined the actions to be taken following the report that the victim was missing. And this resulted from the adoption of "insufficient measures to resolve the problem" of violence against women in Guatemala,<sup>83</sup> non-compliance that plainly formed part of the State's general obligation of prevention with regard to the "first moment" – that is, related to the general obligation to prevent the disappearances and murder of women.

46. In this regard, I consider that this constitution of responsibility is a result of a State responsibility that appears during the "first moment" of the obligation of prevention because, in the context of an escalation of homicidal violence against women in Guatemala of which the State was aware,<sup>84</sup> and despite all the measures taken by the State with regard to the problem, at least since 2001,<sup>85</sup> none of these measures was aimed at establishing an effective mechanism or practice that would ensure an immediate search for missing women; a situation that evidently had an impact on the "second moment," when the victim's parents were confronted by the inexistence – that persists up until the present – of an instrument, mechanism or practice requiring the immediate search for their daughter.

47. This is logical when noting the measures of reparation ordered by the Court. Indeed, among the "guarantee of non-repetition" and under the heading "Measures to prevent

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that "there is no provision in domestic law" relating to this lapse and, third, the law on which the State argued that the agents had based their actions (article 51 of Decree No. 40-90 of the Organic Law of the Public Prosecution Service) did not indicate the actions that the authorities should have taken in that case and made no reference to receiving the report, reflecting confusion "as to the rules that the police should follow." Paras. 128 to 131 of the judgment.

<sup>80</sup> Para. 132 of the judgment.

<sup>81</sup> Para. 133 of the judgment.

<sup>82</sup> Para. 133 of the judgment.

<sup>83</sup> Para. 120 of the judgment.

<sup>84</sup> Para. 111 of the judgment.

<sup>85</sup> Para. 112 of the judgment.

violence against women: State policies,<sup>86</sup> the Inter-American Court indicated the insufficiency of the measures implemented by the State to address the problem,<sup>87</sup> stressing that, despite the existence of a “bill on the immediate search for missing women” – which addressed the problem of the lack of an immediate search mechanism for missing women – to date this has not been adopted by the Guatemalan Congress.<sup>88</sup>

48. In this regard, the Court concluded in the need “to regulate the search for missing women in Guatemala” and, consequently required the State “to adopt a national strategy, system, mechanism or program, by legislative or other means, to ensure the immediate and effective search for missing women, and that ensures that in cases of reports of this nature, the corresponding authorities receive them immediately, without the need for formalities and, at the same time, initiate actions to locate the possible victims and prevent the violation of their rights to life and to personal integrity.”<sup>89</sup>

49. In this scenario, it is evident that, to address the context of violence against women in Guatemala, the State must establish laws, measures or a mechanism that, regardless of the fact that they exist, are “effective” in “practice” – in the terms of Article 2 of the American Convention – aimed at preventing the disappearance of women through diligent and appropriate actions by the authorities entailing the immediate search for these women and prevent the perpetration of violations of their human rights.

#### IV. CONCLUSION

50. The culture of discrimination and violence against women is a phenomenon that persists up until the present, nullifying the dignity and also the enjoyment and exercise of the human rights of women in the Americas. To confront this situation, the State obligation “of prevention” plays an essential role, to which, I consider, States should pay special attention.

51. As emphasized in the judgment, the obligation of prevention is an essential presumption to ensure the rights to life and to personal integrity,<sup>90</sup> and “encompasses all those measures of a legal, political, administrative and cultural nature that promote the safeguard of human rights and that ensure that eventual violations of these rights are truly considered and dealt with as wrongful acts that, as such, may result in punishment for those who commit them, as well as the obligation to compensate the victims for the harmful consequences.”<sup>91</sup>

52. In particular, Article 7 of the “Convention of Belém do Pará” establishes State obligations to prevent, punish and eradicate violence against women,<sup>92</sup> which specify and

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<sup>86</sup> Para. 259 and ff of the judgment.

<sup>87</sup> The insufficiency stems from the failure to allocate resources, “the lack of coordination between the different institutions and a comprehensive protection strategy,” as well as the fact that the State “had not proved that it had implemented the necessary measures to ensure that the officials responsible for receiving missing person reports had the capacity and the sensitivity to understand the gravity of such reports in the context of violence against women, and the willingness and training to act immediately and effectively.” Para. 264 of the judgment.

<sup>88</sup> Para. 265 of the judgment.

<sup>89</sup> Para. 266 of the judgment.

<sup>90</sup> Para. 107 of the judgment.

<sup>91</sup> Para. 107 of the judgment. Citing: I/A Court HR, *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 166, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice)v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 519.

<sup>92</sup> Para. 108 of the judgment.

supplement the State obligations regarding compliance with the rights recognized in the American Convention, including those established in Articles 4 and 5.<sup>93</sup> And the Court has indicated that States must adopt comprehensive measures to comply with due diligence, in cases of violence against women.<sup>94</sup> Thus, the general obligation of prevention or during its “first moment” of analysis, includes the existence of a legal protection framework that is enforced effectively, prevention policies, and prevention practices and strategies; while the specific obligation of prevention or during its “second moment” of analysis, consists in the adoption of preventive measures in specific cases to avoid the perpetration of human rights violations when the State is aware that a person is in danger.

53. Based on the above, with regard to the “general” and “specific” particularities of the obligation of prevention, or its “two moments” of analysis, it can be seen that, when analyzing the “first moment,” although the Court has established that, in a context of violence against women “international obligations impose on the State an enhanced responsibility with regard to the protection of women [...] which includes the obligation of prevention,” it has also indicated that this does not impose on the State “unlimited responsibility for every wrongful act committed against them.”<sup>95</sup>

54. Even though I share this opinion, I also consider that, in reality, compliance with its obligation “to have an adequate legal protection framework that is enforced effectively and prevention policies and practices that permit efficient actions in response to reports, does not represent imposing an unlimited responsibility on the State; nor does the fact that the prevention strategy must be comprehensive and must prevent “the risk factors and, at the same time, reinforce the institutions so that they can provide an effective response to cases of violence against women” as the Court has established in its case law,<sup>96</sup> aspects that form part of the general obligation of prevention or the “first moment” of the analysis. Thus, this “first moment” of the obligation of prevention has a determinant impact on the “second moment” in which the State prevention apparatus is applied to the cases of missing persons and gender-based violence that confront the State.

55. In the instant case, it should be noted that, faced with a persistent “context” of an escalation of violence against women and even though the Guatemalan State has taken some actions to address the problem,<sup>97</sup> the insufficiency and ineffectiveness of such measures has meant that the country still does not have a mechanism, instrument or, in particular, a practice to search immediately for missing women, in accordance with the standard established by the Inter-American Court in the two previous cases on this

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<sup>93</sup> Para. 108 of the judgment. Citing: *I/A Court HR, Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 346, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 133.

<sup>94</sup> Para. 108 of the judgment. Citing: *I/A Court HR, Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 258, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 136.

<sup>95</sup> *I/A Court HR, Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 282, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 139.

<sup>96</sup> *I/A Court HR, Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 258, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 136.

<sup>97</sup> As described in paras. 112 to 120 of the judgment.

matter,<sup>98</sup> that could prevent the risk faced by Guatemalan women and girls given the escalation in the murder of women and the brutal circumstances in which it is perpetrated.

56. It is a factor of special concern that, as a result of the failure to adopt effective and sufficient measures to prevent violence against Guatemalan women, they continue to face a constant situation of danger, where the guarantee of their rights is nullified, as well as the rights of their next of kin, as in the instant case.

57. Consequently, the undersigned finds it pertinent to indicate that, given the context of violence faced by women in Guatemala and, consequently, the enhanced obligation of the State to prevent this situation, the Court should have declared the international responsibility of the State for failing to comply with its general obligation of prevention when examining the "first moment" of the measures adopted by the State. This is because this failure originated the absence of specific prevention or the "second moment" of prevention; in other words, when the State was confronted by the disappearance of Claudina Velásquez; because, as there was no mechanism, instrument or practice for the immediate search for missing women (which should have existed owing to the State's "general obligation of prevention"), this evidently influenced the actions of the State when it was informed that the victim was missing.

58. On this point, I consider that States must pay special attention to the general obligation of prevention in accordance with the requirements for this obligations established by the American Convention on Human Rights and the "Convention of Belém do Pará." Thus, it is not sufficient for the State to take just any measure or action to comply with the obligation of prevention; rather, it must ensure that such measure or action effectively has the purpose of preventing, as of the first moment and in general, the specific danger that women and girls in the region may face. In sum, this represents a fundamental question to which the States should give special consideration in contexts of violence against women – as seen in the instant case – because the eradication of femicide and, in general, of violence against women, a social burden that regrettably continues to afflict the region, depends to a large extent on compliance with the said "obligation of prevention.

Eduardo Ferrer Mac-Gregor Poisot  
Judge

Pablo Saavedra Alessandri  
Secretary

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<sup>98</sup> I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014.