

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF DIGNA OCHOA AND FAMILY MEMBERS V. MEXICO*

JUDGMENT OF NOVEMBER 25, 2021

(Preliminary objections, merits, reparations and costs)

In the case of *Digna Ochoa and family members v. Mexico*,

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

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi
Humberto Antonio Sierra Porto
Eugenio Raúl Zaffaroni, and
Ricardo Pérez Manrique,

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, 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, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

* Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not take part in the deliberation and signature of this judgment, in keeping with the provisions of Articles 19(1) and 19(2) of the Court’s Rules of Procedure.

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I
INTRODUCTION OF THE CASE AND SUBJECT OF THE DISPUTE

1. *The case submitted to the Court.* On October 2, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “*Relatives of Digna Ochoa y Plácido v. Mexico*” (hereinafter “the State” or “Mexico”). According to the Commission, the case relates to the alleged existence of serious irregularities in the investigation into the death of the human rights defender, Digna Ochoa y Plácido (hereinafter “Digna Ochoa”), on October 19, 2001. It indicated that her death occurred in a context of harassment and attacks against human rights defenders in Mexico. Consequently, the Commission concluded that the State was responsible for the violation of the rights to judicial protection and judicial guarantees established in Articles 8(1) and 25 of the American Convention in relation to the obligations established in Article 1(1) of this instrument, as well as the right to personal integrity established in Article 5(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of the members of Digna Ochoa y Plácido’s family.
2. *Procedure before the Commission.* The procedure before the Commission was as follows:
 - a) *Petition.* On November 2, 1999, the representatives¹ (hereinafter “the petitioners” or “the representatives,” as applicable) lodged the initial petition before the Commission.
 - b) *Precautionary measures adopted by the Commission and provisional measures adopted by the Court.* On September 9, 1999, prior to the filing of the initial petition, the Commission granted precautionary measures and asked the State to adopt, urgently, specific measures to protect the life and physical integrity of Digna Ochoa y Plácido, Edgar Cortéz Morales and the members of the Centro ProDH, the organization for which Digna Ochoa worked. On November 11, 1999, the Commission asked the Court to adopt provisional measures and these were granted on November 17, 1999.² The Court required the State to adopt all necessary measures to protect the life and integrity of Digna Ochoa and other members of the Centro ProDH. On August 28, 2001, based on the State’s request that the measures be lifted, and the agreement of the representatives and the Commission, the Court lifted those provisional measures.³
 - c) *Admissibility Report.* On July 16, 2013, the Commission adopted Admissibility Report No. 57/13, in which it concluded that the petition was admissible with regard to Articles 5, 8 and 25 of the American Convention and inadmissible with regard to Articles 2, 4, 7 and 11 of this instrument, and to Articles 1, 2 and 3 of the Inter-American Convention to Prevent and Punish Torture.
 - d) *Merits Report.* On May 4, 2019, the Commission adopted Merits Report No. 61/19, under Article 50 of the Convention (hereinafter “the Merits Report” or “Report No. 61/19”), in which it reached a series of conclusions,⁴ and made several recommendations to the State.

¹ Grupo de Acción por los Derechos Humanos y la Justicia Social AC (Acción_dh) and the Center for Justice and International Law (CEJIL).

² Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures.* Order of the Inter-American Court of Human Rights of November 17, 1999. Available at: https://www.corteidh.or.cr/docs/medidas/digochoa_se_01.pdf

³ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures.* Order of the Inter-American Court of Human Rights of August 28, 2001. Available at: https://www.corteidh.or.cr/docs/medidas/digochoa_se_02.pdf

⁴ The Commission concluded that the State was responsible for the violation of the rights to judicial protection and judicial guarantees established in Articles 8(1) and 25 of the American Convention in relation to the obligations established in

e) *Notification to the State.* The Merits Report was notified to the State on July 2, 2019. The Mexican State answered the Merits Report on September 24, 2019, and indicated its willingness to comply with the recommendations. However, according to the Commission, the State made no progress in complying with the recommendations and did not request an extension of the time frame before the case was submitted to the Court.

3. *Submission to the Court.* Accordingly, on October 2, 2019, the Commission submitted all the facts and human rights violations described in the Merits Report to the jurisdiction of the Inter-American Court “in view of the need to obtain justice and reparation.”⁵

4. *The Inter-American Commission’s requests.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations indicated in the Merits Report (*supra* para. 2.c). The Commission also asked the Court to order the State to adopt measures of reparation, and these are described and analyzed in Chapter IX of this judgment. The Court notes with concern that almost 20 years elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the representatives and to the State.* The Court notified the Commission’s submission of the case to the representatives of the alleged victims⁶ and to the State on November 22, 2019.

6. *Brief with pleadings, motions and evidence.* On January 28, 2020, the representatives presented their brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”) to the Court. The representatives were in substantial agreement with the Commission’s allegations and asked the Court to declare the international responsibility of the State for the violation of the articles alleged by the Commission and, additionally, the violation of Articles 4(1), 5, 8 and 25 of the Convention, as well as Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”) to the detriment of Digna Ochoa y Plácido, and Articles 11 and 13 of the American Convention to the detriment of the members of her family. In addition, through their representatives, the alleged victims requested access to the Victims’ Legal Assistance Fund of the Inter-American Court (hereinafter “the Court’s Legal Assistance Fund” or “the Fund”).

7. *Answering brief.* On July 8, 2020, the State submitted to the Court its brief with preliminary objections and its answer to the Merits Report of the Inter-American Commission and to the pleading and motions brief of the representatives (hereinafter “the answering brief”). In this brief, the State contested the alleged violations and the measures of reparation proposed by the Commission and the representatives.

Article 1(1) of this instrument, as well as the right to personal integrity established in Article 5(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of the members of Digna Ochoa y Plácido’s family.

⁵ The Commission appointed Commissioner Esmeralda Arosemena de Troitiño and then Executive Secretary Paulo Abrão as its delegates before the Court. It also appointed Marisol Blanchard Vera, Jorge Meza Flores and Piero Vázquez Agüero, Executive Secretariat lawyers, as legal advisers.

⁶ The alleged victims in this case were represented before the Court by the Grupo de Acción por los Derechos Humanos y la Justicia Social AC (Acción_dh) and the Center for Justice and International Law (CEJIL).

8. *Public hearing.* The public hearing on this case took place on April 26 and 27, 2021,⁷ during the Court's 141st regular session, which was held by videoconference.⁸ During the hearing, the State made a partial acknowledgement of responsibility (*infra* Chapter IV).

9. *Amici Curiae.* The Court received eight *amicus curiae* briefs presented by: (a) the Gender Law and Society Research Group and the Human Rights Group at the Universidad Externado de Colombia;⁹ (b) Family members of women who have been victims of femicide and survivors of femicide;¹⁰ (c) the Fundación Abogacía Española and the Observatorio Internacional de la Abogacía en Riesgo;¹¹ (d) the Red Nacional de Defensoras de Derechos Humanos en México (RNDDHM) and the Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos (IM-Defensoras);¹² (e) the Colectivo de Litigio Estratégico e Investigación en Derechos Humanos, A.C.;¹³ (f) the Human

⁷ In an order of March 3, 2021, the President called the State, the representatives and the Inter-American Commission to a public hearing to receive their final oral arguments and observations on the preliminary objections and eventual merits, reparations and costs, and also to receive the statements of one presumed victim proposed by the representatives, one witness proposed by the State and two expert witnesses proposed by the representatives. *Cf. Case of family members of Digna Ochoa y Plácido v. Mexico. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of March 3, 2021. Available at: http://www.corteidh.or.cr/docs/asuntos/familiares_digna_ochoa_y_placido_03_03_21.pdf. On March 9, the State filed a request for "reconsideration" of this order and asked that two expert opinions that been declared inadmissible be admitted. On March 26, 2021, the Court in full decided to confirm the order adopted by the President of the Court on March 3, 2021, and consequently to declare inadmissible the request for reconsideration filed by the State. *Cf. Case of family members of Digna Ochoa y Plácido v. Mexico.* Order of the Inter-American Court of Human Rights of March 26, 2021. Available at: http://www.corteidh.or.cr/docs/asuntos/dignaochoa_26_03_21.pdf

⁸ There appeared at this hearing:

a) for the Inter-American Commission: Commissioner Esmeralda Arosemena de Troitino, Deputy Executive Secretary Marisol Blanchard, and Jorge H. Meza Flores and Ignacio Bollier, legal advisers.

b) for the alleged victims' representatives: for Acción_dh, Karla Michel Salas Ramírez, David Peña Rodríguez and Edwin Alan Piñón González; for CEJIL, Viviana Krsticevic, Gisela de León and Lady Carolina Guzmán Marengo.

c) for the Mexican State: Alejandro Celorio Alcántara, Head of Delegation and Legal Adviser to the Mexican Ministry of Foreign Affairs; Roselia Margarita Barajas and Olea, Mexican Ambassador to Costa Rica; Cristopher Ballinas Valdés, Director General of Human Rights and Democracy of the Mexican Ministry of Foreign Affairs; Enrique Irazoque Palazuelos, Head of the Human Rights Defense Unit of the Mexican Ministry of the Interior; Marcos Moreno Báez, Coordinator for International Human Rights Matters of the Human Rights Defense Unit of the Mexican Ministry of the Interior, and Carlos Alfredo Frausto Martínez, Director General of Human Rights of the Mexico City Prosecutor General's Office.

⁹ The brief was signed by María Daniela Díaz Villamil, Jessika Mariana Barragán, Jennifer Alejandra Blanco Ballesteros, Camilo Alfonso Vanegas Sánchez, Daniela Alejandra León González, Laura Catalina Senejoa Jurado and Valentina De Narváez López and refers to: (i) the right of women to defend human rights, and (ii) the right to the truth.

¹⁰ The brief was signed by Irinea Buendía Cortés, Norma Esther Andrade, María Antonia Márquez Hernandez, Araceli Osorio Martínez, Luz Guadalupe Gochi Vera, Lorena Gutiérrez Rangel, Carolina Ramirez Suárez, Paloma Ramirez Rubio, Aaron Eduardo Sánchez Gochi, Ana Gabriela, Carlos Rafael López Muciño, Diana Monserrat Tamayo Abad, Erika Izbeth Martínez Romero, Fabiola Posadas Torres, Jaciel Antonio Muciño Marquez, Jimena Guadalupe Sánchez Gochi, Jimena Vio, Jose Uriel López Muciño, Maribel Cruz Olguín, Mauro Isaac Muciño Marquez, Mónica Hernández, Nadia Daniela Sánchez Martínez, Nadia Daniela Sánchez Martínez, Rafael Muciño Marquez, Viviana Guadalupe Muciño Márquez, Yuliana, and refers to: (i) the context of violence against women in Mexico, and (ii) "20 years after the murder of defender Digna Ochoa, the same patterns of impunity continue."

¹¹ The brief was signed by Victoria Ortega Benito, President of the Fundación del Consejo General de la Abogacía Española, and Francesco Caia, President of the Observatorio Internacional para la Abogacía en Riesgo, and relates to: (i) the defense of human rights: a dangerous undertaking; (ii) State obligations in relation to the duty to ensure the protection of Digna Ochoa and (iii) proposed protocol for the investigation of crimes against human rights defenders in the state of Guerrero.

¹² The brief was signed by Argentina Casanova Mendoza and María Martín Quintana and relates to: (i) the violence against women defenders in Mexico at the time of the facts and currently; (ii) feminist comprehensive protection, a strategy that is not reflected in the State initiatives, and (iii) the case of Digna: example of stigmatization based on gender stereotyping as a generator of impunity.

¹³ The brief was signed by Ivonne Daniela Roa Osorio and relates to: (i) the legal status of human rights defenders; (ii) the duties of state authorities conducting an investigation into the death of a defender; (iii) the duties of state authorities conducting an investigation into the death of a female defender; (iv) the right to defend human rights; (v) the Latin American context in relation to human rights defenders; (vi) the right to defend human rights as an autonomous right; (vii) impunity, complicity and prosecution in the criminal justice system; (viii) the gender-based stereotyping, stigmatization, violence,

Rights Clinic at the Universidad de Santa Clara;¹⁴ (g) the Mexico City Human Rights Commission,¹⁵ and (j) the Legal Observatory on Gender of the Law School at the Universidad Nacional Autónoma of Mexico.¹⁶

10. *Final written arguments and observations.* On May 27, 2021, the representatives and the State forwarded their respective final written arguments and the Commission presented its final written observations. The representatives and the State attached certain annexes to their final written arguments. On the instructions of the Court's President, the parties and the Inter-American Commission were asked to forward any comments they deemed pertinent on the annexed documentation. On June 11, 2021, the representatives and the Commission each forwarded their comments on the annexes sent by the State. On June 22, 2021, the State and the Commission each forwarded their comments on the annexes sent by the representatives.

11. *Deliberation of this case.* The Court deliberated on this judgment in a virtual session on November 24 and 25, 2021.¹⁷

III JURISDICTION

12. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention because Mexico has been a State Party to the Convention since March 24, 1981, and accepted the contentious jurisdiction of the Court on December 16, 1998. Mexico deposited the instrument of accession to the Convention of Belém do Pará on November 12, 1998.

IV ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

A. Partial acknowledgement by the State and observations of the parties and the Commission

13. During the public hearing held in this case, the **State** advised that, in order to avoid "a revictimization of the family" of Digna Ochoa, it acknowledged its international responsibility "for the violation of Articles 8 and 25 of the American Convention in relation to Article 1(1) of this instrument,

inequality and discrimination faced by women human rights defenders, and (ix) the stereotypes that women human rights defenders have to face.

¹⁴ The brief was signed by Francisco J. Rivera Juaristi, Jessie Smith, Jasmine Gill, Nas Yasin and Marili Iturbe Guadarrama and indicates that: (i) international law recognizes the autonomous right to defend human rights; (ii) the State is responsible for the violation of the autonomous right to defend human rights, recognized in Articles 4, 5, 13, 16, 8 and 25 of the Convention, to the detriment of Digna Ochoa y Plácido, and (iii) the Court should order the State to adopt comprehensive measures to respect, protect and ensure the right to defend human rights, particularly with regard to women defenders who are also victims of gender-based violence.

¹⁵ The brief was signed by Nashieli Ramírez Hernández, President and legal representative of the Mexico City Human Rights Commission, and relates to: (i) the right to defend human rights; (ii) women human rights defenders; (iii) the right to defend human rights as an element of a democratic State; (iv) recognition of the right to defend human rights in the case of the Family of Digna Ochoa y Plácido v. the Mexican State, and (v) the recognition of Digna Ochoa y Plácido as a direct victim in the case of Family Members of Digna Ochoa y Plácido v. the Mexican State.

¹⁶ The brief was signed by Andrea Arabella Montes de Oca, Erick Octavio Moreno Zúñiga, Samantha Rodríguez Santillán and Erika Kaire Pérez Arizmendi and refers to: (i) the context of violence and impunity in crimes against human rights defenders; (ii) obligations in investigations of crimes committed against defenders, and (iii) women human rights defenders as a suspect category.

¹⁷ This judgment was deliberated on and adopted during the 145th regular session that, due to the exceptional circumstances caused by the Covid-19 pandemic, was held virtually using technological means pursuant to the Court's Rules of Procedure.

in the terms indicated in the Merits Report of the Inter-American Commission on Human Rights." Additionally, the State acknowledged the violation of Article 7 of the Convention of Belém do Pará, "because a gender-based investigation was not conducted in this case." The State also acknowledged its international responsibility for the violation of Article 5 of the American Convention to the detriment of the members of Digna Ochoa's family owing to the "absence of truth and justice in this case." Furthermore, the State acknowledged its international responsibility for the violation of Article 11 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Digna Ochoa "as a victim of the negative image of her that was generated after her death and for how the information obtained by the investigation conducted into the death of this defender was managed."

14. Regarding reparations, the State advised that it had approached the representatives and Jesús Ochoa, the alleged victim's brother, in order to propose a "comprehensive reparations agreement, as a fundamental element of the State's implementation of measures of non-repetition," and that it would provide the Court with information on this agreement.

15. Then, in its brief with final arguments, the State reiterated the partial acknowledgement of responsibility made during the public hearing. It also advised that "total agreement" had been reached on reparations and, in particular, with regard to measures of access to the truth and justice, and measures of satisfaction, rehabilitation, non-repetition and compensation.¹⁸ The Mexican State advised that it would continue "supporting joint efforts with the family members and the representatives in this case in order to finalize those agreements on which, to date, partial agreement has been reached so as to define a proposal for integral reparation that meets their expectations, as well as the competences of the authorities involved in its implementation."

16. The **Commission** "took note" of the partial acknowledgement of international responsibility made by the Mexican State during the hearing and indicated that this made "a contribution towards obtaining justice and reparation for the victims in the case." However, it pointed out that the State's acknowledgement of responsibility had not referred to some of the representatives' allegations, such as the alleged violation of Digna Ochoa y Plácido's right to life and the alleged violation of the right to defend human rights; therefore, the dispute continued in this regard.

17. Similarly, the **representatives** indicated that there had been other violations in the context of the investigation into the alleged murder of the defender, Digna Ochoa y Plácido, that were not covered by the State's acknowledgement, such as "some additional flaws in the handling of the crime scene," "omissions and irregularities in obtaining evidence," and "additional shortcomings in the execution and content of the expert psychological, biological and criminalistic appraisals, as well as the State's use of gender stereotyping and stigmatization." Nevertheless, the representatives appreciated the Mexican State's acknowledgement of responsibility for the violation of Digna Ochoa's right to honor and asked the Court to accept this acknowledgment of international responsibility. As regards reparation, the representatives advised that "an approach had indeed been made to propose to the victims' representatives and to the Ochoa y Plácido family a series of measures of reparation within the framework of the Mexican State's acknowledgment of responsibility" for the violation of Articles 8, 11 and 25 of the Convention, in relation to Article 1(1) thereof, and these included measures of satisfaction, rehabilitation, compensation, and also guarantees of non-repetition, measures that had been accepted by the representatives. The representatives also made additional observations on the measures proposed by the Mexican State, as well as on other measures that it asked the Court to require the State to adopt (see *infra* Chapter IX).

¹⁸ In this regard, the representatives also sent the Court a "proposed reparations agreement" that was substantially the same as the agreements indicated by the State. However, the Court notes that there were some differences with regard to certain measures, and these will be analyzed in the chapter on reparations (see *infra* Chapter IX).

B. Considerations of the Court

18. In accordance with Articles 62 and 64 of its Rules of Procedure, and in exercise of its authority for the international judicial protection of human rights, a matter of international public order, this Court must ensure that acts of acknowledgement of responsibility are acceptable for the purposes of the inter-American system.¹⁹ The Court will now examine the situation in this specific case.

b.1 The facts

19. In this case, the State partially acknowledged the violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) of this instrument, "in the terms indicated in the Merits Report of the Inter-American Commission on Human Rights." Therefore, the dispute has ceased with regard to the facts described in the Merits Report and in relation to those articles and, in particular, the deficiencies indicated by the Commission in the context of the investigations and proceedings based on the death of Digna Ochoa. Also, with regard to the specific shortcomings that involved a violation of Article 7 of the Convention of Belém do Pará "because an investigation with a gender perspective was not conducted in this case," as well as regarding the suffering that these deficiencies caused to the members of Digna Ochoa's family and that involved a violation of Article 5 of the American Convention.

20. However, the Court considers that the dispute subsists with regard to the other deficiencies indicated by the representatives in the context of the investigation and proceedings undertaken owing to the death of Digna Ochoa. To this should be added facts that supplement or explain the facts in the Merits Report and that were described by the representatives, such as the alleged "threats and attacks perpetrated against Digna Ochoa y Plácido before her death and the lack of an effective response by the State," as well as the circumstances that surrounded Digna Ochoa's death.

b.2 The legal claims

21. Taking into account the violations acknowledged by the State, as well as the observations of the representatives and of the Commission, the Court considers that the dispute has ceased with regard to the following violations:

- a) The violation of judicial guarantees and judicial protection (Articles 8 and 25 of the American Convention in relation to Article 1(1) of this instrument) to the detriment of the members of Digna Ochoa's family, as described in the Merits Report of the Inter-American Commission on Human Rights.
- b) The violation of Article 7(b) of the Convention of Belém do Pará to the detriment of the members of Digna Ochoa's family, due to the failure to conduct an investigation with a gender perspective in this case.
- c) The violation of the right to personal integrity (Article 5 of the American Convention in relation to Article 1(1) of this instrument) to the detriment of the members of Digna Ochoa's family, owing to the "absence of truth and justice in this case."
- d) The violation of the right to protection of honor and dignity (Article 11 of the American Convention in relation to Article 1(1) of this instrument) to the detriment of Digna Ochoa "as

¹⁹ Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Bedoya Lima et al. v. Colombia. Merits, reparations and costs*. Judgment of August 26, 2021. Series C No. 431, para. 17.

a victim of the negative image of her that was generated after her death and for how the information obtained by the investigation into this defender's death was managed.”

22. Consequently, the dispute still remains, *prima facie*, with regard to the following:
- a) The alleged international responsibility of the State for the death of Digna Ochoa.
 - b) The alleged international responsibility of the State for the alleged threats and attacks perpetrated against Digna Ochoa y Plácido before her death.
 - c) The alleged international responsibility of the State for the alleged violation of Digna Ochoa's right to defend human rights.
 - d) The alleged international responsibility of the State for the other shortcomings described by the representatives that allegedly occurred during the investigation and proceedings based on the death of Digna Ochoa.

b.3 The reparations

23. Regarding measures of reparation, the Court notes that the State and the representatives have reached a series of agreements on certain reparations, although certain points still need to be clarified and the representatives have requested other reparations on which no agreement has been reached. Therefore, the dispute subsists partially in this regard, and the matter will be examined in Chapter IX of this judgment.

b.4 Conclusions: assessment of the partial acknowledgment of responsibility

24. The acknowledgement made by the State constitutes a partial acceptance of the facts and a partial acknowledgement of the violations that have been alleged. This acknowledgement has full legal effects pursuant to the above-mentioned Articles 62 and 64 of the Court's Rules of Procedure. The Court appreciates the State's willingness to express a partial acknowledgement of international responsibility, owing to its significance in the context of the inter-American system for the protection of human rights, and that the parties have decided to reach an agreement on reparations. In addition, the Court notes that the acknowledgement of specific facts and violations may have effects and consequences on the Court's analysis of the other alleged facts and violations, to the extent that they all form part of the same set of circumstances.²⁰

25. Bearing in mind the seriousness of the alleged facts and violations, the Court will proceed to make a wide-ranging and detailed determination of the facts that occurred, because this contributes to making reparation to the victims, to avoiding a repetition of similar facts and, in sum, to meeting the objectives of the inter-American human rights jurisdiction.²¹ It will then examine the origin and scope of the violations cited by the representatives regarding which the dispute subsists. Also, in order to ensure a better understanding of the State's international responsibility, of the causal nexus between the violations proved and the reparations that will be ordered, the Court finds it pertinent to described some of the human rights violations that occurred in this case and that have been

²⁰ Cf. *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 14, 2014. Series C No. 287, para. 27, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 30.

²¹ Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 26, and *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, para. 27.

acknowledged by the State.²² Lastly, the Court will rule on the dispute that subsists regarding the reparations requested by the Commission and the representatives.

V PRELIMINARY OBJECTIONS

26. The State filed four preliminary objections, namely: (i) failure to determine the possible victims; (ii) failure to exhaust domestic remedies; (iii) lack of jurisdiction *ratione materiae* to examine the alleged violation of the right to defend human rights as an autonomous right and with regard to Article 7 of the Convention of Belém do Pará, and (iv) objection of fourth instance.

27. First, regarding the objection of the failure to determine the possible victims, the Court notes that, in its answering brief, the State contested the inclusion as victims in this case of Digna Ochoa, and also of her brothers, Eusebio, Roberto and Juan Carlos Ochoa, because they were not included as victims in the Commission's Merits Report. However, the Court notes that the State recognized Digna Ochoa and Eusebio, Roberto and Juan Carlos Ochoa as victims in the context of the partial acknowledgement of international responsibility made at the public hearing. On the one hand, it expressly recognized Digna Ochoa as a victim of the violation of Article 11 of the American Convention; on the other, in a brief of June 7, 2021, it specified the scope of the measures of reparation offered in the context of the partial acknowledgement of responsibility and included, in addition to the family members indicated by the Commission, Digna Ochoa and Eusebio, Roberto and Juan Carlos Ochoa as beneficiaries of the compensation for pecuniary and non-pecuniary damage for the violations of the American Convention that it had acknowledged. Consequently, the Court considers that this objection presented in the answering brief is incompatible with the State's acknowledgement of its international responsibility; therefore, it has become devoid of purpose and, for this reason, the Court will not analyze it.

28. Second, the Court notes that the State, in its final written arguments, and in light of its partial acknowledgement of international responsibility, totally withdrew the objection on prior exhaustion of domestic remedies; therefore, the Court will not analyze this objection either.

29. Third, the Court notes that the State partially withdrew the objection on jurisdiction *ratione materiae* and indicated that it only retained this with regard to the analysis of a possible violation of the right to defend human rights as an autonomous right. Consequently, this objection will only be examined in relation to the remaining dispute; that is, concerning the Court's competence to examine an eventual violation of the right to defend human rights.

A. Alleged lack of jurisdiction ratione materiae to examine an eventual violation of the right to defend human rights

30. The **State** argued that the Commission's Merits Report had only concluded that there had been a violation of the rights recognized in Articles 5, 8 and 25 of the American Convention. The State contested the fact that, in their pleadings and motions brief, the representatives had included new violations that had not been considered in the proceedings before the Inter-American Commission and that, consequently, were "not contained in the analysis made by the Commission in its Merits Report." Regarding the inclusion of the right to defend human rights as an autonomous right, it emphasized that the Court had recognized that the American Convention on Human Rights made it clear that, in contentious cases, the procedure initiated before the Commission that culminates with

²² Cf. *Case of the Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 371, para. 42.

an application before the Court, must refer specifically to the rights protected by that Convention.

31. The **representatives** indicated that, according to the Court's consistent case law, the alleged victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided these relate to the facts contained in that document, because the alleged victims are entitled to all the rights established in the Convention.

32. The **Commission** expressed a similar view to the representatives.

33. The Court reiterates that the alleged victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided they respect the factual framework defined by the Commission, because the alleged victims are entitled to all the rights established in the American Convention. In such cases, the Court must decide on the admissibility of arguments based on the factual framework to safeguard the procedural balance between the parties.²³

34. In the instant case, the Court notes that the right to defend human rights alleged by the representatives relates to the enjoyment of several rights contained in the American Convention, such as life, personal integrity, freedom of expression and of association, judicial guarantees and judicial protection,²⁴ which fall within the jurisdiction *ratione materiae* of this Court and, to that extent, they will be analyzed throughout this judgment. Consequently, the Court is competent to analyze this alleged violation, provided it conforms to the factual framework presented by the Commission; therefore, the objection filed by the State must be rejected..

B. Preliminary objection of fourth instance

35. The **State** argued that, contrary to the apparent claims of the representatives of the alleged victims in this case, and based on the subsidiary nature of the inter-American system, the Court's functions did not include determining the circumstances in which Digna Ochoa lost her life. It added that, in various arguments in their pleading and motions brief, the representatives had mentioned that different probative elements allegedly proving the hypothesis of the murder of Digna Ochoa, had been "assessed incorrectly" by the Mexican State, without specifying the causal nexus with the specific obligation that the Mexican State was violating. On this basis, the State asserted that, in this case, by referring to disputes concerning certain probative elements in the investigation into Digna Ochoa's death, it was "evident" that the representatives of the alleged victims were seeking for the Court to become a court of fourth instance and, therefore, it was prevented from hearing the instant case.

36. The **representatives** indicated that this Court's consistent case law has established that the determination of whether or not the actions of judicial organs have constituted a violation of the State's international obligations may result in the Court having to examine the respective domestic proceedings to establish their compatibility with the American Convention. They clarified that they were merely seeking for the Court to "review whether the actions of the authorities during the initial stages of the investigation were conducted with due diligence; whether the State had exhausted all the necessary lines of investigation in light of Digna Ochoa's work in defense of human rights; whether the State incurred in acts of stigmatization and gender stereotyping throughout the investigations; whether the State had taken the necessary measures to protect the witnesses who appeared in the proceedings; whether the State had ensured that the victims could participate

²³ Cf. *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, para. 22, and *Case of Moya Solís v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 425, para. 32.

²⁴ Cf. *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 60.

satisfactorily in the proceedings, and whether it had incurred in an unjustified delay in the investigation of the facts," all in light of the State's obligations derived from the American Convention on Human Rights, the Convention of Belém Do Pará, and the Court's case law.

37. The **Commission** argued that aspects such as those indicated were not seeking for the Court to rule on whether the death of the victim was homicide or suicide, or to establish the corresponding individual responsibilities, which was a matter for the domestic authorities. The Commission noted that such arguments were directly related to the analysis of "whether the State acted with due diligence to investigate this type of incident in conformity with the provisions of Articles 8 and 25 of the American Convention." It added that the determination of whether such aspects entailed an act or omission that would result in a violation of that obligation was a matter that related to the merits of the case and, therefore, did not comply with the criteria for a preliminary objection.

38. This Court has indicated that, to determine whether the actions of judicial organs constitute a violation of the State's international obligations, the Court may have to examine the respective domestic proceedings in order to establish their compatibility with the American Convention.²⁵ Consequently, the Court is not a fourth instance of judicial review, insofar as it examines the conformity of internal judicial decisions with the American Convention and not with domestic law. Thus, in order to determine whether the alleged violations really occurred, it is essential to examine the decisions taken by the different jurisdictional authorities to verify their compatibility with the State's international obligations and, ultimately, this constitutes a matter relating to the merits that cannot be addressed by means of a preliminary objection. Consequently, the Court finds this preliminary objection presented by the State inadmissible.

VI EVIDENCE

A. *Admissibility of the documentary evidence*

39. The Court received diverse documents presented as evidence by the Commission, the representatives and the State and, as in other cases, these are admitted in the understanding that they were presented at the appropriate procedural moment (Article 57 of the Rules of Procedure).²⁶

40. The Court also received documents attached to the final written arguments submitted by the State and by the representatives of the alleged victims.²⁷ On June 11, 2021, the Commission and the representatives each presented their observations on the annexes sent by the State. Then, on June 22, 2021, the State and the Commission each forwarded their observations on the annexes sent by the representatives. The parties and the Commission commented on the content of the

²⁵ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2020. Series C No. 409, para. 31.

²⁶ In general and according to Article 57(2) of the Rules of Procedure, the documentary evidence should be presented together with the brief submitting the case, the pleadings and motions brief or the answering brief, as applicable, and evidence submitted outside these procedural occasions is not admissible, subject to the exceptions established in the said Article 57(2) of the Rules of Procedure (namely, *force majeure*, grave impediment) or if it relates to a supervening fact; that is, one that occurred after the said procedural moments. Cf. *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 34.

²⁷ The State forwarded an annex entitled "Critical path. Reopening of investigation FDCUAUHT/03/USD04/2576/01-10. Case of the lawyer and human rights defender, Digna Ochoa y Plácido." The representatives forwarded three annexes: (i) "Reparation agreement proposed by the Mexican State in the case of Case of Ochoa and Others"; (ii) "Critical path for the reopening of investigation FDCUAUHT/03/USD04/2576/01-10," and (iii) "List of expenses incurred by the Ochoa y Plácido family, Acción DH and CEJIL as a result of this litigation, following the presentation of the pleadings and motions brief.

annexes; however, they did not contest their admissibility.

41. The Court notes that the documents annexed to the final written arguments of the State and of the representatives were issued following the presentation of their main briefs and, therefore, constitute evidence of supervening facts. Therefore, these documents are admissible pursuant to Article 57(2) of the Rules of Procedure.

B. Admissibility of the testimonial and expert evidence

42. The Court finds it pertinent to admit the statements made during the public hearing,²⁸ and also those submitted by affidavit,²⁹ insofar as they are in keeping with the purpose defined by the President in the order requiring them.³⁰

VII FACTS

43. In this chapter, the Court will establish the facts of the case based on the factual framework submitted to its consideration by the Inter-American Commission, in relation to: (A) the context of violence against human rights defenders at the time of the facts and currently in Mexico and the precautionary and provisional measures adopted by the Commission and the Court, respectively; (B) Digna Ochoa's activities and her death on October 19, 2001, and (C) the corresponding investigations and judicial proceedings.

A. Context

a.1. Context of violence against human rights defenders at the time of the facts and currently in Mexico

44. The Court notes that, at the time of the facts (that is, at the end of the 1990s and beginning of the 2000s), human rights defenders in Mexico – as well as other people who worked in the defense of human rights, such as journalists, trade union representatives and indigenous people – ran the risk of suffering numerous human rights violations. According to the Inter-American Commission's country report for 1998, it had received "various complaints regarding acts of intimidation committed in Mexico against members of human rights organizations and community groups," and it indicated that "various social and political movements and organizations, in addition to students, activists, and attorney groups in Mexico, have been the victims of threats, kidnappings, arbitrary detention, robbery, searches and raids, fabricated charges, and disappearance."³¹ Consequently, it expressed its "concern over the serious incidents of harassment and violence affecting human rights defenders and the members of social organizations in Mexico," and urged the Mexican State "to conduct a

²⁸ During the public hearing, the Court received the statements of alleged victim Jesús Ochoa y Plácido, proposed by the representatives, of witness José Antonio Pérez Bravo, proposed by the State, and of expert witnesses Erika Guevara Rosas and Ángela María Buitrago Ruiz, proposed by the representatives.

²⁹ The Court received affidavits made by alleged victims Estela Ochoa y Plácido and Ismael Ochoa y Plácido, proposed by the representatives; witnesses Pilar Noriega García, José Antonio Becerril and Emilio Álvarez Icaza, proposed by the representatives, and witness Margarita Guerra and Tejada, proposed by the State; and expert witnesses José Luis Prieto Carrero, Emanuel Santos and Mariana Castilla, Ana Constanza Rangel Núñez, Michel Forst, proposed by the representatives, expert witness Carolina Espinosa Luna, proposed by the State, and expert witness Luz Adriana Camargo Garzón, proposed by the Commission.

³⁰ The purpose of all the statements was established in the order of the President of the Inter-American Court of March 3, 2021. Available at: http://www.corteidh.or.cr/docs/asuntos/familiares_digna_ochoa_y_placido_03_03_21.pdf

³¹ Cf. IACHR, Report on the situation of human rights in Mexico, September 24, 1998, Chapter X, OEA/Ser.L/V/II.100, paras. 662 and 666. Available at: <http://www.cidh.org/countryrep/mexico98en/Chapter-10.htm>

serious examination of the situation described, so as to avoid any repetition of these events.”³²

45. Similarly, the Office in Mexico of the United Nations High Commissioner for Human Rights indicated that, in 2000, human rights defenders suffered a “series of human rights violations” such as “limited protection and institutional and legal human rights guarantees.”³³ Also, in her 2000 report, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions expressed her concern owing to “continuing reports of death threats against or extrajudicial killings of human rights activists, lawyers, community workers, teachers, journalists, and other persons engaged in activities aimed at promoting human rights or publicizing human rights violations” and indicated that, during her mandate, she had made two urgent calls to the Mexican State in favor of those carrying out peaceful activities in defense of human rights. The Special Rapporteur also “noted that there was a particular reluctance among the competent Mexican authorities to hold members of the armed forces accountable for extrajudicial killings and other grave human rights violations.”³⁴ In an early-2003 report,³⁵ the Special Rapporteur also underlined her concern owing to deaths of numerous journalists, judges, lawyers, human rights defenders, trade union representatives and indigenous people in Mexico.³⁶

46. Regarding the current situation of human rights defenders in Mexico, the Court notes that, following his visit to Mexico in 2017, the Special Rapporteur on the situation of human rights defenders indicated that “[d]espite some progress, the level of violence in Mexico remains alarmingly high, affecting the population at large.”³⁷ He also indicated that “the majority of human rights defenders [he] met during the visit confirmed that they had experienced intimidation, harassment and stigmatization at the hands of State and non-State actors in retaliation for their human rights work.”³⁸ To this is added the high levels of impunity in relation to these crimes. In this regard, he indicated that “[a]pproximately 98 per cent of crimes in Mexico remain unsolved” and that the percentage of successful investigations and prosecutions of crimes against human rights defenders was negligible, which had “engendered a sense of widespread and persistent impunity,”³⁹ and this had “become both the cause and the effect of the overall insecurity of human rights defenders in Mexico.”⁴⁰ He also noted, that “[b]etween 2010 and 2017, more than 43 women defenders and journalists were killed in Mexico and at least 5 women activists were killed in 2017” and “[t]he majority of women human rights defenders also face risks linked to their gender, including sexual

³² Cf. IACHR, Report on the situation of human rights in Mexico, September 24, 1998, Chapter X, OEA/Ser.L/V/II.100, para. 668.

³³ Cf. OHCHR. *Diagnóstico sobre la situación de derechos humanos en México*. 2003, p. 5. Available at: https://hchr.org.mx/wp/wp-content/themes/hchr/images/doc_pub/8diagnosticoCompleto.pdf

³⁴ Cf. ECOSOC, Report of the special rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/36, of January 25, 2000, E/CN.4/2000/3, paras. 85 to 91. Available at: <https://undocs.org/E/CN.4/2000/3>

³⁵ This report covers information received and the communications sent from December 2, 2001, to December 1, 2002. Cf. ECOSOC, Report of the special rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/36, of January 13, 2003, E/CN.4/2003/3, para. 2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/103/27/PDF/G0310327.pdf?OpenElement>

³⁶ Cf. ECOSOC, Report of the special rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/36, of January 13, 2003, E/CN.4/2003/3, para. 2.

³⁷ Cf. UN. Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, A/HRC/37/51/Add.2, February 12, 2018, para. 15. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/037/94/PDF/G1803794.pdf?OpenElement>

³⁸ Cf. UN. Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, A/HRC/37/51/Add.2, February 12, 2018, para. 42.

³⁹ Cf. UN. Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, A/HRC/37/51/Add.2, February 12, 2018, para. 48.

⁴⁰ Cf. UN. Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, A/HRC/37/51/Add.2, February 12, 2018, para. 50.

violence and threats on social media or smear campaigns based on gender stereotypes.”⁴¹ Additionally, in early 2019, the United Nations High Commissioner for Human Rights (hereinafter “UNHCHR”) and the Inter-American Commission expressed their “concern” owing to “the increase in killings of human rights defenders in Mexico during the first four months of the year compared to previous years,” and of particular concern was the fact that eight of the defenders killed were indigenous people.⁴²

47. Furthermore, in her latest report on the situation of human rights defenders, presented at the end of 2020, the actual UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, highlighted Mexico as one of the countries where the highest number of human rights defenders have been killed.⁴³ She also stressed that, although Mexico was one of the countries of the Americas that had set up mechanism for protecting human rights defenders, which “had saved lives,” “there was much room for improvement” and noted “the often poor response to death threats.”⁴⁴ Also, very recently, the Mexican Ministry of the Interior (SEGOB) acknowledged that at least 68 human rights defenders and 43 journalist had been killed since December 1, 2018,⁴⁵ converting Mexico into one of the most dangerous countries for the defense of human rights.⁴⁶ This is inserted in a global context of violence against human rights defenders in which, “according to information gathered by OHCHR [... s]ince 2015, a total of 1,323 [human rights defenders] have been killed,” and “Latin America is consistently the most affected region.”⁴⁷

48. The Court also underlines that “[w]omen human rights defenders encounter additional obstacles linked to gender discrimination” because “they are victims of stigmatization, they are exposed to sexist or misogynistic comments or their allegations are not taken seriously.”⁴⁸ It should also be pointed out that, as the Special Rapporteur on the situation of human rights defenders indicated in a 2019 report, “[t]he threat of violence, including sexual violence, is often used to silence women defenders” and that “[w]omen defenders are also at risk of femicide, rape, acid attacks, arbitrary arrest, detention, killings and enforced disappearances.”⁴⁹

⁴¹ Cf. UN. Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, A/HRC/37/51/Add.2, February 12, 2018, paras. 53 and 54. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/037/94/PDF/G1803794.pdf?OpenElement>

⁴² Cf. UNHCHR and IACHR, “*Se disparan los actos de violencia contra defensores de derechos humanos en América Latina, alertan ONU y CIDH*”. May 30, 2019. Available at: <https://www.onu.org.mx/se-disparan-los-actos-de-violencia-contra-defensores-de-derechos-humanos-en-america-latina-en-2019-alertan-onu-y-cidh/>

⁴³ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, of December 24, 2020, A/HRC/46/35, paras. 4, 41, 44 and 45. Available at: <https://undocs.org/en/A/HRC/46/35>

⁴⁴ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, of December 24, 2020, A/HRC/46/35, para. 84, referring to a 2017 Report of Amnesty International. Cf. Amnesty International, “Americas: State protection mechanisms for human rights defenders,” May 17, 2017. Available at: <https://www.amnesty.org/es/wp-content/uploads/2021/05/AMR0162112017ENGLISH.pdf>

⁴⁵ Cf. Agencia EFE, “ONG denuncia persecución de defensor de derechos humanos en México,” article of November 18, 2021. Available at: <https://www.efo.com/efe/usa/mexico/onq-denuncian-persecucion-de-defensor-derechos-humanos-en-mexico/50000100-4679312>

⁴⁶ Cf. Front Line Defenders, Global Analysis 2020 on the situation of human rights defenders (HRDs) at risk throughout the world, p. 4. Available at: https://www.frontlinedefenders.org/sites/default/files/fl_d_global_analysis_2020.pdf

⁴⁷ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, of December 24, 2020, A/HRC/46/35, para. 5.

⁴⁸ Cf. Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, of July 15, 2019, A/74/159, para. 74. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/24/PDF/N1921624.pdf?OpenElement>

⁴⁹ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, of January 10, 2019, A/HRC/40/60, para. 42.

a.2. Precautionary and provisional measures adopted by the Commission and the Court, respectively

49. During 1999, Digna Ochoa and other members of the Centro ProDH were victims of different acts of intimidation, as a result of which several complaints were filed. They included one filed by Digna Ochoa on August 9, 1999, in which she alleged that she had been kidnapped for four hours and that her backpack and files with personal documents had been stolen.⁵⁰ On September 8, 1999, members of the Centro ProDH received renewed threats in four envelopes delivered to their offices. The petitioners denounced this incident to the Federal District Prosecutor General's Office, which decided to expand two investigations that it had opened in 1995 and 1996 owing to reports concerning death threats against the Director of the Centro ProDH at the time and other members of this organization, including Digna Ochoa.⁵¹ These facts resulted in the opening of criminal procedures.

50. Digna Ochoa also filed a complaint on October 29, 1999, stating that the previous day, at around 11 p.m., she had been kidnapped in her own home, threatened and left unconscious tied to her bed. The attackers had placed an open gas tank beside her and left. Digna Ochoa came round and was able to free herself in time to close the gas tank. Later, she found in her house the files that had been stolen during her kidnapping on August 9, 1999. That same day, the employees of the Centro ProDH found that their offices had been searched and that everything was in disarray; they also found new anonymous threatening letters.⁵²

51. In this situation of threats and intimidation, on September 9, 1999, the Inter-American Commission granted precautionary measures and asked the State to adopt specific measures urgently in order to protect the life and physical integrity of Digna Ochoa y Plácido, Edgar Cortéz Morales and the members of the Centro ProDH.⁵³

52. In light of the fact that the petitioners alleged that the precautionary measures adopted by the State had not been effective, on November 11, 1999, the Commission asked the Court to issue provisional measures. The Court granted the provisional measures on November 17, 1999, considering that "the safety of the members of the Centro ProDH" was "in grave danger."⁵⁴ The Court required the State to adopt all necessary measures to protect the life and integrity of Digna Ochoa and other members of the Centro ProDH.⁵⁵

53. On May 31, 2001, the State asked the Court to lift the said provisional measures, and reiterated its request on August 14, 2001. On August 21, 2001, the representatives of the beneficiaries indicated their agreement that the provisional measures be lifted because, according to the Commission, "the acts of harassment and threats leading to the provisional measures had ceased."⁵⁶

⁵⁰ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of November 17, 1999, having seen paragraph 2.a. Available at: https://www.corteidh.or.cr/docs/medidas/digochoa_se_01.pdf

⁵¹ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of November 17, 1999, having seen paragraph 2.d.

⁵² Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of November 17, 1999, having seen paragraph 2.j and k.

⁵³ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of November 17, 1999, having seen paragraph 2.e.

⁵⁴ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of November 17, 1999, considering paragraph 6.

⁵⁵ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of November 17, 1999, having seen paragraph 2.e.

⁵⁶ Cf. Merits Report No. 61/19, Case 12,229, OEA/Ser.L/V/II.172, of May 4, 2019, para. 31 (merits file, folio 43).

Also, on August 22, 2001, the Commission reported that, because the measures had fulfilled their objective, and with the consent of the representatives of the beneficiaries, it had no objection to the provisional measures being lifted.⁵⁷ Consequently, on August 28, 2001, the Inter-American Court lifted the provisional measures.⁵⁸

B. Regarding the life and death of Digna Ochoa

54. Digna Ochoa y Plácido, who was born on May 15, 1964, in Misantla, Veracruz, was a human rights defender, well-known at both the national and the international level. She was a member of the Centro ProDH team and took part in defending several landmark cases in Mexico, such as the "Aguas Blancas" massacre and the human rights violations suffered by Messrs. Cabrera García and Montiel Flores, and Messrs. García Cruz and Sánchez Silvestre;⁵⁹ the Commission subsequently submitted the last two cases to the consideration of the Inter-American Court.⁶⁰ The Human Rights Commission of the Federal District (hereinafter "CDHDF"), in a special report on her case dated July 2004, referred to Digna Ochoa's commitment to the defense of human rights as follows:

Digna Ochoa y Plácido has been recognized for her strong social vocation and sense of ethics, and her achievements merit recognition. Her efforts and commitment constitute an example in the fight to defend human rights, because she defended those who few, if any, wanted to defend. Her significant work in defense of human rights earned her various awards including, in particular, the Roque Dalton Medal, Amnesty International's "Enduring Spirit" Award for human rights defenders, and the American Bar Association's Human Rights Award.⁶¹

55. Moreover, in its answering brief, the Mexican State expressed "its most sincere recognition of the important work performed by the human rights defender."⁶²

56. On October 19, 2001, at 6 p.m., Digna Ochoa was found dead by her colleague, Gerardo González Pedraza, in the office of "Servicios Legales de Investigación y Estudios Jurídicos A.C.," located at Zacatecas 31, Colonia Roma, Mexico City, which she visited occasionally and, therefore, had keys to the office.⁶³ According to Mr. González Pedraza, when he entered the office, he noticed "a white powder, which appeared to be talcum powder, and that was sprinkled on the carpet and on the chairs" and, next to an armchair that was near the entrance to the washroom, "the shadow of a person lying on the floor," together with a blood stain.⁶⁴ On approaching, Mr. González Pedraza recognized Digna Ochoa. He made several telephone calls to certain colleagues and waited for them

⁵⁷ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of August 28, 2001, having seen paragraph 4. Available at: https://www.corteidh.or.cr/docs/medidas/digochoa_se_02.pdf

⁵⁸ Cf. *Matter of Digna Ochoa y Plácido and others with regard to Mexico. Provisional measures*. Order of the Inter-American Court of Human Rights of August 28, 2001, first operative paragraph.

⁵⁹ Cf. Merits Report No. 61/19, Case of 12,229, OEA/Ser.L/V/II.172, of May 4, 2019, para. 19 (merits file, folio 12); Pleading and motions brief, p. 28 (merits file, folio 146), and Answering brief of the State, para. 592 (merits file, folio 515).

⁶⁰ See, *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, and *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs*. Judgment of November 26, 2013. Series C No. 273.

⁶¹ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 1 (evidence file, folio 3811).

⁶² Cf. Answering brief of the State, para. 592 (merits file, folio 498).

⁶³ Cf. Public Prosecution Service, Decision to end preliminary inquiry FDCUAUHT/03/USD04//2576/01-10, of July 18, 2003 (evidence file, folio 3509), and Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4190 and 4191).

⁶⁴ Cf. Public Prosecution Service, Decision to end preliminary inquiry FDCUAUHT/03/USD04//2576/01-10, of July 18, 2003 (evidence file, folio 3511), and Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4191).

to arrive; subsequently, personnel from the Public Prosecution Service arrived. He then decided to go to the offices of the Prosecution Service to provide his statement on the events and to file a complaint for the crime of the homicide "of Digna Ochoa y Plácido and against the person or persons who are found to be responsible."⁶⁵

57. According to the record drawn up by the Decentralized Prosecutors' Office of Cuauhtémoc, the human rights defender was lying dead against an armchair with bullet wounds.⁶⁶ A .22 caliber firearm and three shell casings were also found.⁶⁷ The crime scene was described as follows:

Observed was a dead body, female, slumped to the left with the head propped up on a brown armchair with red stripes. Another chair of the same color was against the north wall, and on the left armrest was white powder, seemingly talcum, and on the left side of the seat, a blood stain [...] and on the floor was a piece of chewed gum and a blood stain [...] between the feet of the deceased was a spent shell casing, apparently a .22 caliber. On the opposite side of the chair from where the deceased's head was resting was white powder, seemingly talcum [...] with white powder also appearing on the floor at the entry to the room. [...] Upon lifting the body, a firearm was discovered, apparently .22 caliber [...]. Also, the corpse was wearing red plastic gloves, with the right glove not fully on and the left one with only the thumb out [...] On lifting up the armchair on which the head of the deceased was resting, two spent shell casings were found [...].⁶⁸

58. Subsequently, based on several forensic appraisals, it was determined that Digna Ochoa had three injuries: two caused by bullets – one in the cranial area on the left temple with only the entry wound, and another in the left thigh with entry and exit wounds – and bruising on the right thigh.⁶⁹

59. Among the documents found at the scene of the crime was a piece of paper with a message composed of newspaper cuttings that indicated: "Pros, sons of bitches, if you keep going one of you will also get fucked up. Don't say we didn't warn you."⁷⁰

60. The death of Digna Ochoa y Plácido had national and international repercussions. Public statements were made by the President of Mexico at the time,⁷¹ and the then Head of Government of the Federal District⁷² and Federal District Prosecutor General,⁷³ several members of the Legislative

⁶⁵ Cf. Public Prosecution Service, Decision to end preliminary inquiry, FDCUAUHT/03/USD04//2576/01-10, of July 18, 2003 (evidence file, folio 3509), and Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4193).

⁶⁶ Cf. Decentralized Prosecutors' Office of Cuauhtémoc, Preliminary inquiry FDCUAUHT /03/USD04/02576/2001-10, Record of October 19, 2001 (evidence file, folio 7).

⁶⁷ Cf. Decentralized Prosecutors' Office of Cuauhtémoc, Preliminary inquiry FDCUAUHT /03/USD04/02576/2001-10, Record of October 19, 2001 (evidence file, folio 6).

⁶⁸ Cf. Decentralized Prosecutors' Office of Cuauhtémoc, Preliminary inquiry FDCUAUHT /03/USD04/02576/2001-10, Record of October 19, 2001 (evidence file, folio 7).

⁶⁹ Cf. Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 2628).

⁷⁰ Cf. Decentralized Prosecutors' Office of Cuauhtémoc, Preliminary inquiry FDCUAUHT /03/USD04/02576/2001-10, Record of October 19, 2001 (evidence file, folio 6), Public Prosecution Service, Decision to end preliminary inquiry, FDCUAUHT/03/USD04//2576/01-10, of July 18, 2003 (evidence file, folio 3512), and Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folio 2731).

⁷¹ Cf. El País, "Fox abre los archivos militares secretos para aclarar el asesinato de Digna Ochoa," news item of October 27, 2001. Available at: https://elpais.com/internacional/2001/10/28/actualidad/1004220005_850215.html

⁷² Cf. La Jornada, "La muerte de la abogada daña la estabilidad política: López Obrador," news item of October 22, 2001. Available at: <https://www.jornada.com.mx/2001/10/22/017n1pol.html>

⁷³ Cf. La Jornada, "La muerte de la abogada daña la estabilidad política: López Obrador," news item of October 22, 2001. Available at: <https://www.jornada.com.mx/2001/10/22/017n1pol.html>; La Jornada, "Terror y confusión por el asesinato de Digna Ochoa", news item of October 21, 2001. Available at: <https://www.jornada.com.mx/2001/10/21/001n1por.html>

Assembly of the Federal District,⁷⁴ and the Federal District Human Rights Commission,⁷⁵ among others. At the international level, numerous organizations expressed their dismay and demanded clarification of the circumstances of the human rights defender's death. They included the French Government,⁷⁶ the United States Department of State,⁷⁷ the United Nations (hereinafter "the UN")⁷⁸ and various human rights organizations.⁷⁹ In addition, in 2002, she was posthumously awarded the Global Exchange "International Human Rights Award" and, in 2003, the Ludovic-Trarieux International Human Rights prize.⁸⁰ Digna Ochoa was an emblematic figure in the defense of human rights and her death caused, and still causes, great distress at both the national and international level.

C. Investigations and proceedings conducted owing to Digna Ochoa's death

61. On October 19, 2001, at 7.29 p.m., the Public Prosecution Service received a telephone call reporting the finding of Digna Ochoa's body and this resulted in the opening of preliminary inquiry FDCUAUHT/03/USD04/02576/2001-10 ("AP-2576"). Following the call, personnel of the Public Prosecution Service and the Judicial Police and forensic experts proceeded to the site.⁸¹

62. On October 29, 2001, Miguel Cortez Morales, legal representative of the Centro ProDH, expanded the complaint previously filed by González Pedraza owing to the threatening note found in the office at the time of Digna Ochoa's death.⁸² The Public Prosecution Service then began investigating this incident also.⁸³

63. On August 1, 2002, the Federal District Prosecutor General issued Decision No. A/006/02 creating the Special Agency of the Public Prosecution Service for the investigation of the facts surrounding the death of Digna Ochoa y Plácido.⁸⁴ During the initial stage of the investigation, 1,370 measures were taken, divided into the following categories: 282 statements, 247 "prosecutorial procedures," 269 expert reports, 572 communications received and also reports from the now

⁷⁴ Cf. La Jornada, "La muerte de la abogada daña la estabilidad política: López Obrador," news item of October 22, 2001. Available at: <https://www.jornada.com.mx/2001/10/22/017n1pol.html>

⁷⁵ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, paras. 3 and 5 (evidence file, folio 3811).

⁷⁶ Cf. El Universal, "Exige ONU esclarecer caso Ochoa," news item of October 25, 2001. Available at: <https://archivo.eluniversal.com.mx/nacion/69617.html> ,

⁷⁶ Cf. El Universal, "Exige ONU esclarecer caso Ochoa," news item of October 25, 2001. Available at: <https://archivo.eluniversal.com.mx/nacion/69617.html>

⁷⁷ Cf. El Universal, "Condena de Estados Unidos y Human Rights Watch," news item of October 23, 2001. Available at: <https://archivo.eluniversal.com.mx/nacion/69395.html>

⁷⁸ Cf. El Universal, "Exige ONU esclarecer caso Ochoa," news item of October 25, 2001. Available at: <https://archivo.eluniversal.com.mx/nacion/69617.html>

⁷⁹ Cf. El Universal, "Condena de Estados Unidos y Human Rights Watch," news item of October 23, 2001. Available at: <https://archivo.eluniversal.com.mx/nacion/69395.html> See also, La Jornada, "Exigen más de 80 ONG investigación expedita del asesinato de Digna Ochoa," news item of October 21, 2001. Available at: <https://www.jornada.com.mx/2001/10/21/001n1por.html>

⁸⁰ Cf. Ludovic-Trarieux International Human Rights Prize, 20003. Available at: <http://www.ludovictarieux.org/uk-page5.1.mex2.htm>

⁸¹ Cf. Decentralized Prosecutors' Office of Cuauhtémoc, Preliminary inquiry FDCUAUHT /03/USD04/02576/2001-10, Record of October 19, 2001 (evidence file, folio 7).

⁸² Cf. Public Prosecution Service, Decision to end preliminary inquiry, FDCUAUHT/03/USD04//2576/01-10, of July 18, 2003 (evidence file, folio 3512).

⁸³ Cf. Public Prosecution Service, Decision to end preliminary inquiry, FDCUAUHT/03/USD04//2576/01-10, of July 18, 2003 (evidence file, folio 3512).

⁸⁴ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 6 (evidence file, folio 3811).

defunct Judicial Police.⁸⁵

c.1. Lines of investigation

64. With regard to the death of Digna Ochoa, the special prosecutor proposed three main lines of investigation: (i) possible responsibility of the army; (ii) the so-called "Guerrero" line of investigation, and (iii) the line of investigation relating to the family, social and work environment.⁸⁶

a) The military line

65. The prosecution undertook this line of investigation based on the statements concerning two incidents. First, the detention of the ecologists, Rodolfo Montiel and Teodoro Cabrera, on May 2, 1999, by the 40th Infantry Battalion. Second, the presence of Digna Ochoa on October 1 and 2, 2001, in the Sierra de Petatlán, in the state of Guerrero, when she and the person accompanying her had come into contact with members of the 19th Infantry Battalion deployed in that region.⁸⁷

66. The investigators obtained the corresponding evidence, and sent communications to different military and judicial bodies of the state of Guerrero to gather information, and also to possible witnesses. Finally, the prosecution eliminated any connection of military agents with Digna Ochoa's death, indicating that there was no valid reason and, in particular, insufficient evidence, to link any members of the 40th Infantry Battalion or the 19th Infantry Battalion to the death of Digna Ochoa.⁸⁸

b) The "Guerrero" line

67. The so-called "Guerrero" line of investigation explored the possibility that Digna Ochoa's death was related to criminal acts by third parties, as indicated by several witnesses and the press. In particular, Digna Ochoa's activities in defense of ecologists and environmental groups in Guerrero had created certain tensions with the so-called "*caciques*," who carried out logging activities and who were allegedly causing devastation in the region's ecosystem, and also deforestation and water scarcity. This line of investigation was also unsuccessful.⁸⁹

c) The line relating to the family, social and work environment

68. Regarding the "family environment," the prosecution determined that "there was no evidence that any of the blood relatives with whom Digna Ochoa y Plácido lived during her lifetime had any connection to her death."⁹⁰

69. With regard to her "social environment," the prosecution divided its assessment into "emotional life," "religious life" and "close friends." None of these lines of investigation produced evidence of any type of connection to the circumstances of Digna Ochoa's death.⁹¹

⁸⁵ Cf. Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4199 to 4604).

⁸⁶ Cf. Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folio 686).

⁸⁷ Cf. Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folio 691).

⁸⁸ Cf. Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folios 924, 993, 995 and 1001). See also, Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4944 to 5252).

⁸⁹ Cf. Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folios 1002 to 1342). See also, Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 5252 to 5641).

⁹⁰ Cf. Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folio 1647). See also, Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 5945 to 5980).

⁹¹ Regarding the line of investigation related to "emotional life," see: Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folio 1677). See also, Federal District Prosecutor General's Office, Decision of

70. In relation to the “work environment,” the prosecution did not find any type of connection to Digna Ochoa’s death. It therefore concluded that there was insufficient evidence to establish that anyone related to her environment was linked to her death.⁹²

c.2. First decision not to institute criminal proceedings of July 18, 2003

71. On July 18, 2003, having analyzed the body of evidence, the agent of the Public Prosecution Service in charge of the investigation recommended to the Public Prosecution Service Agents Coordinator (hereinafter “the CAMP”), that criminal proceedings should not be instituted, adopting the respective decision to close AP-2576.⁹³ This decision rejected the hypothesis of homicide, considering that the most probable hypothesis was that of a “dissimulated suicide,”⁹⁴ and pointed out that there was no evidence that would appear to suggest “or even provide an indication that any person or group of person had participated in her decease.”⁹⁵ The prosecutor concluded that the events relating to the death of Digna Ochoa were “irrelevant from the point of view of criminal law, because they did not fall within any of the conducts regulated in the applicable substantive code.”⁹⁶

72. Although the prosecutor identified problems in the chain of custody of the evidence obtained at the crime scene, he argued that this circumstance “was not serious enough to radically alter the crime scene, or to assert that the conclusions of some reports were not valid.”⁹⁷

73. Regarding the threats that Digna Ochoa and the Centro ProDH had been reporting for some years, the special prosecutor noted that it was not possible to include them in the AP-2576, because it had been determined that Digna Ochoa had “taken her own life,”⁹⁸ arguing the following:

[...] None of the matters in which Digna Ochoa y Plácido intervened lasted so long; that is, none of them covered the period between 1995 and 2001, making it impossible to implicate those involved in the threats, to say nothing of in the death of [Digna] Ochoa, who, it should be insisted, tried to make her death appear to be homicide, when it was she herself who took her own life. Therefore, based on the probative elements incorporated by this preliminary inquiry, the arguments that try to connect the supposed threats that Digna Ochoa y Plácido received years before with her death have no logical basis.⁹⁹

74. On September 17, 2003, the CAMP found it in order to authorize the proposed decision.¹⁰⁰ On October 3, the intervenors¹⁰¹ filed an appeal contesting this decision before the CAMP, but this was

November 26, 2010 (evidence file, folios 5963 to 5965). Regarding the line of investigation related to “religious life,” see: Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 1681). See also, Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folios 5945 to 5981). Regarding the line of investigation related to “close friends,” see: Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 1685).

⁹² Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 1745). See also, Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folios 5988 to 6175).

⁹³ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, paras. 7 and 443 (evidence file, folios 3811 and 3911).

⁹⁴ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folios 2555 and 2588).

⁹⁵ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2576).

⁹⁶ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2576).

⁹⁷ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2548).

⁹⁸ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2586).

⁹⁹ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2586).

¹⁰⁰ CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, paras. 9 and 444 (evidence file, folios 3812 and 3911).

¹⁰¹ The legal mechanism of intervention (*coadyuvancia*) in matters of a criminal nature consists in the role played by the

dismissed in an order of October 29, 2003.¹⁰²

75. On November 19, 2003, the intervenors filed an application for indirect amparo against the dismissal of the appeal contesting the decision, and this was rejected on July 22, 2004.¹⁰³ Subsequently, the intervenors filed an appeal for review before the Second Collegiate Criminal Court of the first Circuit, which was decided on February 24, 2005. In particular, the Collegiate Court found that the rejection of the family's offer of evidence based on the "overabundance of evidence" "prevented them from defending their constitutionally-recognized interests," because the intervenors have the right to present its evidence if this differs from the evidence obtained officially,¹⁰⁴ and ordered the admission of the evidence as requested by the intervenors in a brief of May 6, 2003.¹⁰⁵

c.3. Second decision not to institute criminal proceedings of March 12, 2007

76. Following the foregoing decision, the prosecutor ordered the admission of the evidence offered by the intervenors. On March 12, 2007, following the incorporation of the new evidence that had been provided, the agent of the Public Prosecution Service again recommended to the CAMP that criminal proceedings should not be instituted.¹⁰⁶ The Public Prosecution Service asked the Seventh District Court for criminal amparo matters of the Federal District to consider that the amparo proceeding had concluded and, on June 7, 2007, that court declared that the amparo judgment had been executed.¹⁰⁷ In response to this ruling, the intervenors filed a motion of complaint which was rejected on June 9, 2007.¹⁰⁸

77. Subsequently, on September 17, 2008, the CAMP rejected the request not to institute criminal proceedings and ordered various measures.¹⁰⁹

c.4. Third decision not to institute criminal proceedings of November 26, 2010

78. After new measures had been taken, on August 20, 2010, the agent of the Public Prosecution Service recommended a third decision not to institute criminal proceedings on the basis that "the crime of homicide had not been committed" and that there had been no "conduct that was relevant for criminal law."¹¹⁰ On November 26, 2010, the decision not to institute criminal proceedings was adopted.¹¹¹ On April 5, 2011, the intervenors filed an application for amparo against the said decision not to institute criminal proceedings. On August 19, 2011, the amparo judge ruled that the arguments of the applicants were inadmissible and unsubstantiated.¹¹² The State indicated that on

victim of the crime or the injured party in the processing of the measures involved in criminal proceedings, during the investigation and prosecution and up until the execution of the judgment delivered by the jurisdictional organs. *Cf.* Federal District Prosecutor General's Office, Decision of July 18, 2003 (evidence file, folio 2626).

¹⁰² *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4184).

¹⁰³ *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4185 and 4186).

¹⁰⁴ *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4186 and 4187).

¹⁰⁵ *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4696).

¹⁰⁶ *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4843).

¹⁰⁷ *Cf.* Merits Report no. 61/19, Case of 12,229, OEA/Ser.L/V/II.172, of May 4, 2019, para. 151 (merits file, folio 43); Pleadings and motions brief, p. 56 (merits file, folio 174), and the State's answering brief, para. 511 (merits file, folio 494). See also, Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4853).

¹⁰⁸ *Cf.* Merits Report no. 61/19, Case of 12,229, OEA/Ser.L/V/II.172, of May 4, 2019, para. 151 (merits file, folio 43); Pleadings and motions brief, p. 56 (merits file, folio 174), and the State's answering brief, para. 512 (merits file, folio 494).

¹⁰⁹ *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4187 and 4856).

¹¹⁰ *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4188).

¹¹¹ *Cf.* Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4182 a 7218).

¹¹² *Cf.* Amparo ruling by the Seventh District Criminal Judge on Amparo in Mexico City of August 19, 2011 (evidence file, folio 7787).

September 9, 2011, the Seventh District Criminal Amparo Judge of the Federal District ruled that the process was final and ordered it closed because the representatives had not filed a motion for review.¹¹³

D. Independent technical verification of the investigation by the special prosecutor of the Mexican Federal District Prosecutor General's Office

79. In 2002 and 2003, negotiated by the Inter-American Commission and with the State's consent, a group of independent experts was established to conduct the respective review of "whether the technical evidence collected [during the investigation into the death of Digna Ochoa] in the areas of forensic pathology, ballistics, and criminalistics meets international standards." The experts prepared an "Independent Report." On June 16, 2003, the Inter-American Commission forwarded to the Mexican Government and to the petitioners the "Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Federal District Prosecutor General's Office."¹¹⁴

80. The said report concluded that some of the tests conducted in the investigation "were not performed [...] in keeping with the methods and procedures," and this was due to the "outdated routine procedures" conducted by the Forensic Services of the Federal District Prosecutor General's Office and the Forensic Medicine Service of the Federal District Court of Justice.¹¹⁵ The shortcomings verified included the inexistence of a proper chain of custody that would ensure "the authenticity of the evidence found, its preservation and inviolability."¹¹⁶ Also, according to this report, some of the expert reports did not meet the methodological or formal requirements, lacked scientific analysis and reached "unsubstantiated conclusions."¹¹⁷ Consequently, the group of independent experts made the following recommendation to the Mexican State:

The design and implementation of an aggressive program of new models for criminal investigation, involving a review of available logistic and material resources; the upgrading of investigation methods; the application of strict procedures for the evidence chain of custody, and control of the management and quality of work; the obligatory training and upgrading of technical and scientific expertise in the area of criminalistics at different levels, not only for those who perform the tests, but also for the other officials who are part of the investigation apparatus; also, a review of the professional, moral and personal requirements of the officials who are members of the Public Prosecution Service units or teams in the area of criminal investigation.¹¹⁸

¹¹³ Cf. State's answering brief para. 523 (merits file, folio 497).

¹¹⁴ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003 (evidence file, folios 8997 to 9047). See also, CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 454 (evidence file, folio 3913).

¹¹⁵ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003 (evidence file, folio 9045).

¹¹⁶ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003 (evidence file, folio 9045).

¹¹⁷ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003 (evidence file, folio 9045).

¹¹⁸ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003 (evidence file, folio 9047).

E. Special Report of the Federal District Human Rights Commission (CDHDF)

81. In July 2004, the Federal District Human Rights Commission elaborated a special report on the investigation conducted up until then into the circumstances of the death of Digna Ochoa and, in particular, on “the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido.”¹¹⁹ The commission prepared the report owing to a complaint filed by the family members based on the alleged irregularities at the procedural stage of the preliminary inquiry and irregularities in some forensic tests performed during the procedure.¹²⁰

82. The CDHDF noted, first, that the Public Prosecution Service had obstructed the intervenors’ right to offer evidence, because several requests had been rejected without any justification. The report also included observations on the preservation of the crime scene, the description of the crime scene, and the lack of coordination between the photographs, plans and other graphic evidence in the case, and also underlined the inconsistencies in the description of the injuries in the different expert and forensic reports. In addition, it indicated that, in some cases, the expert reports had been prepared without methodology or tests and were based on incomplete or inexact information. The CDHDF noted that most of the conclusions of the reports prepared in relation to Digna Ochoa’s death were not substantiated either rationally or experimentally. It added that, “they did not take into account all the indicia, prints, findings and photographs contained in the [investigation file] to be analyzed by the experts.” Also, it pointed out that the reports did not explain sufficiently “the technical principles, the operations or procedures performed, and the analysis or interpretation of the results.” Thus, regarding the criminalistics report, it indicated that its conclusions were not “substantiated either rationally or experimentally; moreover, it does not explain sufficiently the technical principles, the operations or procedures performed, and the analysis or interpretation of the results.” With regard to the forensic autopsy, the report stressed, among other flaws, the failure to establish the time of death and, when this was required, it was calculated “without sufficient data and without any basis in forensic medicine literature.” Furthermore, the injuries present on the corpse were not described sufficiently and, also, there were contradictions between the report of the criminalistics expert and the medical expert. It also indicated that there had also been shortcomings when performing the autopsy, the follow up to this, and the chain of custody of the samples.¹²¹

83. The CDHDF also noted that, regarding the identification, position and orientation of the body, the external examination, the condition of the body, the examination of the clothing and of the firearms, shell casings and bullets, the criminalistics expert, the doctors who issued the medical certificate and those who performed the autopsy on Digna Ochoa’s corpse had not met or collaborated¹²² in order to exchange information and support their conclusions with more data.

VIII MERITS

84. Based on the factual framework set out in the Commission’s Merits Report, this case relates to

¹¹⁹ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 1 (evidence file, folios 3808 to 3919).

¹²⁰ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 13 (evidence file, folios 3813, 3817 and 3830 to 3919)

¹²¹ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, paras. 75 to 127 (evidence file, folios 3830 to 3839).

¹²² The first was a criminalistics expert who prepared the “report of violent death by gunshot wound”; the second was a forensic expert attached to the Forensic Services who drew up the medical certificate and, finally, another medical expert provided follow-up. Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 336 (evidence file, folio 3885).

the lack of due diligence in the investigation into the death of the human rights defender, Digna Ochoa y Plácido. The Court notes that, although the Commission did not include Digna Ochoa as a victim in this case in its Merits Report, the State has recognized her as such (*supra* Chapter IV). This means that Digna Ochoa and the serious events that surrounded her death will not remain invisible and outside the inter-American system for the protection of human rights, as would have been the case if the State had not included her as a victim and the representatives had not alleged the perpetration of specific human rights violations against her.

85. In addition, the Court notes that, in the pleadings and motions brief, the representatives argued that the State had violated Article 4(1) of the American Convention, in keeping with the failure to comply with the obligations contained in Articles 1(1) of this instrument and Article 7 of the Convention of Belém do Pará: (i) because the State had failed to comply with its obligation to ensure rights by not adopting effective measures to prevent the alleged violation of Digna Ochoa's rights, and (ii) due to the absence of a serious and effective investigation to clarify what happened in relation to the alleged murder of Digna Ochoa. Furthermore, the representatives alleged that the State was also responsible for the violation of Article 5(1) of the American Convention, in keeping with the obligations contained in Articles 1(1) of this instrument and 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the threats perpetrated against the defender and the State's failure to investigate them. Lastly, they indicated that the State had failed to comply with its obligation to ensure Digna Ochoa's right to defend human rights.

86. That said, taking into account the arguments of the parties and the Commission, as well as the partial acknowledgement of international responsibility made by the State, in the instant case the Court will examine the human rights violations that occurred in relation to the lack of due diligence when investigating the death of Digna Ochoa and the violations derived from this deficiency.

VIII-I

RIGHTS TO LIFE, PERSONAL INTEGRITY, JUDICIAL GUARANTEES, JUDICIAL PROTECTION AND PROTECTION OF HONOR AND DIGNITY¹²³

87. In this chapter, the Court will examine specifically: (i) the alleged deficiencies and non-compliance with the obligation of due diligence in the investigation and clarification of the facts surrounding the death of Digna Ochoa; (ii) the use of gender stereotyping during the investigation and prosecution of the facts; (iii) the alleged failure to comply with a reasonable time; (iv) the violation of Digna Ochoa's right to protection of honor and dignity in the proceedings, and also (v) the alleged violation of the rights to life and to personal integrity, all in alleged violation of Articles 4, 5, 8, 11 and 25 of the American Convention, in relation to Article 1(1) of this instrument, and Article 7(b) of the Convention of Belém do Pará.

A. Arguments of the parties and of the Commission

88. The **Commission** noted, first, that there had been serious issues in the documentation of forensic medical information, the information on the cadaveric phenomena, and the description of the presence of injuries on Digna Ochoa's body. In particular, it underscored that the medical certificate, the autopsy protocol, and the forensic medical report contained information that was subsequently modified, corrected or amended during the investigation up until the adoption of the first decision not to institute criminal proceedings. It also indicated that there were inconsistencies regarding the finding of traces of substances associated with the gunshots on hands, gloves and cuffs.

¹²³ Articles 4, 5, 8, 25 and 11 of the American Convention on Human Rights.

89. It added that the forensic stage failed to comply with the Minnesota Protocol and indicated that there were flaws in the chain of custody of the evidence that violated due diligence. It also alleged that the participation of the family members in the proceedings was obstructed and, in particular, their presentation of evidence. In this regard, it clarified that it took the intervenors around three years to be allowed to submit evidence and, given the "conflictive situation" that arose among the different experts participating in the preliminary inquiry, the right of the victims' families to play an active role in the investigation was violated.

90. The Commission also noted that, in the different decisions not to institute criminal proceedings, including the third, overwhelming importance was given to matters relating to Digna Ochoa's mental health, in order to corroborate the hypothesis of suicide," and this was "extremely problematic" not only because of the divergent results of the expert reports, but also because no determination was made on "how the specific ailments mentioned are related to the supposed suicide."

91. Lastly, the Commission alleged that the reasonable time had been violated.

92. Consequently, the Commission concluded that the Mexican State was responsible for the violation of the rights to judicial protection and to judicial guarantees established in Articles 8(1) and 25 of the American Convention, in relation to the obligations established in Article 1(1) of this instrument, to the detriment of the members of Digna Ochoa y Plácido's family.

93. The **representatives** indicated that the State: (i) was responsible for serious shortcomings and omissions during the initial stages of the investigation; (ii) had not exhausted all lines of investigation, taking into account the work of the defender and the precedent of threats against her; (iii) had not acted impartially to determine the cause, manner, place and time of death; (iv) was responsible for acts of stigmatization and the use of gender stereotyping in the investigation; (v) failed to adopt adequate measures of protection for witnesses linked to the death of Digna Ochoa y Plácido; (vi) failed to respect the right of the members of Digna Ochoa y Plácido's family to take part in the investigation, and (vii) incurred in an unjustified delay in the investigation into the facts.

94. They added that, owing to these deficiencies, it had not been possible to discover the truth about the events of October 19, 2001, and, to date, they remain in impunity. Consequently, they concluded that the State was responsible for the violation of the victim's rights to judicial guarantees and to judicial protection contained in Articles 8 and 25 of the Convention, together with non-compliance with the obligations contained in Article 7 of the Convention of Belém do Pará.

95. The representatives also argued that the State had violated Article 4(1) of the American Convention, together with non-compliance with the obligations contained in Articles 1(1) thereof and Article 7 of the Convention of Belém do Pará, because: (i) the State had not complied with its obligation to ensure rights, because it had failed to adopt effective measures to prevent the alleged violation of Digna Ochoa's rights, and (ii) of the absence of a serious and effective investigation that clarified what happened with regard to the alleged murder of Digna Ochoa. In addition, the representatives argued that the State was also responsible for the violation of Article 5(1) of the American Convention, together with non-compliance with the obligations contained in Articles 1(1) of this instrument and 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the threats perpetrated against the defender and the State's failure to investigate them. Lastly they indicated that the State had failed to comply with its obligation to ensure Digna Ochoa's right to defend human rights.

96. The **State** acknowledged its international responsibility for the violation of judicial guarantees and judicial protection (Articles 8 and 25 of the American Convention in relation to Article 1(1) of this instrument) to the detriment of the members of Digna Ochoa's family, as indicated in the Merits

Report of the Inter-American Commission on Human Rights (*supra* para. 21). It also acknowledged its responsibility for the violation of Article 7 of the Convention of Belém do Pará to the detriment of the members of Digna Ochoa's family, because it had not conducted an investigation with a gender perspective in this case. Furthermore, it acknowledged the violation of the right to the protection of honor and dignity to the detriment of Digna Ochoa "as a victim of the negative image of her that was generated after her death and for how the information obtained by the investigation conducted into the death of this defender was managed."

B. Considerations of the Court

97. As mentioned previously, in relation to the violation of the rights to judicial guarantees and judicial protection, the State acknowledged its responsibility for the violation of Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of this instrument, to the detriment of the members of Digna Ochoa's family, for the reasons indicated by the Commission in its Merits Report. The Court will now describe these violations and examine the arguments as well as the additional violations alleged by the representatives.

98. 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 substantiated in keeping with the rules of due process of law (Article 8(1)), all of this under the general obligation of those States to ensure the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).¹²⁴

99. In its consistent case law, the Court has indicated that, in cases of the deprivation of life, it is essential that the State identify, investigate effectively, and eventually punish those responsible. To the contrary, they would be creating the conditions for such acts to be repeated owing to a climate of impunity. The duty to investigate is an obligation of means and not of results that must be assumed by the State as its inherent legal duty, and it does not depend, only and necessarily, on the procedural initiative of the victims or of their families, or upon their offer of evidence.¹²⁵

100. Regarding the professional status of the human rights defender, the Court reiterates that compliance with the duty to create the necessary conditions for the effective exercise and enjoyment of the rights established in the Convention is intrinsically linked to the protection and recognition of the importance of the role played by human rights defenders,¹²⁶ whose work is fundamental to strengthen democracy and the rule of law. The Court also recalls that the activities of monitoring, denunciation and education that human rights defenders perform make an essential contribution to respect for human rights, because they act as guarantors against impunity. Thus, they complement the role, not only of the States, but also of the inter-American human rights system as a whole.¹²⁷ Therefore, the Court has indicated that States have the duty to ensure that they can carry out their activities freely;¹²⁸ to protect them when they are subject to threats in order to avoid attacks on their

¹²⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91, and *Case of Guerrero, Molina et al. v. Venezuela. Merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 424, para. 136.

¹²⁵ Cf. *Case of Velásquez Rodríguez. Merits, supra, para. 177*, and *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 132.

¹²⁶ Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 74, and *Case of Fleury et al. v. Haiti. Merits and reparations*. Judgment of November 23, 2011. Series C No. 236, para. 80.

¹²⁷ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 88, and *Case of Fleury et al. v. Haiti, supra, para. 80*.

¹²⁸ Cf. *Case of Persons Deprived of Liberty in the "Dr. Sebastião Martins Silveira" Prison in Araraquara*. Provisional measures, considering paragraph 24; *Case of the Monagas Detention Center ("La Pica")*. Provisional measures. Order of the

life and integrity; to refrain from imposing obstacles that hinder their work, and to investigate, seriously and effectively, any violations committed against them, combatting impunity.¹²⁹ Moreover, in cases of attacks against human rights defenders, States have the obligation to ensure impartial, prompt and authoritative justice and this entails an exhaustive search for all the information in order to design and execute an investigation that involves the proper analysis of the different hypotheses of authorship, by act or omission, at different levels, exploring all the pertinent lines of investigation to identify those responsible.¹³⁰ Consequently, when confronted with indications or allegations that a specific act against a human rights defender could be based precisely on their work of defense and promotion of human rights, the investigating authorities should take into account the context of the facts and their activities to identify the interests that could have been considered affected by those activities, in order to establish and exhaust the lines of investigation that take into account their work, determine the reason for the crime, and identify the perpetrators.¹³¹

101. In the case of attacks against women human rights defenders, the Court considers that all the measures designed to mitigate the risks they run should be adopted with a gender perspective and with an intersectional approach, so that these women can be provided with comprehensive protection based on considering, understanding and highlighting the complexities of the different forms of violence that women defenders face due to their profession and their gender.¹³² Chief among these complexities are political, social, economic, environmental and systemic factors, including patriarchal attitudes and practices which produce and reproduce this type of violence.¹³³ This approach also means that it should be the women defenders themselves who define their priorities and needs for protection and, in this regard, are supported based on a rationale of respect for their wishes.¹³⁴ In order to ensure effective access to justice on an equal basis for women human rights defenders,¹³⁵ the Court considers that States must guarantee: (i) unrestricted access, without gender-based discrimination, to justice, ensuring that women human rights defenders receive effective protection against harassment, threats, reprisals and violence; (ii) a system of justice that is in keeping with international standards concerning competence, efficiency, independence, impartiality, integrity and credibility, and the diligent and prompt investigation of acts of violence, as well as (iii) the application, in the context of this access to justice for women human rights defenders, of mechanisms that ensure that the evidentiary standards, investigations and other legal probative procedures are impartial and are not influenced by gender stereotyping or prejudices.¹³⁶

Inter-American Court of Human Rights of February 9, 2006, considering paragraph 14; *Case of Mery Naranjo et al.* Provisional measures, considering paragraph 8, and *Case of the Guatemalan Forensic Anthropology Foundation*. Provisional measures. Order of the Inter-American Court of Human Rights of February 9, 2006, considering paragraph 12.

¹²⁹ Cf. *Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161, para. 77.

¹³⁰ Cf. *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 143, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 47.

¹³¹ Cf. *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, paras. 131, 216, 219, and *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 47.

¹³² Cf. *Mutatis mutandis, Case of Bedoya Lima et al. v. Colombia. Merits, reparations and costs*. Judgment of August 26, 2021. Series C No. 431, para. 95.

¹³³ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Doc. A/HRC/16/44, of December 20, 2010, para. 103.

¹³⁴ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Doc. A/HRC/16/44, of December 20, 2010, 2010, para. 109.

¹³⁵ Cf. CEDAW, General recommendation No. 33 on women's access to justice, UN Doc. CEDAW/C/GC/33, of August 3, 2015, para. 8. See also, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, UN Doc. A/HRC/40/60, of January 10, 2019, para. 34.

¹³⁶ Cf. CEDAW, General recommendation No. 33 on women's access to justice, UN Doc. CEDAW/C/GC/33, of August 3, 2015, paras. 14, 15 and 18. See also, Human Rights Council, Report of the Special Rapporteur on the situation of human

b.1 Due diligence in the investigation and clarification of the facts

102. First, the Court recalls that it is for the domestic courts to examine the facts and the evidence submitted in individual cases. It is not incumbent on this Court to supplant the domestic jurisdiction by establishing the specific way to investigate and prosecute a particular case in order to obtain a better or more effective result; but rather to verify whether or not the steps taken in the domestic sphere violated the State's international obligations derived from Articles 8 and 25 of the American Convention.¹³⁷

103. That said, the Court recalls that, in the investigation of a violent death, the initial stages of the investigation are crucially important, and omissions and irregularities at such stages may have a negative impact on the real and effective possibility of clarifying what happened.¹³⁸

104. The Court also notes that, as indicated by expert witness Buitrago and confirmed by expert witness Camargo, the Mexican State had an enhanced obligation to conduct the investigation into the death of Digna Ochoa with due diligence, owing to her condition as a woman and as a human rights defender.¹³⁹ Therefore, the investigation should have been directed at documenting her activity as a defender, the role she played in the community and her environment, as well as the agenda she was implementing and the region in which she performed her activities. Similarly, the Court finds that methodological tools should have been used such as researching similar cases to identify systematic patterns, and applying protocols for the investigation of violent gender-based deaths, even if, at the outset there was no suspicion of foul-play and the hypothesis of suicide was being considered,¹⁴⁰ as in this case. In this regard, the Court underscores the guidelines included in the "Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)" elaborated by United Nations High Commissioner for Human Rights and UN Women, which stressed that "many suicides are the consequence of prior violence that the women has suffered, and "suicide is a common way for perpetrators to hide a homicide, presenting the death as a suicide or accidental death."¹⁴¹

a) Deficiencies in the gathering of evidence

105. In the instant case, the Court notes, first, that, as the State has acknowledged, there were numerous deficiencies in the handling of the crime scene and, especially, in documenting this and it underscores that important errors were made in the description of the findings, both on the body, and at the scene of the crime, as well as in the records of the external and internal examinations of the corpse, and the forensic autopsy.

rights defenders, Michel Forst, UN Doc. A/HRC/40/60, of January 10, 2019, para. 98.

¹³⁷ 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.

¹³⁸ Cf. *Case of Servellón García et al. v. Honduras, supra*, para. 120, and *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 135.

¹³⁹ Cf. Expert opinion of Ángela María Buitrago provided at the public hearing held on April 27 and 27, 2021, during the 141st regular session, and Expert opinion provided by affidavit by Luz Adriana Camargo Garzón on April 19, 2021, para. 39 (evidence file, folio 1205).

¹⁴⁰ Cf. Expert opinion provided by affidavit by Luz Adriana Camargo Garzón on April 19, 2021, paras. 36 to 39 (evidence file, folios 1204 and 1205). See also, UNHCHR and UN Women, Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), 2014, para. 21. Available at: <https://lac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documentos/Publicaciones/LatinAmericanProtocolForInvestigationOfFemicide.pdf>.

¹⁴¹ Cf. UNHCHR and UN Women, Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), 2014, para. 22.

106. Also, closely related to the preservation of the crime scene, there is no record in the case file that all those who had access to the corpse prior to the arrival of the investigation teams were identified, in order to determine whether the scene of the crime had been contaminated.¹⁴² In this regard, expert witness José Luis Prieto stressed that the first measure that should be taken when examining a crime scene is “limiting access to it by anyone other than the investigator or expert in charge of the case, considering that this is the first link in creating the mandatory chain of custody, and also, as applicable, identifying those who had access to the corpse before the arrival of the investigation teams.”¹⁴³ The expert witness also drew attention to the fact that at least four people had access to the corpse before the investigators arrived, without this being sufficiently investigated.¹⁴⁴ On this point, expert witness Buitrago stated before the Court that “the presence of several people on the scene should have led to the conviction that the scene had been contaminated.”¹⁴⁵

107. Furthermore, the Court considers it significant that it has been proved that the record of the inspection of the crime scene did not describe the location of the corpse, or contain the description of cadaveric phenomena at the scene.¹⁴⁶ Also, the record of the removal of the corpse did not observe “the usual parameters for this type of procedure,” and lacked a description of the cadaveric phenomena and the body temperature of the corpse; consequently, it was impossible to determine such relevant questions as whether the corpse was moved from its original position and the probable time of death.¹⁴⁷ Regarding the location of Digna Ochoa’s body, expert witness Buitrago considered that, “in criminalistics, the indication that the body has been moved is fundamental for the proper investigation not only of the gunshots, the actions, but also for the mandatory reconstruction of the events.” It has significant impact for the investigation and resulted in it being impossible to conduct “comprehensive and advanced analyses” during the investigation into the death of Digna Ochoa.¹⁴⁸

108. The Court also emphasizes that, as reflected in the Special Report of the CDHDF, the record of the visual inspection and removal of the corpse was not accompanied by photographs; rather the said photographs appear separately, without any captions or annotations that explain what they represent. Moreover, the photographs were of a “deficient quality because they were out of focus, and the presentation, close-ups, measurement markers, and identification of the case were deficient.”¹⁴⁹ The report underscored the relevance of this because “if the written description is not supplemented by photographs, diagrams, maps or sketches that illustrate what is described, this can result in inaccuracies and flawed interpretations.”¹⁵⁰

¹⁴² Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 140 (evidence file, folio 3841).

¹⁴³ Cf. Expert opinion of José Luis Prieto Carreto provided by affidavit on April 8, 2021 (evidence file, folios 81572 and 81573).

¹⁴⁴ Cf. Expert opinion of José Luis Prieto Carreto provided by affidavit on April 8, 2021 (evidence file, folio 81573).

¹⁴⁵ Cf. Expert opinion of Ángela María Buitrago provided at the public hearing held on April 26 and 27, 2021, during the 141st regular session.

¹⁴⁶ CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 140 (evidence file, folio 3901).

¹⁴⁷ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General’s Office, May 27, 2003 (evidence file, folio 9008).

¹⁴⁸ Cf. Expert opinion of Ángela María Buitrago provided at the public hearing held on April 26 and 27, 2021, during the 141st regular session.

¹⁴⁹ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 438 (evidence file, folio 3910).

¹⁵⁰ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 140 (evidence file, folio 3841).

109. As already indicated, there were also numerous flaws in the autopsy. In particular, the doctors of the Forensic Medicine Service who performed the autopsy failed to go to the crime scene and did not take part in the removal of the corpse, which meant that they were unable to verify whether adequate information had been collected on important aspects.¹⁵¹ Another significant flaw was the fact that the autopsy did not comply with the May 2001 model protocol for the forensic investigation of deaths suspected of resulting from human rights violations.¹⁵² In particular, it omitted the time of the start and finish of the autopsy; the names of those present at the autopsy, and whether x-rays were taken and other supplementary tests performed.¹⁵³ In addition to a limited description of the findings, the autopsy report contained an inadequate description of internal and external injuries, and failed to record the names of those who intervened in the autopsy.¹⁵⁴ In this regard, it is also relevant to underscore that the limited information on the presence or absence of traumatic injuries prevented establishing such significant facts as whether there had been any type of previous scuffle or struggle, or defense injuries suffered before death.¹⁵⁵ To this should be added that there were also shortcomings in the autopsy photographs. According to the CDHDF Special Report, the 14 photographs that accompany the autopsy report “do not reflect the course of the external examination; there are no photographs of the body before and after it was undressed, and the photographs do not include any shots that confirm, in detail, the presence of all the demonstrable signs of injury.”¹⁵⁶ This represents a failure to comply with the 1991 “United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,” which indicates that the photographs of the autopsy must be comprehensive in scope, and adequate for thorough documentation of autopsy findings.¹⁵⁷

b) Contradictions in the information gathered and rectifications

110. The Court also notes that there were serious inconsistencies and contradictions in the information gathered and, in particular, between the criminalistics report of October 19, 2001, the medical certificate prepared three hours later, and the autopsy report, because they do not tally or there are notable gaps in the descriptions, *inter alia*, of the injury to Digna Ochoa’s head, the bruising on the upper right eyelid, the gunshot wounds on the left thigh and the bruising on the right thigh.¹⁵⁸

111. The Court also notes with concern the discrepancy in relation to the weapon used that was pointed out by expert witness Ángela María Buitrago during the public hearing in this case. She

¹⁵¹ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, 8.2.2 (evidence file, folio 39171).

¹⁵² Cf. OHCHR, *Protocolo Modelo para la Investigación Forense de Muertes sospechosas de haberse producido por Violación de los Derechos Humanos*, Project MEX/00/AH/10, May 2001, Available at: <https://www.sedh.gob.hn/documentos-recipientes/103-protocolo-modelo-para-la-investigaci%C3%B3n-forense-de-muertes-sospechosas-de-haberse-producido-por-violaci%C3%B3n-de-ddhh/file>

¹⁵³ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, 8.2.2 (evidence file, folio 39171).

¹⁵⁴ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 140 (evidence file, folio 3908).

¹⁵⁵ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 140 (evidence file, folio 3909).

¹⁵⁶ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, 6.3.2.24 (evidence file, folio 3891).

¹⁵⁷ Cf. United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,” 1991, para. IV.B.2.c). Available at: https://www.un.org/ruleoflaw/files/UN_Manual_on_the_Effective_Prevention_and_Investigation%5B1%5D.pdf. See also, CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, 6.3.2.24 (evidence file, folio 3891).

¹⁵⁸ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, paras. 156 to 164 (evidence file, folios 3844 to 3847).

indicated that there were inconsistencies in the registration number of the weapon in the case file.¹⁵⁹ The Court notes that, indeed, the criminalistics report of October 20, 2011, drawn up by the Forensic Ballistics Department records that the weapon found at the scene of the crime bore the registration number M13711.¹⁶⁰ However, a report of the same date prepared by the Department of On-site Criminalistics and Forensic Photography, indicated that the registration number of the weapon was 79311.¹⁶¹

112. Furthermore, numerous rectifications were made during the investigation. For example, the trajectory of the bullet that killed Digna Ochoa and the position of the weapon when it was fired had to be rectified by the very experts who had prepared the autopsy report owing to the deficiencies and inaccuracies in the first version. In this regard, expert witness Prieto Carreto indicated:

The inaccuracy in the description of the findings, the chronological discrepancies noted and the incomplete processing of the scene at the time of the initial inspections reveal an evident lack of rigor in the procedures conducted and in the elaboration of official documents, and this is a potential source of errors in the subsequent interpretation of those findings and in the working hypotheses and conclusions of the subsequent criminalistics reports.¹⁶²

113. In this regard, the Court notes that, with regard to the identification, position and orientation of the corpse, the external examination, the cadaveric phenomena, the examination of clothes and weapons, shell cases and bullets, there were no working meetings or collaboration between the criminalistics expert, the doctors who prepared the medical certificate, and those who drew up the autopsy protocol on the body of Digna Ochoa,¹⁶³ to exchange information and, thereby, support their conclusions with more information. The negative consequence of this was that contradictory information was obtained which, far from helping clarify the facts concerning the corpse, confused them.¹⁶⁴

c) Deficiencies in the chain of custody

114. The Court has indicated that incorrect completion of the chain of custody record,¹⁶⁵ the failure to record or to safeguard objects found at the scene of the crime,¹⁶⁶ and the destruction of evidence once it is in custody,¹⁶⁷ are breaches of the State obligation of due diligence.

¹⁵⁹ Cf. Expert opinion of Ángela María Buitrago provided at the public hearing held on April 26 and 27, 2021, during the 141st regular session.

¹⁶⁰ Cf. General Coordination of Forensic Services, Department of Forensic Ballistics, Criminalistics report of October 20, 2001 (evidence file, folio 2842).

¹⁶¹ Cf. General Coordination of Forensic Services, On-site Criminalistics. report of 2001 (evidence file, folio 4108).

¹⁶² Cf. Expert opinion of José Luis Prieto Carreto provided by affidavit on April 8, 2021, para. 23 (evidence file, folio 81575).

¹⁶³ The first was a criminalistics expert who prepared the "report of violence death by gunshot wounds"; the second was a forensic medical expert attached to the Forensic Services Unit who prepared the medical certificate, and finally another medical expert was responsible for follow-up. Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 336 (evidence file, folio 3885).

¹⁶⁴ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, para. 338 (evidence file, folios 3848 and 3885).

¹⁶⁵ Cf. *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2010. Series C No.362, para. 213.

¹⁶⁶ Cf. *Case of Véliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 193 to 198.

¹⁶⁷ Cf. *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs.* Judgment of May 15, 2011. Series C No, 224, para. 112.

115. The Court also notes that there were numerous shortcomings in the chain of custody that had an impact on the result of the investigation. In this regard, expert witness José Luis Prieto called attention to the absence of proof that a standardized procedure had been followed for the chain of custody of the evidence obtained from the investigation of the scene and from the corpse.¹⁶⁸ Moreover, this is related to the deficient gathering of information. Thus, regarding the external examination of the corpse, the CDHDF Special Report indicated that the description “does not permit establishing aspects relating to the chain of custody, the packaging of the evidence, its prior manipulation, and the condition in which the body was received by the morgue of the Forensic Medical Service.”¹⁶⁹

116. These deficiencies were even acknowledged by the prosecutor, who identified problems in the chain of custody of the evidence obtained at the scene, although he alleged that this circumstance “was not so serious as to radically alter the scene, or to assert that the conclusions of some reports were totally invalid.”¹⁷⁰ For example, the Court notes that there is no precise explanation about the failure to record the bag containing the white powder, which was not official recognized until February 27, 2003; in other words, sixteen months after Digna Ochoa’s death.¹⁷¹ This evidence was not recorded or protected correctly, whereas the white powder was one of the most characteristic elements of the crime scene. This affected the probative value and information that this element could have provided. Another of the shortcomings was that fingerprints were collected at the scene of the crime one year later, which meant that it was difficult to assess the origin of such prints in a place that had been frequented by numerous people, such as the prosecution agents, the employees of the office, and those who visited it, and they could even have been altered by the internal environment of the place.¹⁷²

117. Indeed, the report prepared by the Inter-American Commission’s independent experts indicated that “the absence of formal chain of custody procedures for the evidence recovered at the scene of the crime was evident”; moreover, they also underlined that, during the initial procedures, there was no detailed and autonomous identification system for the different elements found or adequate packaging for them.¹⁷³

d) Deficiencies in obtaining testimonial evidence

118. The Court recalls that, to ensure due process, the State must facilitate all necessary measures to protect agents of justice, investigators, witnesses, and family members of victims from harassment and threats designed to hinder the proceedings, avoid the clarification of the facts, and conceal those responsible.¹⁷⁴

¹⁶⁸ Cf. Expert opinion of José Luis Prieto Carreto provided by affidavit, p. 23

¹⁶⁹ Cf. CDHDF, Special report on the irregularities in the preliminary inquiry opened into the death of Digna Ochoa y Plácido, Julio 2004, para. 431 (evidence file, folio 3909).

¹⁷⁰ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2548).

¹⁷¹ The Court notes that on February 27, 2003, PGJDF agents made an inventory at the crime scene, during which they discovered a plastic bag marked “hand powder.” Cf. Inventory of February 27, 2008 (evidence file, folio 23474).

¹⁷² Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General’s Office, May 27, 2003, para. 94 (evidence file, folio 9021).

¹⁷³ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General’s Office, May 27, 2003, para. 172 (evidence file, folio 9042).

¹⁷⁴ Cf. *Case of Myra Mack Chang v. Guatemala*. Merits, reparations and costs. Judgment of November 25, 2003. Series C No. 101. Para. 109, and *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Preliminary objections. Judgment of September 11, 1997. Series C No. 32. Para. 231.

119. That said, the Court notes that, in some cases, the statements gathered during the investigation were obtained in the presence of individuals presumably linked to the facts. Thus, the report of the Inter-American Commission's group of independent experts indicated:

[...] one of the witnesses who gave a statement felt intimidated by the presence of R.A.A. during the procedure, and this undermined the significance of his testimony because it affected the autonomy and liberty of the witness to provide his version of the events.¹⁷⁵

120. The Court also notes with concern that the organization of campesino ecologists denounced publicly that the conditions had not been established for them to testify freely about the death of Digna Ochoa y Plácido.¹⁷⁶ A similar issue arose in the cases of Javier Torres Cruz and Isaías Torres, who gave statements before the Office of the Prosecutor General of Mexico City (hereinafter "the PGJDF") on September 19, 2007, indicating that R.A.A. was allegedly responsible for the death of Digna Ochoa.¹⁷⁷ During his statement, Isaías Torres indicated that he and his family ran the risk of being attacked by this individual because he had testified before the PGJDF.¹⁷⁸ The Court notes that Javier Torres was detained, interrogated and tortured on December 3, 2008,¹⁷⁹ and was subsequently found dead on April 19, 2011.¹⁸⁰

121. It is also relevant to underscore that, when obtaining testimonial evidence from the campesinos of the region, their vulnerable situation owing to the criminal dynamics in the area was not taken into consideration. To the contrary, ordinary subpoena procedures were used, with the usual pre-established questions, contrary to the recommendations made in the Inter-American Commission's preliminary report of March 28, 2002.¹⁸¹ Regarding the testimonial evidence of the campesinos of the region, the Court emphasizes that, owing to the particularities of this case and the risk of reprisals faced by the possible witnesses who were questioned, obtaining this evidence called for a special methodology over and above the routine practice of requiring the local official, with no knowledge of the contents of the case file, the purpose of the evidence, or the context in which the procedure was required, to work with a pre-established questionnaire. Thus, the statements continued to be taken by subpoena by the officials of the Guerrero Prosecution Service with competence in that region who were mistrusted by the community due to their alleged links to the "caciques" and the illegal activities carried out there,¹⁸² and this made it difficult to obtain reliable testimony that permitted clarification of the facts.

¹⁷⁵ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003, para. 147 (evidence file, folio 9010).

¹⁷⁶ Cf. Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 5518).

¹⁷⁷ Cf. Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4857).

¹⁷⁸ Cf. Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folio 4895).

¹⁷⁹ Federal District Prosecutor General's Office, Decision of November 26, 2010 (evidence file, folios 4876 and 4877). See also, Cimac Noticias, "Aparece con huellas de tortura Javier Torres, vinculado al caso Digna Ochoa", news item of December 19, 2008. Available at: <https://cimacnoticias.com.mx/noticia/aparece-con-huellas-de-tortura-javier-torresvinculado-al-caso-digna-ochoa/>, Proceso, "Persiguen a testigo en caso Digna Ochoa", news item of December 30, 2008. Available at: <https://www.proceso.com.mx/204507/persiguen-a-testigo-en-caso-digna-ochoa>

¹⁸⁰ Cf. Expansión, "La CIDH condena el asesinato del activista mexicano Javier Torres", news item of April 25, 2011. Available at: <https://expansion.mx/nacional/2011/04/25/la-IACHR-condena-el-asesinato-del-activista-mexicano-javier-torres>; See also, MVS Noticias, "CDHDH condena muerte de líder ecologista de Petatlán, Guerrero, Javier Torres Cruz", news item of April 20, 2011. Available at: <https://mvsnoticias.com/noticias/policiaca/cdhdf-condena-muerte-de-lider-ecologista-depetatlan-guerrero-javier-torres-cruz-28/>

¹⁸¹ Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003 (evidence file, folios 8999 and 9003).

¹⁸² Cf. Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido conducted by the special prosecutor of the Mexican Federal District Prosecutor General's Office, May 27, 2003 (evidence file, folio 9003).

122. Based on the above, the Court considers that the State failed to take adequate measures to identify deponents who might have been afraid of testifying or to adopt measures of protection for witnesses linked to the death of Digna Ochoa and this, inevitably, could have had an impact on the reliability of some of the statements.

b.2 Use of gender stereotypes

123. On numerous occasions, this Court has emphasized the importance of recognizing, highlighting and rejecting negative gender stereotyping – which is one of the causes and consequences of gender-based violence against women – in order to change the socio-cultural conditions that permit and perpetuate the subordination of women.¹⁸³ In this regard, the Court reiterates that gender stereotyping refers to a preconception of attributes, conducts, characteristics or roles that correspond or should correspond to men and women, respectively, and that the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes. Thus, their creation and use becomes one of the causes and consequences of gender-based violence against women, and this is exacerbated when the stereotypes are reflected implicitly or explicitly in policies and practices and, particularly, in the reasoning and language of the state authorities.¹⁸⁴

124. In the case of investigations into the complaints filed, the Court has recognized that personal prejudices and gender stereotyping affect the objectivity of the state officials in charge of investigating such complaints, influencing their ability to determine whether or not an act of violence has occurred, and their evaluation of the credibility of the witnesses and of the victim herself. Stereotyping “distorts perceptions and results in decisions based on preconceived beliefs and myths, rather than relevant facts,” and this “can, in turn, lead to miscarriages of justice, including the revictimization of complainants.”¹⁸⁵ Moreover, when stereotyping is used in investigations into violence against women, the right to a life free of violence is violated, especially in cases in which its use by agents of justice hinders the implementation of appropriate investigations, which also denies a woman’s right of access to justice. Also, when the State does not take concrete actions to eradicate stereotyping, it reinforces and institutionalizes it and this generates and reproduces violence against women.¹⁸⁶ Therefore, States have the obligation to adopt a differentiated approach that excludes the discrimination and gender stereotyping that have historically accentuated violence against women and human rights defenders.

125. The Court also stresses that “[w]omen human rights defenders encounter additional obstacles linked to gender discrimination” and “are victims of stigmatization; they are exposed to comments of a sexist or misogynist nature and their complaints are not taken seriously.”¹⁸⁷ Thus, in its General recommendation No. 33 on women’s access to justice, the Committee for the Elimination of Discrimination against Women indicated that “other factors that make it more difficult for women to

¹⁸³ Cf. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009, para. 401, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 136.

¹⁸⁴ Cf. *Case of González et al. (“Cotton Field”) v. Mexico, supra*, para. 401, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 180, and *Case of López Soto et al. v. Venezuela, supra*, para. 235.

¹⁸⁵ Cf. UN, Committee for the Elimination of Discrimination against Women, General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, August 3, 2015, para. 26.

¹⁸⁶ Cf. *Case of Gutiérrez Hernández et al. v. Guatemala, supra*, para. 173, and *Case of López Soto et al. v. Venezuela, supra*, para. 236.

¹⁸⁷ Cf. Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, of July 15, 2019, A/74/159, para. 74. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/24/PDF/N1921624.pdf?OpenElement>

gain access to justice include stigmatization of women fighting for their rights,¹⁸⁸ and that it had documented “many examples of the negative impact of intersecting forms of discrimination on access to justice, including ineffective remedies, for specific groups of women.”¹⁸⁹ In addition, in its General recommendation No. 35 on gender-based violence against women, the Committee indicated that “discrimination against women was inextricably linked to other factors that affected their lives,” such as “the stigmatization of women who fight for their rights, including human rights defenders.”¹⁹⁰

126. The Court notes that, in this case, on three occasions it was decided that it was not in order to institute criminal proceedings, considering that a “dissimulated suicide” was the most probable hypothesis. To support this hypothesis, among other probative elements, the decisions were based on a series of forensic psychology reports. The psychological autopsy is a technique use when doubts exist concerning whether death is due to an accident, suicide or homicide, and it seeks to reconstruct the behavioral style of the deceased by assessing various aspects: (i) whether the person had a reason for committing suicide; (ii) their vulnerabilities, and (iii) a study of their personality based on a retrospective evaluation of their life.¹⁹¹

127. The Court notes that the forensic psychology reports prepared on Digna Ochoa were based on the examination of personal objects that were in her possession (such as the notes in a journal, newspaper items and some letters she had written), as well as interviews with people who knew her. Thus, in the report of June 28, 2002, Digna Ochoa was described as a person who was “demanding,” “religious” and with a “strong feeling of anger,” among other personality traits.¹⁹² In addition, the psychodynamic report of May 8, 2003, defined Digna Ochoa as a person with “unstable interpersonal relations,” also speculating that she could have suffered from “conversion hysteria.”¹⁹³ The Court notes that, to conclude that Digna Ochoa suffered from a sort of psychological or personality disorder, the reports referred to aspects of her personal life, such as the fact that she had received psychological therapy,¹⁹⁴ and to matters relating to her romantic relationships, and even some concerning her sexual and reproductive autonomy.¹⁹⁵ All this led to the adoption of stereotypical – and even paternalistic – conclusions based on her gender, such as the assertion that the fact that her relationship with her partner was experiencing difficulties, had made her feel “unprotected,”

¹⁸⁸ Cf. CEDAW, General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, August 3, 2015, para. 9.

¹⁸⁹ Cf. CEDAW, General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, August 3, 2015, para. 10.

¹⁹⁰ Cf. General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, July 27, 2017, CEDAW/C/GC/35, para. 12. Available at: <https://undocs.org/CEDAW/C/GC/35>.

¹⁹¹ Cf. Expert opinion of Luz Adriana Camargo Garzón provided by affidavit on April 19, 2021, para. 40 (evidence file, folio 1206).

¹⁹² Cf. Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folios 356 and 357). See also, Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 4411). It should be note that, in the last decision not to institute criminal proceedings, the expert opinion of June 28, 2002, was found to be “reliable when assessing the evidence.” Cf. Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 7057).

¹⁹³ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 433). It should be note that the last decision not to institute criminal proceedings of November 26, 2010, the expert opinion of May 8, 2003, was found to be “reliable.” Cf. Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 7057).

¹⁹⁴ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folios 1805 to 1807, 1872).

¹⁹⁵ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folios 1805 to 1807, 1872). Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folios 429, 430, 432 and 2308); Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 7068); Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 361). See also, reference to the report of November 28, 2010; Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 431); Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2309); Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 7070).

making her “vulnerable to being unable to support stress.”¹⁹⁶ The considerations on a supposed interruption of a pregnancy by Digna Ochoa merited special attention, and this was defined as a “significant event” for which the human rights defender did not “feel guilty,”¹⁹⁷ and even though “she considered herself very attached to the Catholic faith” she underwent the procedure “without hesitation or any evident guilt.”¹⁹⁸ In addition, some of the expert reports vilified Digna Ochoa’s commitment to the defense of human rights, creating the image of a person possessed by an exaggerated dedication. Thus, they referred to a “tendency towards suffering [...] and an] inclination and commitment to giving her life to fight anything she thought violated human rights,”¹⁹⁹ as well as assessing negatively that Digna Ochoa “spent most of her life assuming the role of a defender of victims and seeking those who abused them.”²⁰⁰

128. The Court reaffirms that practices such as those described, tending to devalue the victims based on negative stereotyping in an attempt to justify the crimes committed against them and/or to conceal those responsible, must be rejected and determined to be incompatible with international human rights law.²⁰¹ It has also recognized that personal prejudices and gender stereotyping affects the objectivity of the state authorities in charge of investigating the complaints that are filed, influencing their perception as to whether or not an act of violence has occurred, their evaluation of the credibility of the witnesses and of the victims themselves. The Court also underlines that the use of stereotyping by the judicial authorities may indicate the existence of lack of impartiality.²⁰²

129. That said, the Court notes that the investigation into the circumstances of Digna Ochoa’s death were biased from the start, due to the application of gender stereotypes,²⁰³ in particular the elaboration of expert reports based on stereotypes relating to personal and intimate aspects of the defender, all with the goal of casting doubts on her credibility. In this way, an image of Digna Ochoa as a woman lacking credibility and somewhat excessive was created, and this allowed them to conclude that she had committed suicide as a result of emotional instability, instability that was also related to her condition as a woman. Those reports also emphasized the victim and her conduct, thereby isolating and rendering invisible the context in which her death occurred, and automatically disassociating her from her work in defense of human rights and, consequently, negatively affecting the investigation and the assessment of the evidence. Consequently, not only was the determination at the domestic level that Digna Ochoa died as a result of a supposed “dissimulated suicide” not supported by the objective assessment of the evidence collected, but also, in the Court’s opinion, it

¹⁹⁶ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 362). See also, Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 7041).

¹⁹⁷ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2318). See also, Psychodynamic analysis of the personality of Digna Ochoa y Plácido, May 8, 2003 (evidence file, folio 3371), and Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 7079).

¹⁹⁸ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2413). See also, Psychodynamic analysis of the personality of Digna Ochoa y Plácido, May 8, 2003 (evidence file, folio 3380), and Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 7161).

¹⁹⁹ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 2417).

²⁰⁰ Cf. Federal District Prosecutor General’s Office, Decision of July 18, 2003 (evidence file, folio 434). See also, Psychodynamic analysis of the personality of Digna Ochoa y Plácido, May 8, 2003 (evidence file, folio 3391), and Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folios 7053 and 7054).

²⁰¹ Cf. *Case of Gutiérrez Hernández et al. v. Guatemala*, *supra*, paras. 171 and 172, and *Case of López Soto et al. v. Venezuela*, *supra*, para. 239.

²⁰² Cf. *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 2, 2021, para. 133. See also, CEDAW, General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, August 3, 2015, paras. 26 to 28, and Office of the United Nations High Commissioner for Human Rights, Background paper on the role of the judiciary in addressing the harmful gender stereotypes related to sexual and reproductive health and rights, p. 5. Available at: https://www.ohchr.org/Documents/Issues/Women/WRGS/JudiciaryRoleCounterStereotypes_EN.pdf

²⁰³ Cf. *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs*, *supra*, para. 133.

was difficult to reconcile with the series of facts that have been proved and, specifically, with the circumstances and manner in which this death occurred.

b.3 Reasonable time

130. The Court has indicated that the right of access to justice in cases of human rights violations – or, as in this case, where there is a possibility that human right violations may have been committed – must ensure, within a reasonable time, the right of the alleged victims or their family members that everything necessary is done to learn the truth about what happened and to investigate, prosecute and punish, as appropriate, those eventually found responsible.²⁰⁴ Equally important is the Court's consideration that a prolonged delay in the proceedings may, in itself, result in a violation of judicial guarantees.²⁰⁵

131. The Court has established that the reasonable time must be analyzed in each specific case in relation to the total duration of the proceedings, which may also include the execution of the final judgment. Moreover, it has considered that four elements must be examined to know whether the guarantee of a reasonable time has been observed, namely: (a) the complexity of the matter;²⁰⁶ (b) the procedural activity of the interested party;²⁰⁷ (c) the conduct of the judicial authorities,²⁰⁸ and (d) the effects on the legal situation of the alleged victim.²⁰⁹ The Court recalls that it corresponds to the State to justify, based on these criteria, why it has required the time that has passed to process the case and, if it fails to do so, the Court has broad powers to form its own opinion in this regard.²¹⁰ The Court also reiterates that it is necessary to consider the total duration of the proceedings, from the initial procedural act until the final judgment is delivered, including any appeals that may be filed.²¹¹ Consequently, the Court will make this analysis from the day of the *notitia criminis* – that is, October 19, 2001, the day of Digna Ochoa's death – up until the present day, because the State, in its partial acknowledgement of responsibility, undertook to reopen the investigation into her death.

²⁰⁴ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Guerrero, Molina et al. v. Venezuela, supra*, para. 136.

²⁰⁵ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, supra*, para. 145, and *Case of Olivares Muñoz et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 10, 2020. Series C No. 415, para. 123.

²⁰⁶ When analyzing the complexity of the matter, the Court has taken into account, *inter alia*, the complexity of the evidence, the multiplicity of procedural subjects or the number of victims, the time elapsed since the State became aware of the facts that needed to be investigated, the characteristics of the remedy contained in domestic law, and the context in which the violation occurred. Cf. *Case of Genie Lacayo v. Nicaragua, supra*, para. 78, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

²⁰⁷ Regarding the activity of the person interested in obtaining justice, the Court has taken into consideration whether their procedural conduct has in some way contributed to unduly prolonging the proceedings. Cf. *Case of Cantos v. Argentina. Merits, reparations and costs*. Judgment of November 28, 2002. Series C No. 97, para. 57, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

²⁰⁸ The Court has understood that, in order to fully ensure the effectiveness of the judgment, the judicial authorities must act promptly and without delay, because the principle of effective judicial protection requires the execution procedures to be implemented without undue delays or obstacles, in order to achieve its objective in a rapid, simple and comprehensive manner. Cf. *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 106, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

²⁰⁹ Regarding the general effects on the legal situation of the alleged victim, the Court has affirmed that, to determine whether the time has been reasonable, it is necessary to take into account the effects that the duration of the proceedings have had on the legal situation of the person concerned, considering, among other factors, the subject-matter of the dispute. Cf. *Case of the National Association of Dismissed and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2019. Series C No. 394, para. 148, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

²¹⁰ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

²¹¹ Cf. *Case of Suárez Rosero v. Ecuador. Reparations and costs*. Judgment of January 20, 1999. Series C No. 44, para. 71, and *Case of Olivares Muñoz et al. v. Venezuela, supra*, para. 123.

132. With regard to the complexity of the matter, the Court notes that, owing to: (i) the numerous measures conducted; (ii) the geographical extension covered by the investigation; (iii) the fact that the crime scene appeared to have been contaminated, and (iv) the existence of unusual and confusing elements – such as the white power found around the corpse, the latex gloves that Digna Ochoa was wearing and the, at the very least, strange fact that two shots were fired prior to the shot in the head that caused her death – made the investigation in this case complex.

133. However, in the Court’s opinion, the fact that the case was complex did not justify the lengthy periods of inaction during the proceedings. This was due to the Public Prosecution Service’s repeated refusal to accept the intervenors’ offer of evidence, until this was finally admitted in 2003.²¹² The Court also notes that during the judicial proceedings, there were prolonged periods of inactivity, such as from September 17, 2007, to September 11, 2008, during which no measures were taken in the preliminary inquiry because it was reassigned to different prosecutors and despite the issues raised by the Public Prosecution Service Agents Coordinator attached to the Prosecutor General’s Office.²¹³ Lastly, the Court reiterates that the State itself has acknowledged that the investigation into the death of Digna Ochoa violated Articles 8 and 25 of the American Convention, and also, in particular, a reasonable time. This has meant that, to date, more than 20 years after the events, it has not been possible for the courts to determine the causes of her death or, eventually, the corresponding criminal responsibilities.

134. In relation to the procedural conduct of the victims, the Court notes that no delaying or obstructive conducts can be observed on the part of the intervenors; they merely made use of all available recourses for the legitimate defense of their interests.

135. Lastly, regarding the effects on the legal situation of those involved in the proceedings, the Court has established that, if the passage of time has a relevant impact on the legal situation of the individual, the proceedings must advance with greater diligence so that the case may be decided as soon as possible.²¹⁴ In the instant case, the Court notes that, since it refers to a woman human rights defender, the judicial authorities should have used greater diligence and speed in the gathering of evidence, the investigations, and the judicial proceedings into the facts of this case because the investigation and determination of the truth of what happened depended on these judicial actions, and because it was possible that Digna Ochoa had been the victim of a violent death as a result of her activity as a human rights defender, and this could be interpreted as a direct attack on all human rights defenders. In this regard, the Court has already stressed the need to eradicate impunity in the case of acts of violence against human rights defenders (*supra* para. 100), because this is essential to ensure that they may perform their task freely in a safe environment.

136. Based on all the above, the Court concludes that Mexico also violated the reasonable time for the investigation and prosecution of the facts related to the death of Digna Ochoa on October 19, 2001.

b.4 Violation of Digna Ochoa’s right to honor and dignity

137. In the instant case, the State has acknowledged its partial international responsibility for the violation of the right to protection of honor and dignity (Article 11 of the American Convention) to

²¹² Cf. Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 4696).

²¹³ Cf. Federal District Prosecutor General’s Office, Decision of November 26, 2010 (evidence file, folio 4187).

²¹⁴ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407, para. 224.

the detriment of Digna Ochoa “as a victim of the negative image of her that was generated after her death and for how the information obtained by the investigation conducted into the death of this defender was managed.”²¹⁵

138. In this regard, the Court notes that, starting during the first month of the investigation, the PGJDF began to leak sensitive information from the preliminary inquiry, such as the publication in a national newspaper of the photograph of Digna Ochoa’s body in the position in which it was found by the authorities on the day of her death.²¹⁶ Human rights organizations in Mexico, including the Mexico City Human Rights Commission criticized the PGJDF for leaking of information to the media.²¹⁷ Moreover, the State itself acknowledged that the leaked information contributed to generating a negative image of Digna Ochoa.

139. As indicated by the Special Rapporteur on the situation of human rights defenders, “a powerful way of attacking women defenders is to damage their “honour” or reputation” by labelling them negatively.²¹⁸ “Efforts to shame women have led to their stigmatization and isolation. In some contexts, women are often reduced to their roles as mothers, daughters and caregivers rather than seen as legitimate political and economic actors in all spheres of society. In particular, in conservative societies, women defenders are derided for their efforts to create change.”²¹⁹

140. The Court notes, therefore, that the violation of Digna Ochoa’s human rights did not end – for the effects of this case – with the flawed investigation of the facts surrounding her death, but continued and was exacerbated by a discourse channeled through state agents aimed at vilifying her public image, polarizing Mexican society, and substantiating the version of suicide before public opinion; and all of this also making use of detrimental gender stereotypes. The Court also notes that the interference *postmortem* in the private life of an individual by the state authorities, so as to harm their right to respect for their honor and dignity, is incompatible with the American Convention. All this involved a violation of Article 11 of the American Convention, in relation to Article 1(1) of this instrument to the detriment of Digna Ochoa.

b.5 Violation of Digna Ochoa’s right to life

141. The Court has established that the right to life plays a fundamental role in the American Convention because it is the essential prerequisite for the exercise of the other rights. States have the obligation to ensure the creation of the necessary conditions so that violations of this inalienable right are not committed and, in particular, the obligation to prevent their agents from violating it. Respect for Article 4, in relation to Article 1(1) of the American Convention, not only supposes that no one may be deprived of their life arbitrarily (negative obligation), but also requires States to adopt all appropriate measures to protect and preserve the right to life (positive obligation), pursuant to the obligation to ensure to all persons subject to their jurisdiction the free and full exercise of their rights.²²⁰

²¹⁵ Cf. The State’s final written arguments, para. 12 (merits file, folio 1613).

²¹⁶ Cf. La Jornada, “*Critican defensores de los derechos humanos la actuación de la PGJDF en el caso Digna Ochoa*”, news item of November 22, 2001 (evidence file, folio 52850). Available at: <https://www.jornada.com.mx/2001/11/22/020n1pol.html>

²¹⁷ Cf. La Jornada, “*Critican defensores de los derechos humanos la actuación de la PGJDF en el caso Digna Ochoa*”, news item of November 22, 2001 (evidence file, folio 52850).

²¹⁸ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/40/60, of January 10, 2019, para. 37. Available at: <https://undocs.org/sp/A/HRC/40/60>

²¹⁹ Cf. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/40/60, of January 10, 2019, para. 37.

²²⁰ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 144, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs. Judgment of March 13, 2018. Series C No. 352, para. 162.*

142. In this regard, the Court has repeatedly indicated that the State has the legal obligation “to take reasonable steps to prevent human rights violations and to use the means at its disposal to conduct a serious investigation of violations committed within their jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”²²¹ This includes, “establishing a system of justice capable of investigating, punishing and providing reparation for the deprivation of life by state agents or private individuals.”²²²

143. This Court also underscores that the investigation of violations of the right to life constitutes a central element when determining the international responsibility of the State and that this obligation results from the guarantee contained in Article 1(1) of the Convention. Moreover, if it is verified that there has been any flaw or deficiency in the investigation that jeopardizes the possibility of establishing the cause of death or identifying those responsible, this will signify non-compliance with the obligation to protect the right to life.²²³ Similarly, the Court has indicated that the absence of effective mechanisms for investigating violations of the right to life and the weakness of the justice system to address such violations may encourage a climate of impunity in the State with regard to such violations and, in certain contexts and circumstances, may configure generalized situations or gross patterns of impunity, thus encouraging and perpetuating the repetition of violations.²²⁴ The Court also emphasizes the importance of prompt and diligent investigations when the victim is a woman human rights defender (*supra* para. 101).

144. In the instant case, the Court has determined that the investigation and subsequent proceedings based on the facts surrounding Digna Ochoa’s death suffered from numerous flaws from the outset and this prevents considering that the decision adopted by the domestic judicial authorities that Digna Ochoa had committed a “dissimulated suicide” is true or final. On this point, the Court has indicated

²²¹ *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 163.

²²² *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs. Judgment of January 31, 2006, Series C No. 140, para. 120, and Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 163.

²²³ *Cf. Case of Baldeón García v. Peru. Merits, reparations and costs. Judgment of April 6, 2006. Series C No. 147, para. 97, and Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 164. Similarly, the European Court of Human Rights has indicated that the right to life “enjoins the State not only to refrain from the intentional and unlawful taking of life [substantive aspect] but also to take appropriate steps to safeguard the lives of those within its jurisdiction [procedural aspect].” Based on that court’s case law, “the obligation to protect the right to life, as well as to duly account for its loss requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances.” *Cf. ECHR, Case of L.C.B. v. The United Kingdom*, No. 23413/94. Judgment of June 9, 1998, para. 36; *Case of Osman v. The United Kingdom*, No. 23452/94, Judgment of October 28, 1998, para. 115, and *Case of Muradyan v. Armenia*, No.11275/07. Judgment of November 24, 2016, para. 132. See also: ECHR, *Case of Mustafa Tunç and Fecire Tunç v. Turkey*, No. 24014/05. Judgment of April 14, 2015, para. 171. The European Court has also indicated that “the system required by Article 2 [of the European Convention on Human Rights] must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness [...] [and] which would be capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved,” “because often, in practice, the true circumstances of the death are, or may be, largely confined within the knowledge of State officials or authorities.” ECHR, *Case of Kelly and Others v. The United Kingdom*, No. 30054/96. Judgment of May 4, 2001, para. 114; *Case of Sergey Shevchenko v. Ukraine*, No. 32478/02. Judgment of April 4, 2006, para. 65; *Case of Perevedentsevy v. Russia*, No. 39583/05. Judgment of April 24, 2014, para. 104, and *Case of Muradyan v. Armenia*, No.11275/07. Judgment of November 24, 2016, para. 133. As minimum requirements for an effective judicial system, that court has indicated that this requires “the persons responsible for and carrying out the investigation to be independent from those implicated in the events [...]. This means not only a lack of hierarchical or institutional connection but also a practical independence.” ECHR, *Case of Kelly et al. v. The United Kingdom*, No. 30054/96. Judgment of May 4, 2001, para. 95; *Case of Paul and Audrey Edwards v. The United Kingdom*, No. 46477/99. Judgment of September 14, 2002, para. 70; *Case of Mastromatteo v. Italy*, No. 37703/97. Judgment of October 24, 2002, para. 91; *Case of Sergey Shevchenko v. Ukraine*, No. 32478/02. Judgment of April 4, 2006, para. 64, and *Case of Mikhalkova v. Ukraine* No 10919/05. Judgment of January 13, 2011, para. 42.

²²⁴ *Cf. Case of Anzualdo Castro v. Peru*, para. 179, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 164.

that flaws in the internal investigation, or the fact that these have not concluded, do not prevent the Court from determining that the State has failed to respect the right to life, provided sufficient evidence exists to substantiate this conclusion.²²⁵

145. In this regard, the Court notes that the chapter of this judgment on the facts refers to the context of the killing of human rights defenders at the time when the death of Digna Ochoa occurred and that has continued up until the present (*supra* paras. 44 to 48). Similarly, in that chapter, the Court verified that the context of killings was accompanied by high rates of impunity and investigations that failed to conclude in the identification and prosecution of those responsible and that, consequently, such acts continued in impunity. Added to this, for many years, Digna Ochoa had been subjected to threats that endangered her life and personal integrity and, owing to the deficient actions of the State, this led the organs of the inter-American system for the protection of human right to adopt precautionary measures and, subsequently, provisional measures in her favor (*supra* paras. 49 to 53).

146. In sum, the Court finds that Digna Ochoa's death occurred in a generalized context of impunity for the killing of human rights defenders in Mexico at the time of the events of this case and that her death was preceded by threats against her that had continued for several years. The totally flawed investigation into Digna Ochoa's death by the Mexican authorities, together with the fact that other lines of investigation were arbitrarily discarded, did not allow light to be thrown on the particular circumstances that surrounded her death and, therefore, constituted, of itself, a violation of the obligation to ensure Digna Ochoa's right to life as well as of her family's right to the truth. In this regard, the Court reiterates that the State is obliged to combat, by all available means, the potential situation of impunity that could occur in this case because this would encourage the chronic repetition of this type of human rights violation and the total defenselessness of the families of victims, who have a right to know the truth regarding the circumstances of their death.²²⁶

147. In light of the preceding conclusion, the Court considers that it is not necessary to make an additional analysis of the threats perpetrated against the defender and the State's failure to investigate them.

b.6 Conclusion

148. In this case, the Court has determined that the investigation and prosecution of the death of Digna Ochoa failed to comply with the standards for due diligence; that gender stereotypes were used and applied that obstructed the proceedings; that the reasonable time was not respected and, also, that public statements were made during the investigation that harmed the honor and dignity of Digna Ochoa. All this also entailed a violation of the right to the truth of Digna Ochoa's family. Furthermore, Digna Ochoa's death occurred in the context of an increasing number of killings of human rights defenders, accompanied by a generalized situation of impunity with regard to this type of crime, and was preceded by numerous threats against her and her colleagues.

149. Therefore, the Mexican State is responsible for the violation of Articles 8, 11 and 25 of the American Convention, in relation to Article 1(1) of this instrument and Article 7(b) of the Convention of Belém Do Pará, to the detriment of Irene Alicia Plácido Evangelista (mother), Eusebio Ochoa López (father), and the siblings Agustín, Carmen, Elia, Estela, Eusebio, Guadalupe, Ignacio, Ismael, Jesús, Juan Carlos, Luz María and Roberto Ochoa y Plácido. The Mexican State is also responsible for the violation of the obligation to ensure the right to life contained in Article 4(1) of the American

²²⁵ Cf. *Case of Carvajal Carvajal et al. v. Colombia*, *supra*, para. 165.

²²⁶ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra*, para. 266.

Convention, in relation to Articles 1(1), 8 and 25 of this instrument, as well as for the violation of Article 11 of the American Convention in relation to Article 1(1) of this instrument, to the detriment of Digna Ochoa.

IX REPARATIONS

150. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to repair it adequately and that this provisions reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.²²⁷

151. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the rights that have been violated and to redress the consequences of those violations.²²⁸ Therefore, the Court has found it necessary to grant diverse measures of reparation in order to redress the harm comprehensively so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.²²⁹ Additionally, the Court finds that the reparations must include an analysis that takes into account not only the right of the victims to obtain reparation, but also incorporates a gender perspective in both their design and implementation.²³⁰

152. The Court has also established that the reparations must 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. Therefore, the Court must observe this concurrence in order to rule appropriately and in keeping with law.²³¹

153. Bearing in mind the violations of the American Convention declared in the preceding chapters, and in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,²³² the Court will examine the claims presented by the Commission and the representatives, together with the corresponding arguments of the State, in order to establish measures aimed at redressing those violations.

A. Injured party

154. The Court considers that, pursuant to Article 63(1) of the Convention, anyone who has been declared a victim of the violation of any right recognized therein is the injured party. Therefore, the Court finds that Digna Ochoa y Plácido, Irene Alicia Plácido Evangelista (mother), Eusebio Ochoa

²²⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Manuela et al. v. El Salvador, supra*, para. 268.

²²⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 2, and *Case of Cuya Lavy et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 28, 2021. Series C No. 438, para. 186.

²²⁹ Cf. *Case of the 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 Noguera et al. v. Paraguay, supra*, para. 88.

²³⁰ Cf. *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 326, and *Case of Guzmán Albarracín et al. v. Ecuador, supra*, para. 215.

²³¹ Cf. *Case of Ticóna Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 224.

²³² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 225.

López (father), and the siblings, Agustín, Carmen, Elia, Estela, Eusebio, Guadalupe, Ignacio, Ismael, Jesús, Juan Carlos, Luz María and Roberto, all with the last name Ochoa y Plácido, are the injured party, and they, in their capacity as victims of the violations declared in Chapter VIII, will be the beneficiaries of the reparations ordered by the Court

B. Investigation, identification, prosecution and punishment, as appropriate, of all those responsible

155. The **Commission** asked that the State reopen and conduct the criminal investigation diligently, effectively and within a reasonable time in order to clarify the facts completely.

156. The **representatives** asked the Court to order the State to investigate with due diligence, with a gender perspective, and within a reasonable time, the facts that this case refers to, "in order to seek the truth, clarify the facts, and identify and punish, as appropriate, the masterminds and perpetrators of the homicide of Digna Ochoa y Plácido, taking into account the context of human rights violations that existed at the time of the events and the current situation of violence against human rights defenders."

157. In this regard, they also considered it "essential" that a serious, thorough and impartial investigation be conducted of the state officials whose acts and omissions had obstructed the investigations into the facts of this case.

158. In its brief with final arguments, and as a result of its partial acknowledgement of responsibility, the **State** advised the Court that it had reached an agreement with Digna Ochoa's family that included "the willingness and agreement to reopen the investigation, in keeping with the conditions described in the third recommendation of the Merits Report issued by the Inter-American Commission on Human Rights." It added that, an analysis of the norms of the Mexico City Prosecutor General's Office revealed that "it was viable for the special investigation unit to reopen inquiry FDCUAUHT/03/USD04/2576/01-10 concerning the case of the lawyer and human rights defender, Digna Ochoa y Plácido, taking into account the guarantee of punishment, a differentiated approach and a gender perspective." It attached as an annex a document with a "critical path" for reopening the said inquiry. On June 11, 2021, the representatives forwarded their observations in this regard and confirmed that the said document corresponded to the agreement reached between the parties on the general parameters for reopening the investigation into the death of Digna Ochoa. Also, notwithstanding this agreement, they asked the Court to order "the investigation of the public officials who obstructed the investigations and who are responsible, not only for the fact that these events remain in impunity, but also for the fact that Digna's image was severely harmed following her death, as the State itself has acknowledged."

159. The Court appreciates the State's willingness to reopen the criminal investigation diligently, effectively and within a reasonable time in order to clarify the facts completely. Therefore, it establishes that the State must, within a reasonable time, promote and continue all necessary investigations to determine the circumstances of Digna Ochoa's death and, as appropriate, prosecute and eventually punish the person or persons responsible for her death, all from a gender perspective and without applying harmful stereotypes.²³³

²³³ The Court also appreciates the agreement reached by the two parties, and particularly the document concerning the way in which this investigation will be conducted and, particularly that it will follow a "critical path." The document, entitled: "Critical path. Reopening of the inquiry FDCUAUHT/03/USD04/2576/01-10. Case of the lawyer and human rights defender Digna Ochoa y Plácido," was provided by the State with its final written arguments of May 27, 2021, and by the representatives in their brief of June 18, 2021.

C. Rehabilitation

160. The **Commission** recommended that the State order measures to provide the necessary physical and mental health care for the rehabilitation of Digna Ochoa y Plácido's family, "if they so wish and in coordination with them."

161. The **representatives** endorsed the Commission's recommendation and specified that the Court should order the State to provide the medical and/or psychological treatment required by the victims:

Free of charge, through its specialized health services and immediately, adequately and effectively [...] following their informed consent, including the provision, free of charge, of any medicines they may eventually require, taking into consideration the ailments of each one. If the State does not have the required services, it must have recourse to private or specialized civil society institutions. Also, the respective treatment must be provided, insofar as possible, in the center nearest to their places of residence and for as long as necessary. When providing the psychological or psychiatric treatment, the particular circumstances and needs of each victims must also be taken into account so that they are provide with family or individual treatment, as agreed with each of them and following an individual evaluation.

162. In its brief with final arguments and as a result of its partial acknowledgement of responsibility, the **State** undertook to elaborate "a health care plan for the victims, on a priority basis, in order to provide the medical and psychosocial care they need and request in specialized public health institutions." Subsequently, in a brief of June 7, 2021, the State clarified the scope of this measure of reparation, and indicated that the health care plan prepared for their treatment "will be permanent and will include the provision of any medicines they need based on their ailments." In addition, the plan would establish measures for first-, second- and third-tier levels of medical intervention and ensure that all the treatments, medical examinations, laboratory tests and diagnostic imaging procedures, and also transportation would be free of charge. On June 11, 2021, the representatives forwarded their observations on the State's brief of June 7, and confirmed that the measures described corresponded to the agreement reached between the parties, although they indicated that they were incomplete because the final clause had been omitted, which established the following:

The "Mexican State" shall not be obliged to provide medical or psychological care to "the victims" if they decide to reside outside national territory on a temporary or permanent basis. Nevertheless, if "the victims" return to Mexican territory this obligation will continue to be binding in keeping with the above conditions.

163. The Court appreciates the "health care plan" agreed by the two parties, under which the State will provide, free of charge, the medical and/or psychological, psychiatric or psychosocial treatment required by the members of Digna Ochoa y Plácido's family who, in turn, are victims in this case. Consequently, it orders the State to draw up, as a priority, a "health care plan" for these victims in order to provide the said medical care that they require and wish to receive in specialized public health institutions. The health care plan will be permanent and will include the free provision of any medicines they need based on their ailments. In addition, it must include measures for first-, second- and third-tier levels of medical intervention. The State must ensure that all the treatments, medical examinations, laboratory tests and diagnostic imaging procedures, as well as transportation are free of charge. If the victims move to another federative entity of the United Mexican States, the medical care will be provided in centers near to their new place of residence through the institutions of the National Health System. The State will not be obliged to provide medical or psychological care to the victims if they decide to reside outside national territory on a temporary or permanent basis. Nevertheless, if the victims return to Mexican territory this obligation will continue to be binding in keeping with the above conditions

D. Measures of satisfaction

d.1 Publication and dissemination of the judgment

164. The **Commission** made a general recommendation that measures of satisfaction be adopted.

165. The **representatives** asked the Court to order the Mexican State to publish the official summary of the judgment in a national newspaper with widespread circulation. They also asked that the entire judgment be made available for at least one year by a link on the home page of the websites of the Ministry of Foreign Affairs, the Ministry of the Interior, and the Judiciary of the Federation.

166. In its brief with final arguments, and as a result of its partial acknowledgement of responsibility, the **State** undertook to publish, through official channels, the official summary of the judgment in this case. Subsequently, in a brief of June 7, 2021, the State clarified the scope of this measure of reparation, and also undertook to publish the judgment delivered by the Court in full on the websites of the Ministry of the Interior (SEGOB), the Ministry of Foreign Affairs (SRE), and the Mexico City Prosecutor General's Office. On June 11, 2021, the representatives forwarded their observations on the State's brief of June 7, and confirmed that this measure corresponded to the agreement reached between the parties.

167. In light of the agreement reached between the parties, as well as of its consistent case law in this regard, the Court finds, as it has in other cases,²³⁴ that the State must 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, in an appropriate and legible font; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation in an appropriate and legible font, and (c) this judgment in its entirety, available for one year, on the websites of the Ministry of the Interior (SEGOB), the Ministry of Foreign Affairs (SRE), and the Mexico City Prosecutor General's Office. The State must inform this Court immediately when it has made each of the said publications, irrespective of the one-year time frame for presenting its first report established in the twenty-fourth operative paragraph of the judgment.

d.2 Public act to acknowledge responsibility

168. The **representatives** asked the Court to order the Mexican State to acknowledge, during a public act, its responsibility for the violations committed to the detriment of Digna Ochoa y Plácido and her family.

169. In its brief with final arguments, and as a result of its partial acknowledgement of responsibility, the **State** undertook to hold "a public act to acknowledge responsibility in which it would be represented by its highest authorities." Subsequently, in the said brief of June 7, 2021, the State clarified the scope of this measure of reparation and indicated that the victims and their representatives would take part in this public act of acknowledgement and, also, that it would reach agreement with them on the organization of the act. It indicated that the event would be disseminated by the media that the parties invited to attend this act, as well as on the social networks of the Ministry of the Interior (SEGOB), and the Ministry of Foreign Affairs (SRE). In addition, the written and audiovisual versions of the act of acknowledgement would be published on the websites of the SEGOB and of the SRE. On June 11, 2021, the representatives forwarded their observations

²³⁴ Cf. *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 226, and *Case of Manuela et al. v. El Salvador, supra*, para. 273.

on the State's brief of June 7, and confirmed that this measure corresponded to the agreements reached between the parties.

170. The Court appreciates the State's willingness to hold a public act to acknowledge responsibility. Accordingly, the Court establishes that the State must hold a public act to acknowledge international responsibility in relation to the facts of this case, during which it expressly acknowledges the work of human rights defenders, and explicitly condemns any type of attacks or crimes committed against them. Based on the agreement reached by the parties, the State's most senior authorities will intervene in this act, in which the victims and their representatives will also take part. In addition, the State will reach an agreement with the latter of how the act will be organized. The act must be disseminated by the media that the parties invite to the act, and also by the social networks of the Ministry of the Interior (SEGOB), and the Ministry of Foreign Affairs (SRE). In addition, the written and audiovisual versions of the act of acknowledgement must be published on the websites of both Ministries. The State has one year from notification of this judgment to comply with this obligation.

E. Guarantees of non-repetition

171. The **Commission** recommended that the State establish "mechanisms of non-repetition that included enhancing the capacity to investigate acts of violence against human rights defenders, pursuant to the guidelines mentioned in th[e] Merits Report, which must include designing and implementing protocols, as well as measures of institution building and the appropriate training for all the authorities who come into contact with this type of case, from the police to the prosecutors and judicial officials."

172. The **representatives** asked that the State present an annual award named after the lawyer Digna Ochoa y Plácido to be granted to women human rights defenders whose work has been outstanding over the previous year.

173. They also asked the Court to order the Mexican State to adopt and implement a certified protocol for the investigation with due diligence and from a gender perspective of crimes committed against human rights defenders, which should take the following into consideration:

- 1) The concept of human rights defender;
- 2) The standards for the development of instruments to ensure that investigations are conducted with due diligence, including the best international standards and practices for due diligence according to the type of crime (for example, extrajudicial executions, murders, torture and threats);
- 3) The risks inherent in the work of the defense of human rights in Mexico;
- 4) The context in which human rights defenders perform their task and the interests they run up against in the country;
- 5) The existence of patterns of threats of all types used to frighten, threaten, intimidate or attack human rights defenders during the performance of their activities;
- 6) Investigation criteria and techniques to determine whether a criminal act is related to the activity performed by the human rights defender;
- 7) Techniques for investigating the existence and operation of complex criminal structures in the area where defenders are working, as well as context analysis of other power groups outside the public sector.

- 8) Techniques for investigating masterminds and perpetrators;
- 9) A gender and intercultural perspective in the investigation of the crimes involved, eliminating stereotyping and stigmatization;
- 10) The right of the victims' intervenors; that is, the right of the victims to take part in the investigations and to be duly informed of any progress, obstacles and results, as recognized in article 20 of the Constitution of the United Mexican States; and
- 11) The obligation of all the authorities responsible for ensuring and imparting justice to avoid stigmatizing and stereotyping the work of the defense of human rights, respecting the honor and dignity of all those who defend fundamental rights.

174. Additionally, they asked: (i) that the Court require the State to create a special prosecution service to investigate crimes against human rights defenders, in both Mexico City and at the federal level, and also to create a mechanism for the protection of victims, witnesses and other procedural subjects in Mexico City and at the federal level. Furthermore, they asked that the State: (ii) organize a permanent campaign to recognize the work of human rights defenders and their contribution to democracy in Mexico; (iii) make the necessary administrative and legal amendments to ensure that the forensic services are independent from the state and federal prosecution services, and (iv) guarantee, by law, that expert evidence provided by the victims is incorporated into the investigation without the need for the validation or authorization of the Public Prosecution Service.

175. In its brief with final arguments, and as a result of its partial acknowledgement of responsibility, the **State** undertook to: (i) create an award for services in defense of human rights named after Digna Ochoa y Plácido, and (ii) organize a campaign to recognize the work of human rights defenders. It also indicated that it undertook to: (iii) arrange to change the name of a street in the city of Misantla, state of Veracruz, and also a street in Mexico City, to that of "Digna Ochoa y Plácido." In addition, it indicated that, (iv) "to follow up on the efforts made by the Mexican State to reinforce the protection mechanism for human rights defenders and journalists, it would take up the proposals and recommendations made by the representatives' experts and also the recommendations made by the OHCHR in 2019." Lastly, it added that it also agreed: (v) that the Mexican State would expedite the presentation of an initiative to create a "protection mechanism for witnesses who intervene in criminal proceedings, which would include the relevant international standards and parameters, such as individual risk analysis at a specific time, as well as the description of the protection mechanisms that could be granted to beneficiaries."

176. Subsequently, in a brief of June 7, 2021, the State clarified the scope of the said measures of reparation and indicated that the aforementioned award would be given to "human rights defenders in Mexico who have performed outstanding work in the defense, promotion, protection and guarantee of fundamental rights." It also indicated that it would "adopt the pertinent measures to reinforce the SEGOB protection mechanism for human rights defenders and journalists, taking up the proposals and recommendations made by the representatives' expert witnesses before the Court, Erika Guevara Rosas and Michel Forst." It added that it would (vi) elaborate, present and expedite, through the Office of the Legal Counsel of the Federal Executive Branch, a proposed constitutional amendment to provide autonomy and independence to the Forensic Services, as specialized and impartial organs, with their own legal personality and budget; they would also enjoy full technical and administrative autonomy, as well as the capacity to decide on how to allocate their budget and on their internal organization." Regarding the creation of a witness protection mechanism, it indicated that it would elaborate, present and expedite, through the Office of the Legal Counsel of the Federal Executive Branch, a proposal to amend the "Federal Law for the protection of persons who intervene in criminal proceedings" so that it would "include the relevant international standards and parameters for the

creation and effective operation of a witness protection mechanism.” On June 11, 2021, the representatives forwarded their observations on the State’s brief of June 7, and confirmed that these six measures corresponded to the agreements reached by the parties. They also noted that the Court should order other measures of reparation such as the creation of an official protocol and a special prosecution service for the investigation of crimes committed against human rights defenders with due diligence and a gender perspective.

177. In the instant case, the Court appreciates the guarantees of non-repetition proposed by the State, with which the representatives have indicated their conformity. In particular considering, as already indicated *supra* (paras. 46 to 48), that the figures for the deaths of, and attacks against, human rights defenders in Mexico continue to be alarming. Consequently, based on the agreements reached by the parties, the Court orders that the State:

- 1) Establish an annual award for the defense of human rights named after the lawyer Digna Ochoa y Plácido, to be granted annually to human rights defenders in Mexico whose work in the defense, promotion, protection and guarantee of the fundamental rights has been outstanding. The State has one year as of notification of this judgment to comply with this obligation. Every year, the State must send the Court a detailed report on this award for five years following the establishment of the award and the first report to the Court.
- 2) Design a campaign to recognize the work of human rights defenders, and implement this within six months at the most; the campaign should continue for one year and should be designed in collaboration with the victims and their representatives.
- 3) Name a street in the city of Misantla, state of Veracruz, and also a street in Mexico City, “Digna Ochoa y Plácido.” The State has two years as of notification of this judgment to comply with this obligation.
- 4) Within two years, draw up a plan to reinforce the “Protection Mechanisms for human rights defenders and journalists” with a specific timetable, taking up the proposals and recommendations made by the expert witnesses before the Court, Erika Guevara Rosas and Michel Forst, and also the recommendations made by the Office in Mexico of the United Nations High Commissioner for Human Rights in 2019.²³⁵ This plan must include the allocation of the necessary resources for it to fulfill its mandate in national territory, and establish annual timeframes for the presentation of reports.²³⁶
- 5) Establish and implement a “protection mechanism for witnesses who intervene in criminal proceedings,” which would include the relevant international standards and parameters, such as individual risk analysis at a specific time, as well as a description of the protection mechanisms that could be granted to beneficiaries. The State has one year as of notification of this judgment to comply with this obligation.
- 6) Elaborate, present and expedite, through the Office of the Legal Counsel of the Federal Executive Branch, a proposed constitutional amendment to provide autonomy and independence to the Forensic Services, as specialized and impartial bodies, with their own legal personality and budget; they would also enjoy full technical and administrative autonomy, as well as the capacity to decide

²³⁵ Cf. Office in Mexico of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre el funcionamiento del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*, July 2019, Available at: https://hchr.org.mx/wp/wp-content/themes/hchr/images/doc_pub/190725-Diagnostico-Mecanismo-FINAL.pdf

²³⁶ Cf. *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of November 28, 2018. Series C No. 371, para. 360.

on how to allocate their budget and on their internal organization. The State has two years as of notification of this judgment to comply with this obligation.

- 7) Elaborate, present and expedite, through the Office of the Legal Counsel of the Federal Executive Branch, a proposal to amend the "Federal Law for the protection of persons who intervene in criminal proceedings" so that it would "include the relevant international standards and parameters for the creation and effective operation of a witness protection mechanism." The State has one year as of notification of this judgment to comply with this obligation.

178. In addition, the Court orders the State to adopt and implement, at the federal level, within two years at the most, a specific protocol for investigating attacks against human rights defenders, which takes into account the risks inherent in their work,²³⁷ and that requires a full examination of the possibility that the attack was motivated by or linked to the victim's promotion of human rights,²³⁸ and with a gender and ethnic perspective.²³⁹ The protocol must include:

- 1) The concept of human rights defender;
- 2) The standards for the development of instruments to ensure that investigations are conducted with due diligence, including the best international standards and practices for due diligence according to the type of crime (for example, extrajudicial executions, murders, torture and threats);
- 3) The risks inherent in the work of the defense of human rights in Mexico;
- 4) The context in which human rights defenders perform their task and the interests they run up against in the country;
- 5) The existence of patterns of threats of all types used to frighten, threaten, intimidate or attack human rights defenders during the performance of their activities;
- 6) Investigation criteria and techniques to determine whether a criminal act is related to the activity performed by the human rights defender;
- 7) Techniques for investigating the existence and operation of complex criminal structures in the area where defenders are working, as well as context analysis of other power groups outside the public sector.
- 8) Techniques for investigating masterminds and perpetrators;
- 9) The gender and ethnic perspective in the investigation of the crimes involved, eliminating stereotyping and stigmatization.

²³⁷ Cf. Office in Mexico of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre el funcionamiento del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*, July 2019, p. 274. See also, Expert opinion of Michel Forst.

²³⁸ Cf. Human Rights Council. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*. A/HRC/26/36/Add.1. April 28, 2014, para. 114.

²³⁹ Cf. Office in Mexico of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre el funcionamiento del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*, July 2019, p. 272. See also, Expert opinion of Erika Guevara.

179. In addition, the State must offer a training program on the said protocol for investigation personnel, and create a system of indicators that permit measuring the effectiveness of the protocol and demonstrate, in a disaggregated way and by gender, the substantive reduction in impunity in relation to crimes involving human rights defenders. The State has two years as of the adoption of the said protocol to comply with this obligation. Once it has been adopted, the State must forward a detailed annual report on the training program and on the system of indicators for five years following submission of its first report to the Court.

180. Regarding the other measures requested by the representatives, the Court does not find it appropriate to order them, because the delivery of this judgment and the reparations ordered herein are sufficient and adequate to redress the violations suffered by the victims in this case.

F. Compensation

181. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.²⁴⁰ Regarding non-pecuniary damage, the Court has established that this may include both the suffering and afflictions caused to the direct victims and their families, and also the impairment of values of great significant to the individual, as well as alterations of a non-pecuniary nature in the living conditions of the victims or their families.²⁴¹

182. The Commission asked, in general, that the State make full pecuniary and non-pecuniary reparation for the human rights violations declared in its report, stipulating that the State “must adopt measures to provide financial compensation and satisfaction.”

183. On June 7, 2021, the State forwarded a brief to the Court in which it specified the scope of the measures of reparation offered based on the partial acknowledgement of responsibility, and indicated that it had reached agreement with the representatives on the amounts to be paid as compensation for pecuniary and non-pecuniary damage. On June 11, 2021, the representatives sent their observations on the State’s brief of June 7, and confirmed that the compensation amounts indicated corresponded to the agreement reached by the parties.

184. Consequently, based on the agreement adopted by the parties, the Court orders the following compensation to be paid for pecuniary and non-pecuniary damage:

BENEFICIARY	PECUNIARY DAMAGE	NON-PECUNIARY DAMAGE	TOTAL
Digna Ochoa y Plácido			US\$ 50,000
Eusebio Ochoa López (father)	US\$ 15,000	US\$ 30,000	US\$ 45,000
Alicia Plácido Evangelista (mother)	US\$ 15,000	US\$ 30,000	US\$ 45,000

²⁴⁰ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Manuela et al. v. El Salvador, supra*, para. 303.

²⁴¹ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, supra*, para. 84, and *Case of Manuela et al. v. El Salvador, supra*, para. 307.

Jesús Ochoa y Plácido (brother)	US\$ 35,000	US\$ 10,000	US\$ 45,000
Agustín Ochoa y Plácido (brother)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Carmen Ochoa y Plácido (sister)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Elia Ochoa y Plácido (sister)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Estela Ochoa y Plácido (sister)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Eusebio Ochoa y Plácido (brother)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Guadalupe Ochoa y Plácido (sister)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Ignacio Ochoa y Plácido (brother)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Ismael Ochoa y Plácido (brother)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Juan Carlos Ochoa y Plácido (brother)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Luz María Ochoa y Plácido (sister)	US\$ 10,000	US\$ 10,000	US\$ 20,000
Roberto Ochoa y Plácido (brother)	US\$ 10,000	US\$ 10,000	US\$ 20,000

185. The sum corresponding to Digna Ochoa y Plácido must be delivered, in equal parts, to Eusebio Ochoa López (father) and Alicia Plácido Evangelista (mother).

H. Costs and expenses

186. The ***representatives*** requested payment of the following expenses:

a) Expenses of the Ochoa y Plácido family

187. According to the representatives, the Ochoa y Plácido family have played an active role in the investigation into the murder of Digna Ochoa y Plácido from the outset. As a result of their participation, they have incurred “expenses corresponding to the payment of legal fees up until 2008, photocopies of the case file, national and international travel expenses, and the payment of independent experts.” They therefore asked that the family be awarded the sum of US\$ 83,167.55.

b) Expenses of the Grupo de Acción por los Derechos Humanos y Justicia Social (Acción_dh)

188. According to the representatives, members of Acción_dh have represented the victims in the national and international proceedings since 2009. In this regard, it had incurred “expenses corresponding to travel, interviews with the victims, and the necessary legal work, including research, compilation and presentation of evidence, interviews, and preparation of briefs.” On this basis, they asked for the sum of US\$ 20,000.

c) *Expenses of the Center for Justice and International Law (CEJIL)*

189. The representatives indicated that CEJIL had represented the victims in the international proceedings since 1999. In this regard, it had incurred expenses corresponding to “travel and legal work specifically for the case, including research, compilation and presentation of evidence, interviews, and the preparation of briefs.” On this basis, they asked for the sum of US\$ 35,577.47.

d) *Future expenses*

190. The representatives asked that, at the corresponding procedural stage, they be granted “the opportunity to present updated figures and vouchers for the expenses they would incur during the international contentious proceedings for everything not covered by the Victims’ Legal Assistance Fund, if access to the Fund is granted.” They also asked that the judgment delivered in this case establish an amount for expenses at the stage of monitoring compliance.

191. The Mexican **State** indicated that the claim was “excessive,” especially “because, based on the discussions held to establish the compensation criteria, adjustments were made to cover the expenses incurred over the years in the search for justice.” It also indicated that the future expenses that the representatives referred to at the stage of monitoring compliance “did not correspond to the rationale of the concepts on which the Court should rule.”

192. The Court reiterates that, according to its case law,²⁴² costs and expenses form part of the concept of reparations, because the efforts made by the victims to obtain justice, at both the national and the international level, entail disbursements that must be compensated when the international responsibility of the State has been declared in a judgment. With regard to the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes the expenses incurred before the authorities of the internal 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 principle of equity and taking into account the expenses indicated by the parties, provided the *quantum* is reasonable.²⁴³

193. Taking into account: (i) that the compensation for pecuniary and non-pecuniary damage in favor of the Ochoa y Plácido family was established in the preceding section (*supra* para. 184), and also (ii) the amounts requested by each of the organizations and the expense vouchers presented, the Court decides to establish, in equity, the payment of a total of US\$ 20,000.00 (twenty thousand United States dollars) for costs and expenses in favor of Acción_dh, and a total of US\$30,000.00 (thirty thousand United States dollars) for costs and expenses in favor of CEJIL. These amounts must be delivered directly to the said organizations. At the stage of monitoring compliance with this judgment, the Court may establish that the State reimburse the victims or their representatives any reasonable expenses they incur at that procedural stage.²⁴⁴

²⁴² Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Manuela et al. v. El Salvador, supra*, para. 317.

²⁴³ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, para. 82, and *Case of Manuela et al. v. El Salvador, supra*, para. 317.

²⁴⁴ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra*, para. 29, and *Case of Manuela et al. v. El Salvador, supra*, para. 319.

I. Reimbursement of expenses to the Victims' Legal Assistance Fund of the Inter-American Court

194. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the Inter-American Human Rights System "to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."²⁴⁵

195. In a note of the Court's Secretariat of October 15, 2021, a report was sent to the State on the disbursements made in application of the Victims' Legal Assistance Fund in this case. These amounted to US\$ 715.15 (seven hundred and fifteen United States dollars and fifteen cents) and, as established in article 5 of the Court's Rules for the Operation of this Fund, the Mexican State was granted a time frame for presenting any comments that it deemed pertinent. The State did not present any comments.

196. In light of Article 5 of the Rules of the Fund, based on the violations declared in this judgment and that the requirements for access to the Fund were met, the Court orders the State to reimburse this Fund the sum of US\$ 715.15 (seven hundred and fifteen United States dollars and fifteen cents) for the necessary expenses that were funded. This amount must be reimbursed within six months of notification of the judgment.

J. Method of complying with the payments ordered

197. 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 and organizations indicated herein, within one year of notification of this judgment, without prejudice to making the complete payment before that, in accordance with the following paragraphs.

198. If any of the beneficiaries are deceased or have died before they receive the respective amount, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

199. The State shall comply with the monetary obligations by payment in United States dollars or the equivalent in national currency, using the market exchange rate published or calculated by a pertinent financial or banking authority on the date nearest to the day of payment.

200. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit the amounts in their favor in a deposit certificate or account in a solvent Mexican financial institution, in United States dollars, and in the most favorable financial conditions permitting by banking law and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

201. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses must be delivered to the persons and organizations indicated in full, as established in this judgment, without any deductions resulting from possible taxes or charges.

²⁴⁵ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the XXXVIII General Assembly of the OAS, at the fourth plenary session held on June 3, 2008, "*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*", operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*," article 1(1).

202. If the State should incur in arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the United Mexican States.

X
OPERATIVE PARAGRAPHS

203. Therefore,

THE COURT

Unanimously,

DECIDES,

1. To accept the partial acknowledgement of international responsibility made by the State, pursuant to paragraphs 19 to 25 of this judgment.
2. To reject the preliminary objection of the Court's lack of jurisdiction *ratione materiae*, pursuant to paragraphs 33 and 34 of this judgment.
3. To reject the preliminary objection of "fourth instance," pursuant to paragraph 38 of this judgment.

DECLARES,

Unanimously, that:

4. The State is responsible for the violation of Articles 8, 11 and 25 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument and Article 7(b) of the Convention of Belém Do Pará, as well as the right to know the truth of the facts, to the detriment of Irene Alicia Plácido Evangelista, Eusebio Ochoa López, and also the siblings Agustín, Carmen, Elia, Estela, Eusebio, Guadalupe, Ignacio, Ismael, Jesús, Juan Carlos, Luz María and Roberto Ochoa y Plácido, pursuant to paragraphs 102 to 136, 148 and 149 of this judgment.
5. The State is responsible for the violation of Article 11 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Digna Ochoa y Plácido, pursuant to paragraphs 137 to 140, 148 and 149 of this judgment.
6. The State is responsible for the violation of Article 4(1) of the American Convention on Human Rights, in relation to Articles 1(1), 8 and 25 of this instrument, to the detriment of Digna Ochoa y Plácido, pursuant to paragraphs 141 to 149 of this judgment.
7. The State is responsible for the violation of Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Irene Alicia Plácido Evangelista, Eusebio Ochoa López, and also the siblings Agustín, Carmen, Elia, Estela, Eusebio, Guadalupe, Ignacio, Ismael, Jesús, Juan Carlos, Luz María and Roberto Ochoa y Plácido, pursuant to paragraphs 19 and 21 of this judgment.

AND ESTABLISHES:

Unanimously, que:

8. This judgment constitutes, *per se*, a form of reparation.
9. The State shall, within a reasonable time, facilitate and continue all necessary investigations to determine the circumstances of the death of the Digna Ochoa and, as appropriate, prosecute and eventually punish the person or persons responsible for her death, pursuant to paragraph 159 of this judgment.
10. The State shall provide the medical and/or psychological, psychiatric or psychosocial treatment that the victims require, as established in paragraph 163 of this judgment.
11. The State shall make the publications indicated in paragraph 167 of this judgment.
12. The State shall hold a public act to acknowledge international responsibility, pursuant to paragraph 170 of this judgment.
13. The State shall establish an annual award for the defense of human rights named after "Digna Ochoa y Plácido," pursuant to paragraph 177.1 of this judgment.
14. The State shall design and implement a campaign to recognize the work of human rights defenders, pursuant to paragraph 177.2 of this judgment.
15. The State shall name a street in the city of Misantla, state of Veracruz, and also a street in Mexico City, "Digna Ochoa y Plácido," pursuant to paragraph 177.3 of this judgment.
16. The State shall draw up a plan to reinforce the "Mechanism for the protection of human rights defenders and journalists," with the corresponding timetable, pursuant to paragraph 177.4 of this judgment.
17. The State shall create and implement a "protection mechanism for witnesses who intervene in criminal proceedings," pursuant to paragraph 177.5 of this judgment.
18. The State shall elaborate, present and promote a proposed constitutional amendment to grant the Forensic Services autonomy and independence, pursuant to paragraph 177.6 of this judgment.
19. The State shall elaborate, present and promote a proposal to amend the "Federal law for the protection of persons who intervene in criminal proceedings" to "include the relevant international parameters and standards for the creation and effective operation of a witness protection mechanism," pursuant to paragraph 177.7 of this judgment.
20. The State shall create and implement at the federal level a specific protocol for the investigation of attacks on human rights defenders, pursuant to paragraph 178 of this judgment.
21. The State shall provide a training program for investigation personnel on the protocol mentioned in the preceding operative paragraph, and also create a system of indicators that permit the protocol's effectiveness to be measured, pursuant to paragraph 179 of this judgment.
22. The State shall pay the amounts established in paragraphs 184 and 193 of this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses,

pursuant to paragraphs 185 and 197 to 202 of this judgment.

23. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraph 196 of this judgment.

24. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it.

25. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on November 25, 2021, in the Spanish language.

IACtHR. *Case of Digna Ochoa and family members v. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 25, 2021. Judgment adopted at San José, Costa Rica, in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary