

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF VELIZ FRANCO *ET AL.* v. GUATEMALA**

**JUDGMENT OF MAY 19, 2014**

***(Preliminary objections, merits, reparations and costs)***

In the case of *Veliz Franco et al.*,

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

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

also present,

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

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

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

1. *The case submitted to the Court.* On May 3, 2012, in accordance with the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court (hereinafter "submission brief") the case of *Veliz Franco et al. v. the Republic of Guatemala* (hereinafter also "the State" or "Guatemala"). According to the Commission, this case concerns the absence of an effective response by the State to the complaint filed on December 17, 2001, by Rosa Elvira Franco Sandoval (hereinafter also "Rosa Elvira Franco" or "Mrs. Franco Sandoval" or "Mrs. Franco") before the Public Prosecution Service reporting the disappearance of her 15-year old daughter, María Isabel Veliz Franco (hereinafter also "María Isabel Veliz" or "María Isabel" or "the child" or "the presumed victim"), as well as the subsequent irregularities in the investigation of the facts. In the said complaint, Mrs. Franco Sandoval stated that, on December 16, 2001, her daughter left their home at 8 a.m. to go to work and never returned. The Commission observed that there is no record that any effort was made to find the victim between the time the complaint was filed, and the time the body was found at 2 p.m. on December 18, 2001. It also indicated that a series of irregularities occurred during the investigation into the disappearance and subsequent death<sup>1</sup> of María Isabel Veliz Franco, in particular the failure to take immediate steps when she was reported missing, as well as errors in the preservation of the crime scene and the handling and analysis of the evidence collected.

2. *Proceedings before the Commission.* The proceedings before the Commission were as follows:

a. *Petition.* On January 26, 2004, the Commission received the petition lodged by Mrs. Franco Sandoval, the Center for Justice and International Law (hereinafter "CEJIL") and the *Red de No Violencia contra las Mujeres en Guatemala* (hereinafter "REDNOVI").

b. *Admissibility Report.* On October 21, 2006, the Commission approved Admissibility Report No. 92/06<sup>2</sup> (hereinafter also "the Admissibility Report").

c. *Merits Report.* On November 3, 2011, the Commission approved Merits Report No. 170/11 (hereinafter also "the Merits Report") under Article 50 of the Convention, in which it reached a series of conclusions and made several recommendations to the State.

i. *Conclusions.* The Commission concluded that, to the detriment of María Isabel Veliz Franco, the State was responsible for:

Violations of the rights to life and to personal integrity, and the rights of the child, recognized in Articles 4, 5, and 19 of the American Convention, all in relation to Article 1(1) thereof. It also conclude[d] that the State had violated the rights of María Isabel Veliz Franco under Article 7 of the Convention of Belém do Pará, in relation to Article 24 of the American Convention, as

<sup>1</sup> When referring to the act perpetrated against María Isabel in the brief submitting the case and in the Merits Report, the Commission used the terms "death," "homicide" and "murder" indistinctly. Specifically, in the section on Recommendations of the Merits Report, the Commission recommended to the State that it "clarify the murder of María Isabel Veliz Franco." Cf. Brief submitting the case of May 3, 2012 (file of preliminary objections, merits, reparations and costs, fs. 2 to 6), and Merits Report No. 170/11, Case 12,578, María Isabel Veliz Franco *et al.*, Guatemala, November 3, 2011 (file of preliminary objections, merits, reparations and costs, fs. 7 to 51).

<sup>2</sup> In which it admitted the complaint for the presumed violation of the rights recognized in Articles 4, 8(1), 11, 19, 24 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of María Isabel Veliz Franco, as well as the obligation established in Article 7 of the Convention of Belém do Pará. In addition, it concluded that the petition was admissible in relation to Articles 5(1), 8(1), 11 and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rosa Elvira Franco Sandoval. It declared the petition inadmissible with regard to the rights recognized in Articles 5 and 7 of the American Convention, in the case of María Isabel. Cf. No. 92/06, Petition 95-04, María Isabel Veliz Franco, Guatemala, October 21, 2006 (file before the Commission, fs. 804 to 818).

required by the general obligation to respect and ensure rights established in Article 1(1) of the American Convention

The Commission also concluded that the State had:

Violated the right to personal integrity recognized in Article 5(1) of the Convention, in relation to the obligation established in Article 1(1) thereof, to the detriment of Rosa Elvira Franco Sandoval de Veliz (mother), Leonel Enrique Veliz Franco (brother), José Roberto Franco (brother), Cruz Elvira Sandoval Polanco de Franco (grandmother, deceased) and Roberto Franco Pérez (grandfather, deceased), as well as the right to judicial guarantees and protection recognized in Articles 8(1) and 25 of the American Convention, in relation to Article 24 of this instrument, and in relation to the obligation imposed on the State in Article 1(1).

ii. *Recommendations.*

1. Complete a timely, immediate, serious and impartial investigation to clarify the murder of María Isabel Veliz Franco and to identify, prosecute and, as appropriate, punish those responsible.
2. Make full reparations to the next of kin of María Isabel Veliz Franco for the human rights violations [...] established.
3. As a measure of non-repetition, introduce a comprehensive and coordinated State policy, supported by sufficient public funds, to ensure that the specific cases of violence against women are properly prevented, investigated, prosecuted and redressed.
4. Introduce reforms in the State's educational programs, starting in the early, formative years, so as to promote respect for women as equals and observance of their rights to non-violence and non-discrimination.
5. Investigate the irregularities committed by agents of the State in their investigation of the case and punish those responsible.
6. Enhance the institutional capacity to combat impunity in cases of violence against women, through effective criminal investigations conducted from a gender perspective and that have constant judicial oversight, thereby ensuring proper punishment and redress.
7. Take measures and launch campaigns designed to make the general public aware of the duty to respect and ensure the human rights of children.
8. Adopt comprehensive public policies and institutional programs designed to eliminate discriminatory stereotypes about a woman's role and to promote the eradication of discriminatory socio-cultural patterns that prevent women's full access to justice; this should include training programs for public officials in all sectors of government, including education, the various sectors involved in the administration of justice, and the police, as well as comprehensive policies on prevention

3. *Notification of the State.* The Merits Report was notified to the State on January 3, 2012, and the State was given two months to provide information on compliance with the recommendations. On March 13, 2012, Guatemala presented a report on progress with compliance and requested a one-month extension. The Commission granted this extension, requiring the State to present its report by March 25, 2012. The State did not submit its report by the said date. On May 2, 2012, the petitioners informed the Commission that, on March 30, 2012, the State had proposed a friendly settlement agreement to Mrs. Franco Sandoval. On April 19, 2012, the petitioners had responded to the State that "in view of the considerably delay in obtaining justice, [...] they did not consider it appropriate to sign an agreement on compliance with recommendations." Subsequently, in response to the Merits Report, the State presented information on the investigation and on general public policies. Finally, the Commission concluded that the State had not presented information expressly related to the recommendations.

4. *Submission to the Court.* On May 3, 2012, the Commission submitted all the facts and human rights violations described in the Merits Report to the Court's jurisdiction. The Commission appointed Commissioner Dinah Shelton and its Executive Secretary at the time, Santiago A. Canton, as its delegates before the Court. It also indicated that Elizabeth Abi-Mershed, Deputy Executive Secretary, Isabel Madariaga and Fiorella Melzi, would act as legal advisers, as well as the then legal adviser, Karla I. Quintana Osuna.

5. *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 violation of:

(a) Article 4 of the Convention; (b) Article 5 of the Convention; (c) Article 19 of the Convention, and (d) Article 24 of the Convention and Article 7 of the Convention of Belém do Pará, all in relation to Article 1(1) of the Convention, to the detriment of María Isabel Veliz Franco. It also asked that the Court declare the violation of: (a) Article 5(1) of the Convention; (b) Article 8 of the Convention, and (c) Article 25 of the Convention, in relation to Articles 24 and 1(1) of this instrument, to the detriment of María Isabel's mother, brothers and grandparents. Lastly, it asked the Court to order different measures of reparation.

## II PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and the representatives.* The submission of the case was notified to the State and to the representatives of the presumed victims by a communication of July 3, 2012.<sup>3</sup>

7. *Brief with motions, arguments and evidence.* On September 4, 2012, CEJIL and REDNOVI submitted<sup>4</sup> their brief with motions, arguments and evidence (hereinafter "motions and arguments brief") to the Court, in accordance with Article 40 of the Court's Rules of Procedure. They stated that, basically, they endorsed the Commission's presentation of the facts, and indicated that they would describe the context in which these facts occurred in greater detail. They added that the State had failed to comply with its obligation of prevention under Article 7 (Right to Personal Liberty), and alleged non-compliance with Article 2 (Domestic Legal Effects) of the Convention. They did not allege the violation of Article 24 (Equal Protection). In addition, they asked the Court to order different measures of reparation. Lastly, the mother and brothers of María Isabel requested access to the Victims' Legal Assistance Fund of the Court (hereinafter also "the Victims' Legal Assistance Fund" or "the Fund"). Subsequently, on March 8, 2013, the representatives advised the Court that only REDNOVI would act as the representative (hereinafter also "the representative").

8. *Answering brief.* On December 18, 2012,<sup>5</sup> the State presented its brief filing a preliminary objection, answering the submission of the case and with observations on the motions and arguments brief (hereinafter "answering brief"). In this brief, it filed "the preliminary objection of failure to exhaust domestic remedies," denied each of the alleged violations presented by the Commission and the representative, and asked the Court to rule that the State was not internationally responsible. Furthermore, the State made a "preliminary analysis of competence," in which it indicated that "it did not recognize the competence of the Inter-American Court to examine the supposed violation of Article 7 of the Convention of Belém do Pará." It also raised a question concerning the determination of the "victims" in the Commission's Merits Report in its "[I]legal analysis of the supposed violations that had been alleged." Lastly, the State rejected the measures of reparation that had been requested. The State appointed Rodrigo Villagrán Sandoval as Agent,<sup>6</sup> and Ema Estela Hernández Tuy de Iboy as Deputy Agent.

<sup>3</sup> The Commission's submission brief and annexes were forwarded to the parties by courier. The representatives received them on July 4, 2012, and the State received them on July 11, 2012.

<sup>4</sup> On that date, CEJIL, represented by Viviana Krsticevic, Alejandra Nuño, Marcela Martino and Adeline Neau, and REDNOVI, represented by Giovana Lemus and Sonia Acabal, were the representatives of the presumed victims.

<sup>5</sup> On October 2, 2012, the Court sent the State by courier the brief with motions, arguments and evidence, together with its annexes and a USB device and two compact discs with the documents presented by the representatives, granting the State two months, non-extendible, to present its answer. On October 17, 2012, the State advised the Court that the USB device had not been received. On October 18, 2012, the Court again sent the State a compact disc with the missing documentation contained on the USB, and granted the State a new time frame to present its answer calculated from the date of reception of this compact disc.

<sup>6</sup> On March 15, 2013, the State advised that it had appointed Rodrigo Villagrán Sandoval as the State's Agent, in substitution of María Elena de Jesús Rodríguez López.

9. *Access to the Legal Assistance Fund.* In an Order of the President<sup>7</sup> of the Court (hereinafter "the President") of January 8, 2013, the request submitted by the presumed victims, through their representatives (*supra* para. 7), for access to the Court's Assistance Fund was declared admissible.

10. *Observations on the preliminary objections.* On February 21 and 22, 2013, the representative and the Commission, respectively, presented their observations on the preliminary objection presented.

11. *Summons to a public hearing.* By an order of April 10, 2013, the President convened the parties to a public hearing, which took place on May 15, 2013, during the ninety-ninth regular session of the Court, held at its seat,<sup>8</sup> and ordered the reception of diverse statements in this case.

12. *Amici curiae.* On May 30, 2013, the Court received two *amicus curiae* briefs: (a) one submitted by Sorina Macricini, Cristian González Chacó and Bruno Rodríguez Reveggió, of *Notre Dame Law School*, of which section VIII and the following parts were in English. The Court received the corresponding translation on June 10, 2013, and (b) one submitted by Christine M. Venter, Ana-Paolo Calpado and Daniella Palmiotto, of *Notre Dame Law School*, in English.

13. *Final written arguments and observations.* The representative forwarded its final written arguments on June 15, 2013, and the State on June 15 and 18, 2013. In addition, at that time, the State responded to the questions posed by the judges during the public hearing and the representative referred, in general, to the context. On June 15 also, the Commission transmitted its final written arguments. On June 18, 2013, the State advised that, "owing to a clerical error in the numbering and citations of the footnotes," it had amended its brief with final arguments, which it had first uploaded to the "Dropbox" internet site, and therefore asked the Court to verify that the new document appeared on that site. On June 19, 2013, in a communication of the Secretariat of the Court (hereinafter "the Secretariat"), the State was informed that the President would be advised for the pertinent effects, and advised "that once a document has been presented to the Court it cannot continue to be amended." On June 20, 2013, the State advised that both versions of the final written arguments were available on the internet site that had been provided so that the Court could compare the two briefs, and repeated that a clerical error had been made. The briefs with arguments and observations were forwarded to the parties and to the Inter-American Commission on July 2, 2013, and the President granted them until July 15, 2013, at the latest, to submit any observations they deemed pertinent on the annexes to the said briefs. In this case, the Court admits the second brief with final arguments uploaded to the "Dropbox" internet site, because the changes made are of a clerical nature relating to the numbering of the footnotes, and will take this into consideration for the effects of this Judgment.

14. *Observations on the annexes attached to the final arguments.* On July 15, 2013, both the Commission and the representative presented their observations on the annexes submitted by the State together with the final written arguments; however, they also made other observations. In a communication of the Secretariat of July 17, 2013, on the instructions of the President, the representative and the Commission were advised that, in the case of aspects that exceeded the observations on the documents annexed to the State's arguments, the pertinence of considering them would be decided by the Court at the appropriate procedural opportunity. In addition, on July 15, 2013, the State presented,

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<sup>7</sup> Judge Diego García-Sayán's mandate as President ended on December 31, 2013.

<sup>8</sup> There appeared at this hearing: (a) for the Inter-American Commission: Dinah Shelton, Commissioner, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, legal adviser; (b) for the representative of the presumed victims: Giovana Lemus Pérez, Pamela González Ruiz and Sonia Acabal Del Cid of REDNOVI, and (c) for the State: Rodrigo Villagrán Sandoval and Irini Villavicencio Papahiu.



through the “Dropbox” site, a brief in which it made general observations on the final written arguments of the representative and on the final written observations of the Commission. In the said communication of the Secretariat of July 17, 2013, the State was advised that the respective time frame did not represent “a new opportunity to present allegations or arguments.” It was pointed out that the observations presented by the State had not been requested by the Court or its President, and were not contemplated in the Court’s Rules of Procedure, and the State was advised that “their admissibility w[ould] be decided by the Court at the appropriate procedural opportunity.” In this regard, the Court does not admit those other considerations of the parties and the Commission that were presented together with the observations on the documents provided with the final written arguments because they refer to other matters.

15. *Objections to the amici curiae.* On June 15 and July 23, 2013, the State submitted various arguments to contest the *amici curiae* that had been presented, considering that “they do not comply with the purpose of this type of brief that the Court has accepted previously.” The basis for its arguments was that “the authors have no knowledge of the case and in their desire to categorize the facts of this case as violence against women, they do not contribute any new element that would be helpful to the Court when delivering judgment” and “they have no legitimacy, *locus standi*, to submit briefs.”

16. *Disbursements in application of the Assistance Fund.* On August 28, 2013, the Secretariat, on the instructions of the President, forwarded information to the State on the disbursements made in application of the Victims’ Legal Assistance Fund in this case and, as established in article 5 of the Rules of the Court for the Operation of this Fund, accorded it a time frame to present any observations it deemed pertinent. On September 30, 2013, the State forwarded its observations on the report on the disbursements made in application of the Assistance Fund.

### III PRELIMINARY CONSIDERATIONS

#### A. The State’s acknowledgement of the facts in the proceedings before the Commission

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

17. During the public hearing held before the Inter-American Commission on March 20, 2009,<sup>9</sup> the State “acknowledge[d ...] several irregularities and flaws in the investigation procedure corresponding to structural problems of the Guatemalan State.” On that occasion, Guatemala stated that:

At the time of the facts in 2001, [...] there were no guidelines for the investigation and prosecution of crimes; [these] were established by the Public Prosecution Service in February 2006. [...] Irrespective of the reasons why the pertinent tests and the autopsy were not performed, or not performed correctly in keeping with international standards, [...] the guidelines established in 2006 are the ones that are providing guidance for the investigation procedures and the hypotheses that the Public Prosecution Service is using now.

18. During this hearing, the State added that in 2001, a “structural situation of impunity and fear prevailed among the people of Guatemala, as well as of an increase in [...] violent deaths.” Furthermore, in a brief of August 12, 2009, presented to the Commission,<sup>10</sup> the State indicated that it had:

<sup>9</sup> Cf. “IACHR. Audio recording of public hearing in Case 12,578, María Isabel Veliz Franco, Guatemala, March 20, 2009” (file of attachments to the Merits Report, tome I, annex 32.4). This annex was provided to the Court in an audio recording of the said hearing submitted by means of a link to a website: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=En&Session=8>).

<sup>10</sup> The document, Ref. P 1008-09 RDVC/LZ/eh, was transmitted to the Commission under a note dated August 21, 2009, received on August 24 (file before the Commission, tome III, fs. 2105 and 2106). The State’s

Acknowledged responsibility for the lack of due diligence in the investigation into the death of María Isabel Veliz Franco, owing to the failure to perform any forensic tests on the corpse; due also to the delay in the investigation as a result of a dispute over territorial jurisdiction and because an effective precautionary measure was not ordered to ensure the presence of [a person identified as] suspected of committing the murder.

19. During the proceedings before the Court, the State affirmed that, during the processing of the case before the Commission, it had “acknowledged its responsibility” for three “circumstances.” First, “for failing to perform some forensic tests on the corpse”<sup>11</sup>; “second, [...] owing to the delay in the investigation as a result of a dispute over territorial jurisdiction,” and “third, [...] because it had not ordered an effective precautionary measure to ensure the presence of [a person] suspected of committing the murder.” Regarding the first element, it explained that, at the time of the facts, “the tests carried out on corpses” were performed in accordance with the “procedures” and the “possibilities of the State at that time.” In relation to the jurisdictional dispute, it indicated that it had “acknowledged its responsibility for the delay that occurred, but only with regard to some of the evidence that required a judge’s authorization.” Nevertheless, it stated that other steps had been taken “while the interlocutory issue was resolved.” Lastly, as regards the third element indicated, it asserted that it had “acknowledged its responsibility, [...] even though there had been no factual evidence to connect [the said person] to the death of María Isabel,” and that “without evidence, no one can be deprived of their liberty.”

20. The Commission and the representative indicated that, during the processing of the case before the Commission, the State had acknowledged its responsibility for shortcomings in the investigation. They stated that this acknowledgement included the delay in the investigation owing to a jurisdictional dispute. The Commission clarified that it also included “the failure to perform some forensic tests on the corpse” and “failing to establish an effective precautionary measure to ensure the presence of a person suspected of committing the murder.”<sup>12</sup> The representative added that the acknowledgement covered “the inexistence in 2001 of guidelines for the investigation and prosecution of crimes,” and

Also, [...] that, [...] at the time the events occurred, domestic law did not contain any specific provisions on gender, or legislation or directives for the removal of the body, the preservation of the crime scene, [and] the collection of evidence and that, to date, there is no legislation specifically designed for the search for disappeared women.

21. Both the Commission and the representative cited the principle of estoppel. In this regard, the Commission affirmed that what the State had indicated before the Commission “had effects in the proceedings before the Court.” Meanwhile, the representative indicated that “Guatemala cannot assume a position [before the Court] that would be contrary to this previous position.”

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

22. The arguments described refer to statements made by Guatemala during the processing of the case before the Commission. In this regard, although the State made these statements during that procedural stage, the Court considers that Guatemala made them in the context of the international processing of a contentious case; hence they have

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brief was forwarded by the Permanent Mission of Guatemala to the Organization of American States, signed by Ambassador Lionel Maza Luna, accompanied by a COPREDEH report signed by Mrs. del Valle Cobar; the fact that a copy was sent to Róger Haroldo Rodas Melgar, Minister for Foreign Affairs at the time, is noted at the foot of the brief.

<sup>11</sup> The State affirmed that this was indicated in the following document: Report dated August 12, 2009, identified as Ref. P 1008-09 RDVC/LZ/eh sent by COPREDEH to the C[ommission] in the context of case 12,578, pp. 2-7.”

<sup>12</sup> The Commission referred to the following document as evidence of this assertion: “Record of Hearing No. 5, Case 12,578, María Isabel Veliz Franco, Guatemala, March 20, 2009.”

implications for the proceedings before the Court and it cannot be considered that their effects are reserved to the internal or administrative sphere.

23. The statements made by the State before the Commission (*supra* paras. 17, 18 and 19) reveal that it did not relate its “responsibility” to the violation of specific norms; nevertheless, it is clear that it has accepted the following as factual elements: (a) “in 2001, [...] there were no guidelines for investigating and prosecuting crimes”; (b) in that year, a structural situation of impunity existed and fear among the population of Guatemala”; (c) in the same year there was an “increase in [...] violent deaths”; (d) during the investigation into what happened to María Isabel Veliz Franco “[certain tests] and the autopsy were not performed, or not performed correctly in keeping with international standards,” and (f) there was a “lack of due diligence in the investigation procedure [...] owing to: (i) the failure to perform some forensic tests on the corpse; (ii) the delay resulting from the dispute on territorial jurisdiction, and [(iii)] because an effective precautionary measure was not ordered to ensure the presence of [a person identified as] suspected of committing the murder.”

24. Consequently, the Court will take into account the pertinent facts accepted by the State when analyzing the preliminary objections filed, and also, as appropriate the substantive elements or those relating to the merits of the alleged human rights violations.

## **B. The factual framework**

25. The Court recalls that the factual framework of the proceedings before the Court is constituted by the facts contained in the Merits Report submitted to its consideration. Consequently, it is not admissible for the parties to allege facts that differ from those contained in the said report, even though they may indicate elements that explain, clarify or reject the facts that are mentioned in this report and have been submitted to the Court's consideration (also called “complementary facts”).<sup>13</sup>

26. Some of the representative's arguments relating to the alleged violation of Article 5 of the Convention refer to the fact that, in her efforts to obtain justice for her daughter, Rosa Elvira Franco “has been exposed to numerous threats and harassment that have caused anguish and distress, not only to her, but also to María Isabel's brothers and grandparents, owing to the possibility that their personal integrity or even their life could be jeopardized [...].” During the proceedings before the Court, the representative indicated that, following María Isabel's murder, Mrs. Franco Sandoval and the members of her family, have been subjected to continuing acts of intimidation and harassment.<sup>14</sup>

27. The Court has verified that the Commission, in its Merits Report, indicated that, on June 27, 2005, Rosa Elvira Franco asked the Commission to grant precautionary measures,

<sup>13</sup> Cf. *Case of “Five Pensioners” v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 27.

<sup>14</sup> In the section on facts of the motions and arguments brief, the representative specifically mentioned acts of intimidation and harassment that Mrs. Franco Sandoval had suffered; namely that, in February 2002, Mrs. Franco Sandoval reported that she had frequently observed suspicious individuals around her home or on her son's path to school; in August 2002, Mrs. Franco Sandoval reported that she was receiving telephone calls in which unknown persons told her that her whole family would die; in September 2004, agents of the Guatemala City Public Prosecution Service verified the presence of armed individuals around Mrs. Franco Sandoval's home, as well as vehicles with polarized windows and without license plates; in April 2006, an individual who had previously been prowling around the house was following Mrs. Franco Sandoval in the street and intimidating her; in August 2007, one of the agents responsible for Mrs. Franco Sandoval's safety was shot while he returned from having lunch near Mrs. Franco Sandoval's workplace; in December 2011, Mrs. Franco Sandoval again observed the man who had followed her in April 2006 accompanied by another unknown person, the two men remained in a car parked almost in front of Mrs. Franco Sandoval's home for some time talking on the telephone and observing the house. Lastly, Leonel Enrique Veliz Franco, María Isabel's brother, stated that, on several occasions, he had been followed by cars and that he “continually s[aw] strange cars in front of [his] house.” Cf. Affidavit prepared by Leonel Enrique Veliz Franco on April 26, 2013 (file of preliminary objections, merits, reparations and costs, fs. 816 to 822).

alleging that the members of her family were the victims of harassment, persecution and threats, and that, on November 16, 2005, it granted precautionary measures in favor of Elvira Franco Sandoval, Leonel Enrique Veliz Franco, José Roberto Franco Sandoval and Cruz Elvira Sandoval Polanco.<sup>15</sup> Nevertheless, the Merits Report reveals that the said indication appeared in a section describing the “proceedings before the C[ommission],” and not as part of the facts considered pertinent in relation to the merits of the matter. Thus, the Court considers that the above-mentioned factual allusions of the representative do not explain, clarify or reject the facts presented by the Inter-American Commission in its Merits Report, but rather introduce new elements that are not part of the factual framework of this case. Consequently, the Court will not take these facts into consideration.

### C. Determination of the presumed victims

28. In the submission brief, the Commission asked the Court to declare the international responsibility of the State for the violation of the rights of María Isabel Veliz Franco; her mother, Rosa Elvira Franco Sandoval; her brothers, Leonel Enrique Veliz Franco and José Roberto Franco, and her now deceased grandparents, Cruz Elvira Sandoval Polanco de Franco and Roberto Franco Pérez. In the Merits Report, the Commission declared violations to rights of all those mentioned. The representative also asked the Court to establish violations to rights of these six persons. In the context of its arguments on the alleged violations, the State indicated that:

The [initial] petition [lodged before the Commission] referred to and presented María Isabel Veliz Franco and her mother, Rosa Elvira Franco Sandoval, as victims; in the Admissibility Report, the Commission declared that it would examine the case for violations presumably committed against them[. ...] Surprisingly, [...] the Merits Report [...] declared that the State had violated [...] rights of [the above-named members of María Isabel Veliz Franco’s family]. This violates the State’s right to defense, because it was not aware from the start of the arguments on the basis of which, supposedly, there were other collateral victims.

29. The presumed victims must be indicated in the Merits Report issued by the Commission under Article 50 of the Convention.<sup>16</sup> Article 35(1) of the Court’s Rules of Procedure establishes that the case shall be submitted to the Court by the presentation of this report, which must contain “the identification of the presumed victims.” According to this article, it is for the Commission and not the Court to identify the presumed victims in a case before the Court precisely and at the appropriate procedural opportunity.<sup>17</sup>

30. The Court notes that María Isabel Veliz Franco’s brothers and grandparents were indicated as victims in the Merits Report, pursuant to the said Article 35(1) of the Rules of Procedure (*supra* para. 2.c.i). Consequently, the State’s argument concerning the failure to identify the victims is inadmissible. Furthermore, it should be indicated that although some members of María Isabel’s family were not named in the initial petition or in the Admissibility Report,<sup>18</sup> violations to the detriment of her two brothers and her grandparents were alleged in several of the representative’s briefs that were forwarded to the State during the processing of the case before the Commission,<sup>19</sup> and the State was made aware

<sup>15</sup> Cf. Merits Report No. 170/11, *supra*.

<sup>16</sup> This has been the Court’s consistent case law since the *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, paras. 65 to 68, and the *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, paras. 224 and 225. These judgments were adopted by the Court during the same session. In application of the Court’s new Rules of Procedure, this criterion has been ratified since the case of the *Barrios Family v. Venezuela*. Cf. *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, footnote 215, and *Case of J.*, *supra*, para. 23.

<sup>17</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of J.*, *supra*, para. 23.

<sup>18</sup> Cf. Admissibility Report No. 92/06, *supra*.

<sup>19</sup> In this regard, the briefs of the representatives (at the time, the petitioners) of May 31, 2008, and June 4, 2009, may be cited as an example. During the proceedings before the Commission, the State also examined and presented arguments on the representatives’ claim that the said six persons be considered victims. This is revealed

of this on those occasions. The Court also notes that the said arguments were related to the factual framework considered in the Admissibility Report. In addition, before the Court, the State has been made aware of this information and was accorded the right to defend itself.

31. Consequently, the Court finds that the presumed victims in this case are María Isabel Veliz Franco, Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco, José Roberto Franco, Cruz Elvira Sandoval Polanco de Franco and Roberto Franco Pérez.

#### IV COMPETENCE

32. The Inter-American Court is competent, under Article 62(3) of the American Convention, to hear this case, because Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987. Furthermore, Guatemala has been a party to the Convention of Belém do Pará since April 4, 1995. The State's objections to the Court's competence in relation to that treaty are analyzed in the following chapter.

#### V PRELIMINARY OBJECTIONS OF LACK OF COMPETENCE AND FAILURE TO EXHAUST DOMESTIC REMEDIES

##### A. Preliminary objection of lack of material competence in relation to Article 7 of the Convention of Belém do Pará<sup>20</sup>

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

33. The State affirmed that, "taking into consideration the reservations that [Guatemala] made when [...] accepting [...] the contentious jurisdiction" of the Court,<sup>21</sup> the latter is competent to hear the case concerning the "presumed violations that have been alleged to the rights protected by the American Convention." "However, [...it] does not recognize the competence" of the Court "to examine the supposed violation of Article 7 of the Convention of Belém do Pará." It indicated that Article 62 of the American Convention "defines the competence of the Court in relation to cases concerning the interpretation or application of [the said] Convention." It also indicated that "[a]lthough Article 12 of the 'Convention of Belém do Pará'" establishes the possibility that anyone "may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party," this does not mean that the Court has competence *ratione materiae* to examine [...] complaints based on [that treaty]," because "neither the good faith of the States, nor the justifiable object and purpose of the numerous

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by the State's brief received by the Commission on August 24, 2009 (file before the Commission, tome 3, fs. 2109, 2110, 2260 to 2269, 2133 to 2138, and 2107 to 2113, respectively).

<sup>20</sup> Even though the State did not expressly mention that its argument on lack of competence was a "preliminary objection," that is indeed its nature. And this is because this argument clearly reveals that Guatemala seeks an objective that, as the Court has indicated, is in keeping the nature of a preliminary objection: "to obtain a decision that prevents or impedes the analysis of the merits of the contested aspect." *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 11. As revealed by the Court's case law, in order to consider whether or not an argument is a preliminary objection, the relevant aspect is that it has been clearly filed with this objective. *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs.* Judgment of October 13, 2011. Series C No. 234, para. 56.

<sup>21</sup> In its argument, the State did not elaborate on how, in its opinion, "reservations should be considered" in relation to its position on the lack of material competence. The Court notes that, when ratifying the American Convention, the State made a reservation with regard to the death penalty, which was withdrawn by Governmental Decision No. 281-86, of May 20, 1986. Evidently, this has no impact on the case *sub examine*. Also, Guatemala made no declarations or reservations when ratifying the Convention of Belém do Pará.

conventions are sufficient [...] to delegate competence tacitly and automatically to the Court." Thus, the State considered:

That the ruling of the Court is reasonable in the judgment it delivered in the case of *González et al. ("Cotton Field") v. Mexico*, in relation to the possibility of exercising contentious competence with regard to [...] instruments [...] other than the American Convention; [...] but, as Mexico had asserted, it indicated that each inter-American treaty requires a prior specific declaration granting the Court competence.

34. The representative affirmed that the State's position was "inadmissible" and referred to the Court's case law.

35. The Commission stated that "the Court has declared violations of Article [7 of the Convention of Belém do Pará], in the understanding that Article 12 of this instrument incorporates a general clause of competence accepted by the States when ratifying or adhering to [the Convention]." It "consider[ed] that there was no reason for the Court to depart from its reiterated criterion."

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

36. The State ratified the Convention of Belém do Pará on April 4, 1995, without reservations or limitations (*supra* para. 32). Article 12 of this treaty indicates the possibility of lodging "petitions" before the Commission relating to "denunciations or complaints of violations of [its] Article 7," and establishes that "the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statute and Regulations of the Inter-American Commission." As indicated by this Court in the case of *González et al. ("Cotton Field") v. Mexico*, "it appears evidence that the literal meaning of Article 12 of the Convention of Belém do Pará grants competence to the Court, by not excepting from its application any of the norms and procedures for individual communications."<sup>22</sup> It should be underlined that, in other contentious cases against Guatemala,<sup>23</sup> this Court has declared the State's responsibility for the violation of Article 7 of the Convention of Belém do Pará and the State has even acknowledged its responsibility for the violation of this precept without questioning the Court's competence in this regard.

37. Furthermore, the Court notes that Article 7 of the Convention of Belém do Pará refers to measures "to prevent, punish and eradicate" violence against women and, in this regard, is closely related to the rights to life and to personal integrity established in Articles 4 and 5 of the American Convention. Thus, previous considerations of the Court in relation to the *pro persona* principle support what it has indicated with regard to its competence:

The system of international protection should be understood as a whole, [in keeping with the] principle established in Article 29 of the American Convention, which imposes a protection framework that always gives preference to the interpretation or the norm that is most favorable to the rights of the individual, the cornerstone for the protection of the whole inter-American system. Thus, the adoption of a restrictive interpretation with regard to the scope of this Court's competence would not only be contrary to the object and purpose of the [American] Convention, but would also have an impact on the practical effects of this treaty and on the guarantee of protection that it establishes.<sup>24</sup>

<sup>22</sup> *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 41. In the paragraph of this judgment cited, the Court explained that the "wording" of Article 12 of the Convention of Belém do Pará "does not exclude any provision of the American Convention; thus it must be concluded that, in the petitions under Article 7 of the Convention of Belém do Pará, the Commission will act 'pursuant to the provisions of Articles 44 to 51 of [the American Convention],' as established in Article 41 of this instrument. Article 51 of the Convention [...] refers [...] expressly to the submission of cases to the Court."

<sup>23</sup> *Cf. Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 17, and *Case of Gudiel Álvarez (Diario Militar) v. Guatemala. Merits, reparations and costs.* Judgment of November 20, 2012. Series C No. 253, para. 17.

<sup>24</sup> *Cf. Case of Vélez Loor v. Panamá. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010 Series C No. 218, para. 34; *Case of González et al. ("Cotton Field"), supra*, operative paragraphs 4 and 5; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and*

38. Therefore, the Court rejects the preliminary objection of lack of competence of the Court to rule on Article 7 of the Convention of Belém do Pará in relation to this contentious case.

## **B. Preliminary objection of failure to exhaust domestic remedies**

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

39. The State indicated that it understood that the “domestic remedies [...] had not yet been exhausted,” because “criminal proceeding [No.] 105–2002 [...] was still active. It explained that “[t]he second paragraph [of Article 46 of the Convention] establishes the circumstances in which the requirement [of exhaustion of domestic remedies] is not applicable,” and that the respective presumptions are not present in this case. In this regard, it affirmed: (a) “the situation described in Article 46(2)(a) does not arise in this case because Guatemala has domestic legislation establishing the legal procedure to protect the violated rights”; (b) the “situation included in Article 46(2)(b) [...] does not arise either because [...] the victim’s next of kin were never denied access to exercise the remedies before the domestic courts, and (c) regarding the presumption under Article 46(2)(c), there has not been an unwarranted delay because, “since no pre-trial detention or substitutive measures were ordered during the investigation stage, it has no time limit.” The State also indicated that “numerous measures have been taken to clarify the facts,” and that “it is sufficient to observe and analyze these measures [...] to conclude that, at no time, has there been [...] negligence, unwarranted delay or lack of diligence by the investigating body.” In this regard, the State indicated that “the Public Prosecution Service has continued its inquiries, but cannot bring charges if it does not obtain convincing evidence or indications,” and pointed out that, “on different occasions, the judge has requested the Public Prosecution Service to issue the relevant decision ending the investigation, and the latter has asked that the investigation remain open in order to achieve positive results.” The State noted that, to conclude that there had not been an unwarranted delay, the investigation should be evaluated based on the criteria used by the Court to assess the reasonableness of the duration of domestic proceedings.<sup>25</sup> Lastly, it asserted that, if there was an unwarranted delay, the law established ways for “the victims [...] to deal with this circumstance,” and these were not used.<sup>26</sup>

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*costs.* Judgment of August 30, 2010. Series C No. 215, operative paragraphs 3 and 7; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, operative paragraphs 3 and 6; *Case of the Río Negro Massacres, supra*, operative paragraph 6; *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, operative paragraph 7, and *Case of Gudiel Álvarez et al. (Diario Militar), supra*, operative paragraph 5. Moreover, with regard to Guatemala, in the above-mentioned cases of the *Río Negro Massacres* and *Gudiel Álvarez (Diario Militar)*, the State did not contest the Court’s competence in relation to Article 7 of the Convention of Belém do Pará. Paragraph 17 in the two judgments indicates that, in the said cases, Guatemala acknowledged its responsibility for the violation of this article of that treaty.

<sup>25</sup> In this regard, the State indicated that the Court has referred to the pertinence of considering “three elements to determine the reasonableness of the duration [...]: (a) the complexity of the matter; (b) the procedural activity of the interested party, and (c) the conduct of the judicial authorities.”

<sup>26</sup> The State explained that, “Decree 7-2011 of the Congress of the Republic” amended “Decree No. 51-92 of the Congress of the Republic, Code of Criminal Procedure: ‘Article 5. A second paragraph is added to article 108, which shall read as follows: *In the exercise of its functions, and no more than fifteen (15) days after having received the complaint, the Public Prosecution Service shall inform the victim of the measures that have been taken and about the possible decision. The victim who is not informed within this time frame may have recourse to the judge so that the latter may urgently require that, within forty-eight hours, the prosecutor report to him on the progress made in the proceedings. If, from this report, or when it has not been provided, the judge considers that the preparation of the criminal action is insufficient, he shall order the prosecutor to report on additional progress within thirty (30) days at the most or, if not, on the circumstances that prevent the latter from making further progress in the investigation, on pain of his non-compliance being reported to the disciplinary regime of the Public Prosecution Service, and constituting a serious offense.*” (In italics in the original.)

40. The representative indicated that “the Commission [...] reached the conclusion that the exception contained in Article 46(2)(c) of the Convention was applicable” and, according to the representative, this “is closely related to the merits of the matter.” It considered that, since the State’s position “concerns the admissibility of the case,” the Court, “respecting the principles of procedural economy and equality before the law,” should “support Admissibility Report [No.] 92/06 issued by the [...] Commission.” It added that, before the Court, “the State seeks to refer the discussion back to admissibility [...] and, in doing so, disregards the principle of estoppel.” It also clarified that the State’s argument “was not presented [...] opportunely” because, prior to the Commission’s decision on the admissibility of the case, “the State presented [...] seven] briefs,” and “in none of them [...] expressly filed the objection of failure to exhaust domestic remedies.” Furthermore, it affirmed that, before the Commission, “[t]he State did not identify the remedies to be exhausted or describe their effectiveness.” In this regard, it underscored that “during the proceedings before the [...] Commission, the State [...] had] acknowledged its responsibility for [...] the delay in the investigation.” Consequently, the representative argued that it was admissible to “apply the principle of estoppel” to the “analysis] of the preliminary objection.” It pointed out that, “if the Court should decide to revise the Commission’s decision on admissibility, [...] it] ask[ed] that [...] the Court analyze the unwarranted delay in the domestic investigation in light of possible violations of Articles 8 and 25 of the American Convention.” Despite the foregoing, it also stated that “[w]hen the Admissibility Report was issued [...] almost [five] years had passed since the disappearance and subsequent murder of the child, María Isabel Veliz Franco and the [...] criminal proceedings [...] were still at the investigation stage”; and asserted that “[t]he numerous omissions and the negligence in which the authorities incurred from the initial stages of the investigation are the real causes of the delay.”

41. The Commission argued that “the American Convention attributes decisions on admissibility to [the Commission] in the first place, and such decisions are adopted based on the information available when the [respective] ruling is made.” Accordingly, it considered that “the Court should maintain some degree of deference to the decisions of the Commission in this regard.” It indicated that in “the Admissibility Report, [...] it had first observed that there had been an unwarranted delay of almost seven months owing [to a] jurisdictional dispute.” It added that, “in any case, [...] the evidence taken into account at the admissibility stage was confirmed fully at the merits stage,” and concluded that “the preliminary objection [...] is inadmissible.”

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

42. Article 46(1)(a) of the American Convention establishes one of the requirements for “[a]dmission by the Commission of a petition or communication,” which is “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” One of the exceptions to this requirement, established in paragraph 2(c) of this article, arises when “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.”

43. As revealed by Admissibility Report No. 92/06 dated October 21, 2006, on January 26, 2004, the Commission received a “complaint in [relation to] the investigation into the death of María Isabel Veliz Franco, [...] who disappeared on December 17, 2001,” and “forwarded [this ...] to the State on September 24, 2004.”<sup>27</sup> The Court notes that, between September 24, 2004, and October 21, 2006, in addition to requests for an extension, the State sent the Commission a total of six communications concerning the case.<sup>28</sup> In the first brief, submitted to the Commission on December 16, 2004, the State described measures corresponding to the investigation that was being conducted by the Public Prosecution Service in order “to open criminal proceedings against the guilty parties,” and observed that

<sup>27</sup> Admissibility Report No. 92/06, *supra*.

<sup>28</sup> *Cf.* Communications from the State received by the Inter-American Commission on December 16, 2004; April 12, 2005, and April 3 repeated on April 5; May 24 and July 13, 2006 (file before the Commission, tome I, fs. 1067 to 1080; 969 to 973; 899 to 901; 891 to 893; 863 to 868, and 830 to 834, respectively).



"[t]he case of M[aría] I[sabel] V[eliz] F[ranco] was still at the investigation stage." When admitting the case, the Commission concluded the existence of an unwarranted delay pursuant to Article 46(2)(c) of the Convention.<sup>29</sup> In doing so, it took into account a "jurisdictional dispute of almost seven months [that] was had contributed to the unwarranted delay."<sup>30</sup>

44. It has already been noted that the State has acknowledged the delay caused by the jurisdictional dispute that occurred between March 11 and November 21, 2002 (*supra* para. 19 and *infra* para. 107) – in other words, before the initial petition was lodged. Consequently, and considering that, at that time as well as when the initial petition was lodged and when the Admissibility Report was issued, the investigation into the facts remained in its initial stages, there appears to be no error in the Commission's decision. Moreover, this is related to the rights established in Articles 8 and 25 of the Convention, which stipulate that proceedings and remedies must be conducted "within a reasonable time" and "prompt[ly]," respectively. Thus, any delay in implementing them could constitute a violation of judicial guarantees.

45. The preliminary objection of failure to exhaust domestic remedies filed by Guatemala is therefore rejected.

## VI EVIDENCE

46. Pursuant to the pertinent regulatory norms,<sup>31</sup> and its consistent case law,<sup>32</sup> the Court will examine and assess the probative elements provided to the case file, whether documentation, statements or expert opinions, based on the principles of sound judicial discretion and taking into account the body of evidence and the arguments submitted in the proceedings.

### A. Documentary evidence, statements of the presumed victims, and testimonial and expert evidence

47. The Court received diverse documents presented as evidence by the Inter-American Commission, the representative and the State. It also received the statements of the presumed victims proposed by the representative, namely: Rosa Elvira Franco, Leonel Enrique Veliz Franco and José Roberto Franco, of the witness Luisa María de León Santizo, proposed by the representative, and of the expert witnesses Ana Carcedo Cabañas, María Eugenia Solís García, Rodolfo Kepfer Rodríguez and José Mario Nájera Ochoa, proposed by the representative. On April 15, 2013, the Commission advised that it withdrew the expert evidence of Elizabeth Salmón, because, owing to prior professional commitments that could not be postponed, she would be unable to appear at the public hearing.

### B. Admission of the documentary evidence

48. In this case, as in others,<sup>33</sup> the Court admits those documents provided by the parties at the appropriate procedural opportunity that were not contested or challenged, and the authenticity of which was not questioned, exclusively to the extent that they are pertinent and useful for determining the facts and their eventual legal consequences.

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<sup>29</sup> Cf. Admissibility Report No. 92/06, *supra*.

<sup>30</sup> Admissibility Report No. 92/06, *supra*.

<sup>31</sup> Cf. Articles 46, 57 and 58 of the Rules of Procedure.

<sup>32</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 25, 2001. Series C No. 76, para. 51, and *Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits and reparations*. Judgment of January 30, 2014. Series C No. 277, para. 23.

<sup>33</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Liakat Ali Alibux, supra*, para. 25.

49. With regard to newspaper articles, the Court has considered that they may be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case. Therefore, it decides to admit those documents that are complete or that, at least, allow their source and date of publication to be verified, and will assess them taking into account the body of evidence, the observations of the parties, and the rules of sound judicial discretion.<sup>34</sup>

50. Regarding some documents indicated by the parties by means of electronic links, the Court has established that if a party provides, at least, the direct electronic link to the document it cites as evidence and the document can be accessed, neither legal certainty nor procedural balance is affected, because the document can be found immediately by the Court and by the other parties.<sup>35</sup> In this case, the other parties did not oppose or make observations on the content and authenticity of such documents.

51. In addition, together with their final written arguments, the representative<sup>36</sup> and the State<sup>37</sup> forwarded several documents as evidence, and provided electronic links for some of them. In this regard, the parties and the Commission were granted an opportunity to present any observations they deemed pertinent (*supra* para. 14). The Court incorporates the documents indicated in the footnotes as evidence based on Article 58(a) of the Court's Rules of Procedure, considering them useful for deciding the case. The respective documentation will be assessed as pertinent, taking into account the body of evidence, the rules of sound judicial discretion, and the pertinent observations of the representative and the Commission.

52. During the public hearing, expert witness María Eugenia Solís presented a written opinion, which was handed to the parties and the Commission at the hearing. The Court admits it in the terms indicated with regard to the expert opinion that she provided at the public hearing (*infra* para. 63).

### C. Evidence obtained by the Court *ex officio*

53. Under Article 58(a) of its Rules of Procedure, "[t]he Court may, at any stage of the proceedings: (a) [o]btain, on its own motion, any evidence it considers helpful and necessary." The Court finds that the following documents are useful and necessary for the analysis of this case and, therefore, incorporates them, *ex officio*, to the body of evidence in

<sup>34</sup> Namely: BBC News/Americas. "Murderers prey on Guatemalan women", December 6, 2003, internet (file before the Commission, tome I, fs. 1143 and 1144); "Killing sprees terrorize Guatemalan women. Hundred slain in 2 years—only a handful arrested." Jill Replogle, Chronicle Foreign Service, December 30, 2003 (file before the Commission, tome I, fs. 1147 to 1149); *Crónicas del MP*. "MP captura a implicados en crímenes contra mujeres" [Public Prosecution Service captures those implicated in crimes against women]. *Evidencia*, Guatemala, October 2003 (file before the Commission, tome I, fs. 1223), and *Diálogo* "La Red de Derivación creará un nuevo paradigma de asistencia a las víctimas" [The Referral Network will establish a new model of assistance for victims]. *Evidencia*. Guatemala, October 2003 (file before the Commission, tome I, fs. 1224 and 1225).

<sup>35</sup> Cf. *Case of Escué Zapata v. Colombia*. *Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of J.*, *supra*, para. 42.

<sup>36</sup> Namely: the Committee of Experts of the Follow Up Mechanism of the Convention of Belém do Pará. Declaration on Femicide. Approved at the fourth meeting of the Committee of Experts (CEVI) held on August 15, 2008; Information on attention provided to women survivors of violence in the first quarter of 2013, and Governmental Decision 46-2012, Creation of the Presidential Commission to tackle Femicide in Guatemala (COPAF) (file of preliminary objections, merits, reparations and costs, f. 1702), and the link to a website: <http://www.ine.gob.gt/np/snvcn/index>. The Court admits the document provided by the representative in its final written arguments by means of an electronic link because, as the representatives clarified, it supports the answers to questions posed by the Court's judges during the public hearing, and because the Court deems it useful.

<sup>37</sup> Namely: Judicial case file; File of the Public Prosecution Service (in three different parts: "Folios 1-170; Folios 171-400, and Folios 401-476"); Comparison of affidavits, and indication of an electronic link: *Affidavits*, <http://www.ine.gob.gt/np/snvcn/index> (*infra* para. 276). Regarding the case files, these had already been provided as evidence; consequently, the Court only admits those pages that were presented for the first time on this occasion.

this case in application of the said regulatory provision: (a) Report: "*Guatemala: Memoria del Silencio*" published by the Commission for Historical Clarification in 1999;<sup>38</sup> (b) Guatemala's answers to the 2008 questionnaire of the Mechanism to Follow Up on the Implementation of the Convention of Belém do Pará (MESECVI) to evaluate the implementation of the provisions of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará);<sup>39</sup> (c) 2007 Statistical report on Violence in Guatemala of the United Nations Development Programme (UNDP);<sup>40</sup> (d) Final Report of the United Nations Verification Mission in Guatemala (MINUGUA) dated November 2004;<sup>41</sup> (e) Third year report of the Guatemalan International Commission against Impunity in Guatemala (CICIG);<sup>42</sup> (f) Sixth report of the International Commission against Impunity in Guatemala (CICIG);<sup>43</sup> (g) Report: "10 years without war... waiting for peace," a report on compliance with the Peace Accord on Strengthening Civilian Power and the Role of the Armed Forces in a Democratic Society, by Peace Brigades International (PBI) dated August 2007;<sup>44</sup> (h) 2008 Report: "Recognizing the Past: Challenges for the Combat of Impunity in Guatemala" by *Impunity Watch*;<sup>45</sup> (i) Concluding observations with regard to Guatemala of the Committee for the Elimination of Discrimination against Women, June 2, 2006;<sup>46</sup> (j) Decree No. 51-92 Code of Criminal Procedure and its amendments, issued on September 18, 1992,<sup>47</sup> and (k) Message of the President of the Republic of Guatemala, Ramiro De León Carpio, to the Fourth World Conference on Women on September 11, 1995.<sup>48</sup> In addition, the Inter-American Commission on Human Rights did not forward the complete text of the following two reports

<sup>38</sup> Commission for the Historical Clarification: "*Guatemala: Memoria del Silencio*", tome III, June 1999. Available at: [http://www.iom.int/seguridad-fronteriza/lit/land/cap2\\_2.pdf](http://www.iom.int/seguridad-fronteriza/lit/land/cap2_2.pdf).

<sup>39</sup> Follow Up Mechanism of the Convention of Belém do Pará (MESECVI). Second Conference of States parties. July 9 and 10, 2008. OEA/Ser.L/II.7.10, MESECVI-II/doc.31/08, 24 June 2008. Available at: <http://www.oas.org/es/mesecvi/docs/Questionnaire1-GuatemalaResponse.doc>.

<sup>40</sup> United Nations Development Program (UNDP), Armed Violence Prevention programme of UNDP Guatemala, "*Informe estadístico de la violencia en Guatemala*" [Statistical Report on Violence in Guatemala,] Guatemala, 2007. Available [in Spanish only] at: [http://www.who.int/violence\\_injury\\_prevention/violence/national\\_activities/Report\\_estadistico\\_violencia\\_guatemala.pdf](http://www.who.int/violence_injury_prevention/violence/national_activities/Report_estadistico_violencia_guatemala.pdf).

<sup>41</sup> United Nations Verification Mission in Guatemala (MINUGUA), Final Report: "*Asesoría en Derechos Humanos*," 15 November 2004. Available at: <http://www.derechoshumanos.net/lesahumanidad/Reports/guatemala/Report-Final-Minugua.pdf>.

<sup>42</sup> International Commission against Impunity in Guatemala (CICIG), "*Tercer año de labores*". Available at: [http://www.cicig.org/uploads/documents/Reports/INFOR-LABO\\_DOC05\\_20100901\\_ES.pdf](http://www.cicig.org/uploads/documents/Reports/INFOR-LABO_DOC05_20100901_ES.pdf).

<sup>43</sup> International Commission against Impunity in Guatemala (CICIG), "*Sexto Informe de labores de la Comisión Internacional contra la Impunidad en Guatemala (CICIG). Período septiembre 2012 – agosto 2013.*" Available at: <http://www.cicig.org/uploads/documents/2013/COM-045-20130822-DOC01-ES.pdf>.

<sup>44</sup> Peace Brigades International (PBI), "10 years without war... waiting for peace," a report on compliance with the Peace Accord on Strengthening Civilian Power and the Role of the Armed Forces in a Democratic Society, Guatemala, August 2007. Available at: [http://www.peacebrigades.org/fileadmin/user\\_files/projects/guatemala/files/english/10years.pdf](http://www.peacebrigades.org/fileadmin/user_files/projects/guatemala/files/english/10years.pdf).

<sup>45</sup> *Impunity Watch*, "*Reconociendo el pasado: desafíos para combatir la impunidad en Guatemala*", November 2008. Available at: [http://www.impunitywatch.org/docs/BCR\\_Guatemala\\_Spanish.pdf](http://www.impunitywatch.org/docs/BCR_Guatemala_Spanish.pdf). ["Recognizing the Past: Challenges for the Combat of Impunity in Guatemala" (summary in English) [http://www.impunitywatch.org/docs/Guatemala\\_BCR\\_Summary\\_English.pdf](http://www.impunitywatch.org/docs/Guatemala_BCR_Summary_English.pdf)]

<sup>46</sup> Committee for the Elimination of Discrimination against Women, Concluding observations of the Committee for the Elimination of Discrimination against Women: Guatemala, thirty-fifth session, 15 May to 2 June 2006, UN Doc. CEDAW/CE/GUA/CO/6, 2 June 2006. Available at: <http://www.un.org/womenwatch/daw/cedaw/35sess.htm>.

<sup>47</sup> Congress of the Republic of Guatemala. Code of Criminal Procedure. Decree 51-92 and its amendments, issued on September 18, 1992. Available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/arch/gua/CodigoProcesalPenal.pdf>.

<sup>48</sup> Message of the President of the Republic of Guatemala, Ramiro De León Carpio, to the Fourth World Conference on Women. Address by Ambassador Julio Armando Martini Herrera. Permanent Representative to the United Nations. Beijing, 11 September 1995. Available at: <http://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950914133159.txt>.

to the Court: (a) the Fifth Report on the Situation of Human Rights in Guatemala” of 2001,<sup>49</sup> and (b) “Justice and Social Inclusion: the Challenges of Democracy in Guatemala” of 2003.<sup>50</sup> Nevertheless, since these documents have been published, the Court has verified the complete texts on the Commission’s official website.

**D. Admission of the statement of the presumed victims, and testimonial and expert evidence presented by affidavit**

54. In its brief with final arguments, the State maintained that the statements ordered “should be subject, from the start, to the Order of the Court of April 18, 2013,” and that “it was not optional to answer the questions posed by the State.” It indicated that, since the representative had forwarded the affidavits within the stipulated time frame, the deponents had failed to answer more than half the questions sent by the State, “hence, the Court should expand the statements, so that the answers could be provided belatedly in a separate document.” It added that it was not the first time that the victims’ representatives “commit errors that appear to be of a material nature in the delivery of document to the Court. However, this specific situation prejudiced the State’s right of defense and procedural equality at the time of the public hearing [...], because it did not have the allotted time to analyze and compare the said documents, while the representative has had all the documents and information requested of the State within the stipulated time frames.” Consequently, it asked the Court to take its arguments into account, because the situation described placed the State at a disadvantage and was even more prejudicial owing to the inconsistencies and contradictions in the documents in question.

55. The representative presented the affidavits on April 29, 2013, as required in the Order of the President of April 10, 2013. However, as the deponents failed to answer certain questions posed by the State, extra time was granted for the presentation of expansions to the affidavits, and these were presented within the said period.<sup>51</sup> As indicated in the Order of April 10, 2013, the State was given the procedural opportunity to present its observations on the affidavits and did so in its final written arguments. Consequently, the Court finds that the presentation of the said statements was not time-barred and neither was the State’s right to defense violated, as alleged by Guatemala.

56. Regarding the State’s allegation that the deponents failed to refer to the questions posed by the State,<sup>52</sup> the Court reiterates that the fact that the Rules of Procedure establish the possibility of the parties posing written questions to the deponents offered by the other party and, when appropriate, the Commission, imposes the corresponding obligation on the party that offered the statement to take the necessary steps to ensure that the questions are forwarded to the deponents and that the respective answers are included. Under certain circumstances, the failure to answer some questions may be incompatible with the obligation of procedural cooperation and with the principle of good faith that regulates the

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<sup>49</sup> Inter-American Commission on Human Rights “Fifth Report on the Situation of Human Rights in Guatemala”, OEA/Ser.L/V/II. 111, Doc. Rev., April 6, 2001 (file of attachments to the Merits Report, annex 32, fs. 266 to 310). Complete document available at: <http://www.cidh.org/countryrep/Guate01eng/TOC.htm>.

<sup>50</sup> Inter-American Commission on Human Rights, “Justice and Social Inclusion: the Challenges of Democracy in Guatemala.” OEA/Ser.L/V/II.118, 29 December 2003 (file of attachments to the Merits Report annex 32, fs. 266 to 310). Complete document available at: <http://www.cidh.org/countryrep/Guatemala2003eng/TOC.htm>.

<sup>51</sup> In this regard, according to the Secretariat’s communication of May 2, 2013, acknowledging receipt of the affidavits corresponding to the following deponents: Leonel Enrique Veliz Franco, José Roberto Franco, Luisa María de León Santizo, Ana Carcedo Cabañas, Rodolfo Kepfer Rodríguez and José Mario Nájera Ochoa, they only answered the questions regarding which clarifications had been made about the way in which they should be answered, and did not respond to all the State’s questions that should have been answered. Consequently, on the instructions of the President, each affidavit was expanded to include the answers to the previously unanswered questions. On April 9, 2013, the representative presented the expanded statements of the said persons.

<sup>52</sup> Namely: Leonel Enrique Veliz Franco, José Roberto Franco, Luisa María de León Santizo, Ana Carcedo Cabañas, Rodolfo Kepfer Rodríguez and José Mario Nájera Ochoa.

international proceedings.<sup>53</sup> Nevertheless, the Court considers that the fact that the questions of the other party are not answered does not affect a statement's admissibility; rather, it is a factor that, owing to the implications of a deponent's silences, could have an impact on the weight given to the evidence provided by a statement or an expert opinion; an aspect that must be assessed when examining the merits of the case.<sup>54</sup>

57. Meanwhile, with regard to the statement of Leonel Enrique Veliz Franco, the State considered that "the witness has no proof of any of the steps taken by his mother; rather, he knows about them because of what she has told him"; it raised questions as to the "steps [for which] he accompanied his mother," and about some of the statements relating to the investigation and the facts of the case, and the contradiction of the answers to the State's questions. It added, in relation to the statement by José Roberto Franco, that "the State makes the same observations as those made with regard to his brother, Leonel Enrique Veliz Franco, with regard to the general aspects," and pointed out some contradictions between the latter's statement and that of his mother, and between his own statement and his answers to the questions posed by the State. It asserted that "as their name indicates, testimonial statements are a probative means in which individuals who have witnessed an act testify about it because they have first-hand knowledge of the said act." It affirmed that, in this case, "the preparation of the witnesses is evident and also, instead of only referring to the facts that they know first-hand, they give personal opinions that favor the party that has proposed them without these opinions having any basis." In this regard, the Court understands that both these individuals gave their statement in their capacity as presumed victims and this Court's case law has established that the statements of the presumed victims cannot be assessed in isolation, but rather within the body of evidence of the proceedings, because they are useful to the extent that they can provide further information on the alleged violations and their consequences.<sup>55</sup> The other observations of the State refer to the content of the statements, which does not cause problems as regards their admissibility, and will be considered when assessing each statement together with the body of evidence and in keeping with the rules of sound judicial discretion.

58. Regarding the affidavit prepared by witness Luisa María de León, the State repeated some of the observations it had made on the final list of deponents for the public hearing, because she was offered as a witness and not as an expert witness. On this matter, the Court refers to the Order of the President of the Court of April 10, 2013. It also refers to its previous considerations in this Judgment concerning the failure of this witness to answer certain questions posed by the State (*supra* para. 56). In relation to her statement, the State questioned the legal analysis she had made. The Court considers that the State's observations refer to the content of the statement; thus they do not affect its admissibility and, in any case, the observations will be taken into account when assessing the statement together with the body of evidence and in keeping with the rules of sound judicial discretion.

59. As regards the expert opinions presented by affidavit, the State affirmed, in general, that "most of the expert witnesses did not provide their expert opinion pursuant to the oath established in Article 51(4) of the Court's Rules of Procedure," and also that "nor did the statements adhere to the purpose assigned to them by the Court in the corresponding Order, but rather they were in keeping with the purpose for which their expert opinions were offered." It considered that what interested the expert witnesses was "to express their opinions and disclose the information that interested them, either personally or professionally, or worse still, without any objectivity, but rather to favor those who had

<sup>53</sup> *Case of Cantoral Benavides v. Peru. Preliminary objections.* Judgment of September 3, 1998. Series C No. 40, para. 30, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 224, para. 33

<sup>54</sup> *Case of Díaz Peña, supra*, para. 33, and *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, para. 56.

<sup>55</sup> *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Liakat Ali Alibux, supra*, para. 31.

proposed them.” In this case, the Court finds no grounds for considering that the admission of the expert opinions affects the legal certainty or the procedural balance of the parties owing to the absence of the oath in the terms of Article 51(4) of the Court’s Rules of Procedure. In each opinion, the deponents included an oath and their signature certified by notary public attests to the fact that they are the authors of the said statement, and assume the corresponding legal consequences. Consequently, the Court considers that this observation does not represent a defect that makes the expert opinions inadmissible.

60. With regard to the State’s observations on the purpose of the expert opinions of Ana Carcedo Cabañas,<sup>56</sup> Rodolfo Kepfer Rodríguez, and José Nájera Ochoa, the Court understands that they do not contest the admissibility of the said opinions, but rather are designed to question their probative value. Regarding the State’s argument that the expert witnesses did not provide their expert opinion in keeping with the purpose established in the Order of the President, the Court will consider the content of these opinions to the extent that they are adjusted to the purpose for which they were required<sup>57</sup> (*supra* para. 11).

61. Based on above, the Court admits the above-mentioned expert opinions, and will assess them together with the rest of the body of evidence, taking into account the State’s observations and in keeping with the rules of sound judicial discretion.

#### **E. Admission of the statement of the presumed victim and expert evidence provided at the public hearing**

62. Regarding the statement made by Rosa Elvira Franco Sandoval, the State, in its observations, pointed out some inconsistencies in order to question the probative value of the statement when recounting the facts of this case, but did not object to the statement or request that it be found inadmissible.<sup>58</sup> The Court finds it pertinent to admit the presumed victim’s statement insofar as it is adapted to the purpose defined by the President in the Order requiring it, and will take the State’s observations into account (*supra* para. 11). The Court also reiterates its considerations concerning the assessment of this statement since Mrs. Franco Sandoval is a presumed victim (*supra* para. 57).

63. As regards the expert opinion provided by María Eugenia Solís, the State referred to the content of the statement, as well as to her written opinion to invalidate its probative value, but did not contest its admissibility. In this opinion, Ms. Solís did not provide references for the statistical information, bibliography, case files, prosecution cases, cases, judgments and persons she mentioned, and failed to clarify the number of cases she had consulted. The Court admits and will assess the expert opinion together with the rest of the body of evidence, insofar as it corroborates and complements information revealed by other evidence provided to the Court, taking into account the State’s observations and in keeping with the rules of sound judicial discretion.

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<sup>56</sup> The State reiterated that she was not sworn in, and referred to what had been decided previously in this regard; also, that she gave an expert opinion that disregarded the Court’s Order, because she provided this opinion as proposed in the representative’s brief of March 8, 2013. In this regard, the Court reiterates that it will consider the content of the expert opinion to the extent that it is adapted to the purpose established for it. Thus, it will take into account the allegations that the expert witness made about Guatemala, but only to the extent that the indications made about the Central American region were presented in the expert report as data that was comparative or inclusive of the situation in Guatemala.

<sup>57</sup> *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 42, and *Case of Liakat Ali Alibux v. Suriname, supra*, para. 31.

<sup>58</sup> It added that Mrs. Franco Sandoval used an “inappropriate” approach when addressing the State’s representatives that was “unjustified [...] and should not [...] be accepted just because she considers herself a victim.”

64. In the case of the *amici curiae*, these were presented on May 30, 2013, within the time frame established in Article 44 of the Rules of Procedure, but in a language other than the official language in this case, the translation into Spanish of the brief of Christine M. Venter, Ana-Paolo Calpado and Daniella Palmiotto was not provided, so that it is declared inadmissible.<sup>59</sup> As regards the brief of Sorina Macricini, Cristian González Chacó and Bruno Rodríguez Reveggio, the translation of the complete *amicus curiae* was sent on June 10, 2013; in other words, 11 days after the time frame for its presentation had expired (*supra* para. 12). In this regard, the State asked the Court not to admit the brief, and argued that it disagreed with the opinion given in the brief. Based on Article 44(3) of the Court's Rules of Procedure establishing that *amicus curiae* briefs may be submitted "at any time during contentious proceedings for up to 15 days following the public hearing," and given that, in the instant case, the complete translation of the *amicus curiae* was presented outside the time frame indicated in this article, the Court will only admit the part of the brief that was presented in Spanish within the time frame, and does not admit the Spanish translation of the remaining part, because its presentation was time-barred.

## VII FACTS

### A. Context

#### A.1) Introduction

65. As on previous occasions, the Court recalls that, in the exercise of its contentious jurisdiction, it "has examined diverse historical, social and political contexts which situate the facts that are alleged to have violated [human rights] within the framework of the specific circumstances in which they occurred."<sup>60</sup> Furthermore, in some cases, the context made it possible to characterize the facts as part of a systematic pattern of human rights violations<sup>61</sup> and/or were taken into account to determine the international responsibility of the State.<sup>62</sup> Thus, with regard to the State's alleged failure to comply with its obligation to prevent what happened to María Isabel Veliz Franco (*supra* para. 7), taking into consideration contextual information – together with the pertinent factual elements of the case – will help clarify the degree to which the State could be required to consider the existence of a risk for the child, and to act in consequence. In addition, this aspect, together with the actions of the State in the investigation of the facts, will allow a better understanding of the alleged violations and the relevance of certain measures of reparation.

66. The Commission and the representative asserted that this case was inserted in a context of high levels of violence against women and girls in Guatemala, as well as of the general impunity of such acts. The State indicated that it was "false" that it had "ignore[d]" the "growing trend of violence against women in the region"; rather, it had "implemented measures [...] to prevent, punish and eradicate this." It affirmed that there was "no evidence [...] confirm[ing] the connection" of this case "to a supposed systematic pattern of deaths of women." It also maintained that "not all violent deaths of women are gender-based." It asserted that the representative and the Commission "want" "to insert this case [into] a supposed context of violence against women within the socio-cultural patterns of the Guatemalan population"; "however, this has never been the result of a public policy of the State and, particularly, [of its] tolerance or acquiescence."

67. Based on above, the Court will now refer to aspects relating to the contextual evidence and, then, to the situation in Guatemala with regard to gender-based murders,

<sup>59</sup> Cf. *Case of Artavia et al.* ("In vitro fertilization"), *supra*, para. 15.

<sup>60</sup> Cf. *Case of J.*, *supra*, para. 53.

<sup>61</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs.* Judgment of September 22, 2006. Series C No. 153, paras. 61 and 62, and *Case of J.*, *supra*, para. 53.

<sup>62</sup> Cf. *Case of Goiburú et al.*, *supra*, paras. 53 and 63, and *Case of J.*, *supra*, para. 53.

violent acts against women, and impunity in the investigation and eventual punishment of such acts. However, before examining these matters, it will refer to the invisibility of violence against women in the case of Guatemala, because this situation allows the absence of official statistical data on gender-based crimes to be understood, and also constitutes a contextual element of the homicidal violence that specifically affects women victims.

68. The report "*Guatemala: Memoria del Silencio*" states that "[w]omen were victims of every type of human rights violation during the armed conflict, but they also suffered from specific forms of gender-based violence."<sup>63</sup> The Commission for Historical Clarification became convinced that the belittlement to which women were subject was absolute and permitted members of the Army to assault them with total impunity,<sup>64</sup> and concluded that, during the armed conflict, the courts of justice revealed themselves incapable of investigating, processing, trying and punishing those responsible.

69. This situation has persisted following the end of the armed conflict, and is reflected today in a culture of violence that has continued over the years, and which has its own substratum of violence that affects women in particular. Despite this, such violence has gone unnoticed, among other reasons, owing to the absence of official figures until recently, so that it is especially difficult to find reliable statistics that provide trustworthy data on the magnitude of the violence perpetrated against women in Guatemala. Consequently, "[t]he almost complete absence of gender-disaggregated data in official documents means that, in general, less gender violence is recorded than the proportion it truly represents, and even that frequently it is scarcely mentioned."<sup>65</sup>

#### **A.2) The evidence on the contextual situation**

70. The State, in its answering brief, indicated, in general, that it "rejected several accusations included in the Merits Report [...], because in section 'IV. Established Facts,' the Commission outlined what it found to be true and, in the State's opinion, some facts have been disproved by the petitioners, or have been misinterpreted by the Commission." Despite this assertion, and although it made observations and presented evidence on the contextual situation, the State did not indicate that it directly contested specific aspects of the data and opinions included in the Merits Report and in the motions and arguments brief regarding the existence of a context of gender-based murders and of impunity.<sup>66</sup> Accordingly, the Court will assess the information provided by the Commission and the representative, as well as the evidence provided by the latter. Both the Commission and the representative refer mainly to contextual elements related to the situation of women and, to a lesser degree, to elements relating to girls. The Court will also take into consideration the observations and evidence provided by the State.

71. The Court also takes into account that, although several State agencies have produced some information on homicidal violence against women, there are no official figures, at least in relation to acts that occurred before 2008<sup>67</sup> that allow disaggregating

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<sup>63</sup> Commission for the Historical Clarification, "*Guatemala: Memoria del Silencio*", *supra*, p. 13.

<sup>64</sup> Commission for the Historical Clarification, "*Guatemala: Memoria del Silencio*", *supra*, p. 27.

<sup>65</sup> Amnesty International, "Guatemala. No protection, no justice: killings of women," June 2005, p. 2 (file of attachments to the Merits Report, annex 33, fs. 312 to 356).

<sup>66</sup> These statements are found, respectively, in the Merits Report in the subsection entitled "The context: violence against women and girls" (paras. 58 to 66), which can be found in the section on "Established Facts" (paras. 37 to 72), and in the motions and arguments brief in the section entitled "Context," which begins on page 27 of that brief and ends on page 45 (file of preliminary objections, merits, and reparations and costs, fs. 20 to 23 and 118 to 136, respectively).

<sup>67</sup> In its final written arguments, the State indicated "the creation and implementation of the National Information System on Violence against Women. [...] This system can be verified on its web page: <http://www.ine.gob.gt/np/snvcm/index>." The Court has confirmed that this internet site contains information on acts that have occurred since 2008.



gender-based murders from cases of the violent death of women.<sup>68</sup> In this regard, in 2008, the State informed the Mechanism to Follow Up on the Implementation of the Convention of Belém do Pará (MESECVI), in relation to “the statistical data,” that “this is difficult to access, and owing to budgetary restrictions, information has been collected, but this has not been processed and/or information has been processed but has not been published.”<sup>69</sup> The MESECVI indicated that the State information was insufficient (*infra* footnote 244).<sup>70</sup>

72. The Court will examine the observations of the parties and the Commission with regard to the context, as well as the evidence that exists, taking into account everything that has been alleged. It should be clarified that it will also consider the expert evidence, and the following type of documentary evidence: (a) documents from State entities; (b) documents from international entities of both the United Nations and the inter-American systems; (c) documents elaborated by non-governmental organizations, and (d) a document prepared under the coordination of one of the expert witnesses who intervened in the case other than her expert opinion. In addition, all the texts and opinions referred to were produced based on data from Guatemalan State sources.

### **A.3) Homicidal violence in Guatemala in 2001 and its specificity and evolution in relation to women victims**

73. The Court notes that, in December 2001, Guatemala was experiencing an escalation of homicidal violence with a high rate in comparison with other countries. In this context, starting in 2000 or 2001, there was an increase in the number of murders in general and, together with this, a proportionally significant increase in the murder of women. Furthermore, there is data indicating that some of the attacks suffered by women, even in

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<sup>68</sup> The Court notes that, in May 2008, Guatemala approved Decree No. 22-2008 or the Law against Femicide and Other Forms of Violence against Women, which defines crimes subject to public prosecution, including that of “femicide.” Article 3 of the decree states that this consists in the “[v]iolent death of a woman in exercise of gender-based power against women in the context of the unequal power relations between men and women.” Furthermore, expert witnesses Ana Carcedo Cabañas and María Eugenia Solís stated that the violent deaths of women in Guatemala could be classified as “femicide.” *Cf.* Expert opinion of Ana Carcedo Cabañas provided by affidavit received on April 30, 2013 (file of preliminary objections, merits, and reparations and costs, fs. 896 to 906) and expert opinion of María Eugenia Solís García provided at the public hearing held on May 15, 2013. In addition, in the judgment in the case of *González et al. (“Cotton Field”) v. Mexico*, this Court used the expression “gender-based murder of women,” also known as feminicide” (*Case of González et al. (“Cotton Field”), supra*, para. 143). The Court clarifies that, for the purposes of this Judgment, it will use the expression “gender-based murder of women,” to refer to “feminicide” or “femicide.” It should also be understood, as regards the Law against Femicide, that it was not in force in Guatemala at the time of the events that occurred to María Isabel Veliz Franco, and that the Court’s reference to this law does not entail a ruling on its application to the case.

<sup>69</sup> Follow-up Mechanism on the Convention of Belém do Pará (MESECVI). Second Conference of the States parties, *supra*, p. 79.

<sup>70</sup> Similarly, the Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), a State agency, indicated that “[i]t is difficult to quantify the magnitude of the problem [of family violence and violence against women] in Guatemala, owing to the absence of reliable and up-to-date records.” Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), PLANOSI 2004-2014: National Plan for the Prevention and Eradication of Family Violence and Violence against Women, June 2006, p. 6 (file of annexes to the answering brief, annex 10, fs. 14,073 to 14,093). For her part, expert witness Ana Carcedo Cabañas stated that “[t]he first significant finding on femicide in relation to Guatemala is the difficulty to find the necessary information [...]. It is the Central American country in which, at least up until 2006, this problem was most frequent. [...] In 2003, it was quantified; while in other countries of the region it is difficult to obtain information in 20% of the murders or less, in Guatemala this percentage ascends to 70%.” The expert related this to the actions of the “police and judicial” system, when stating that social research [...] considers the State institutions a privileged source, and it would be difficult to fill in [...] the gaps in the information [of that system] from other sources.” *Cf.* Expert opinion of Ana Carcedo Cabañas, *supra*. Meanwhile, expert witness María Eugenia Solís García stated that, “[i]n 2001 no statistical data [on gender-based murders] were produced and, nowadays, it is produced but it is inconsistent. [...] The Public Prosecution Service and the [National Institute of Forensic Science of Guatemala] INACIF come closest, but their figures do not agree. The National Police provide one figure, the Public Prosecution Service another, the Judiciary another, and the press another [...]” *Cf.* Expert opinion of María Eugenia Solís García, *supra*.

2001, were gender-based murders. These assertions are based on the information described below.

74. In Guatemala, homicidal violence increased by 120% between 1999 and 2006, at an average rate that amply exceeded population growth. According to the United Nations Development Programme (UNDP), this increase in murders resulted in “position[ing] Guatemala [in 2006] as one of the most violence countries in the world that were officially at peace.”<sup>71</sup> The greatest proportional increase of this violence between 1986 and 2006 was concentrated in the country’s largest urban centers.<sup>72</sup>

75. In this context, according to the Guatemalan Judiciary, “official figures” revealed a “sustained increase of violent deaths of women throughout the country level from 2001 to 2011.”<sup>73</sup> Similar information was presented by the National Institute of Statistics (*infra* para. 76), and reports of international agencies reveal a sustained increase in cases of the violent death of women as of 2000.<sup>74</sup>

76. The Inter-American Commission affirmed that “State authorities confirmed that, since 2001 [to 2004], 1,188 women have been murdered. [...] and that] several sources stated that [...] there has also been an increase in the degree of violence and cruelty displayed against the bodies of many of the victims.”<sup>75</sup> According to data from the National Institute of Statistics consulted by the MESECVI, the evolution of the number of murders of women in the country was as follows: 1995: 150; 1996: 163; 1997: 249; 1998: 190; 1999: 179; 2000: 213; 2001: 215; 2002: 266; 2003: 282; 2004: 286.<sup>76</sup>

<sup>71</sup> Cf. The United Nations Development Programme stated, indicating that it did so based on data of the National Civil Police, that “the homicidal violence [in Guatemala] has increased more than 120%, from 2,655 murders in 1999 to 5,885 in 2006. This upsurge equals an increase of more than 12% a year since 1999, amply exceeding the growth of the population which is less than 2.6% a year.” United Nations Development Programme (UNDP), Armed Violence Prevention programme of UNDP Guatemala, “Informe estadístico de la violencia en Guatemala” [Statistical report on violence in Guatemala], *supra*, p. 9. It should also be recalled that the State acknowledged that, in 2001, there was an “increase in [...] violent deaths” and “fear among [...] Guatemalan society” (*supra* para. 18).

<sup>72</sup> Cf. Conflict Analysis Resource Center (CERAC), “Guatemala en la encrucijada. Panorama de una violencia transformada” [Guatemala at the Crossroads: An Overview of Violence Transformed], Geneva, 2011 (file of annexes to the motions and arguments brief, annex 57, fs. 7480 to 77007).

<sup>73</sup> This document indicates that “according to a report,” in 2012, “Guatemala occupied the third place at the global level for violent deaths of women, with a rate of 9.7 femicides for every 100,000 inhabitants.” Judiciary of Guatemala, “Primer Informe sobre Juzgados and Tribunales Penales de Delitos de Femicidio y otras Formas de Violencia Contra la Mujer” [First report on criminal courts for crimes of femicide and other forms of violence against women], 2012 (file of annexes to the motions and arguments brief, annex 101, fs. 10854 to 10917).

<sup>74</sup> Cf. Economic Commission for Latin America and the Caribbean (ECLAC), “Si no se cuenta, no cuenta. Información sobre la violencia contra las mujeres,” Santiago de Chile, Chile, 2012, p. 246 (file of annexes to the motions and arguments brief, annex 59, fs. 7815 to 8210), United Nations Economic and Social Council. Commission on Human Rights, sixty first session, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. Mission to Guatemala. UN Doc. E/CN.4/2005/72/Add.3, 10 February 2005, para. 28 (file of attachments to the Merits Report, annex 31, fs. 240 to 264). It should be underscored that, within the framework of the situation described, between 2000 and 2002, there was an increase in the reports of acts of violence perpetrated against women that were dealt with by the Public Prosecution Service: according to documentation of the United Nations Committee for the Elimination of Discrimination against Women, data from State sources indicate that while there were 130,561 complaints in 2000, 222,436 complaints were recorded in 2001, and 238,936 in 2002; in other words, between 2000 and 2002, this type of complaint increased by 83%. Cf. Committee for the Elimination of Discrimination against Women. Pre-session working group. Thirty-fifth session, 15 May to 2 June 2006. Responses to the list of issues and questions for consideration of the sixth periodic report. Guatemala. UN Doc. CEDAW/C/GUA/Q/6/Add.1, 27 March 2006 (file of attachments to the Merits Report, annex 28, fs. 151 to 202). The document indicates that the source of the data is the Guatemala Presidential Human Rights Commission (COPREDEH) (file of attachments to the Merits Report, annex 28, fs. 161 to 202).

<sup>75</sup> Inter-American Commission on Human Rights, Press Communiqué 20/04, “The IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination,” September 18, 2004, para. 7 (file of attachments to the Merits Report, annex 32, fs. 266 to 310).

<sup>76</sup> Follow-up Mechanism on the Convention of Belém do Pará (MESECVI). Second Conference of States parties, *supra*, p. 74.

77. Over and above the increase in the number of murders of women, the Court has been provided with information on the proportion of women murdered compared to the murder of men, and on the increase in that proportion. The Court has been informed that, between 2001 and 2006, almost 10% of murders were committed against women.<sup>77</sup> This percentage is similar to the period from 1986 to 2008,<sup>78</sup> or from 2002 to 2012.<sup>79</sup> It exceeded 10%, at least in 2003 and 2004, years in which it was in excess of 11% and 12%, respectively.<sup>80</sup> Moreover, there is also information that, from 1995 to 2004, the increase in the rate of growth of the murder of women was almost double the increase in the murder of men,<sup>81</sup> and that, in 2004, "the number of violent deaths of women had increased by 20[%] more than that of men."<sup>82</sup>

78. It has been said that it was mainly in urban areas such as Guatemala City or Escuintla that this type of incident took place,<sup>83</sup> and that the women victims generally lived

<sup>77</sup> Expert witness María Eugenia Solís García stated that National Civil Police data indicates that, in 2001, there were 2,967 murders, of these 303 involved women and that, in 2006, there were 5,885 murders 602 of which corresponded to women. In other words, according to these figures, the murders of women represented 10.21% of the total in 2001 and 10.22% of the total in 2006. The UNDP has indicated similar, although not identical, figures, stating that, "on average, the percentage of women murdered between 2001 and 2006 has been 9.9%." United Nations Development Programme (UNDP), Armed Violence Prevention programme of UNDP Guatemala, "*Informe estadístico de la violencia en Guatemala*," *supra*, p. 31, and Expert opinion of María Eugenia Solís García, *supra*.

<sup>78</sup> One report indicates that, based on the "average percentage of murders of men in relation to the total number of murders from [...] 1986 to 2008," "91% of the murders in the country [...] relate to the male population." Conflict Analysis Resource Center (CERAC), "*Guatemala en la encrucijada. Panorama de una violencia transformada*," *supra*, pp. 59 and 106.

<sup>79</sup> Expert witness María Eugenia Solís García indicated that, according to information from the Guatemalan National Institute of Forensic Science (INACIF), in the decade between 2002 and 2012, women were victims of 11% of all violent deaths.

<sup>80</sup> The UNDP indicated that "[A] sustained growth in the total number of [murders of women] recorded can be noted. In six years [...] it has almost doubled, from 303 in 2001 to 603 in 2006, [but] the percentage of [murders of women] in relation to the total number of murders has not increased as greatly as the total frequency. [...] The increase in the percentage of murdered women recorded in 2004 (12.4%) is striking." United Nations Development Programme (UNDP), Armed Violence Prevention programme of UNDP Guatemala, "*Informe estadístico de la violencia en Guatemala*," *supra*, pp. 30 and 31. Amnesty International, in a document dealing with the situation between 2001 and 2005, explained that "[m]en have also been affected by the general level of violence, [...] and there has been a significant increase in the murder rate in general." It also stated that, "according to police data, in 2002, of the total number of murders, 4.5% were women; in 2003, 11.5%, and in 2004, 12.1%." Amnesty International, "Amnesty International, "Guatemala. No protection, no justice: killings of women," *supra*, p. 2.

<sup>81</sup> Regarding the connection between the general situation in relation to violent deaths, and the deaths of women, expert witness Ana Carcedo Cabañas indicated an "uncontrolled increase in the number of violent deaths of women, which has meant that the rates increased from somewhat less than 4 for every 100,000 women in 2000, to almost 10 women for every 100,000 in 2006. [...] Over this period, the murder of men also increased. However, [...] while the murder of men increased by 68% between 1995 and 2004, the murder of women increased by 141%; in other words, such murders are increasing more than twice as fast as the murder of men." Cf. Expert opinion of Ana Carcedo Cabañas, *supra*. Similarly, Carcedo, Ana, "*No olvidamos ni aceptamos: Femicidio en Centroamérica 2000-2006*," San José, Costa Rica, 2010, p. 41 (file of annexes to the motions and arguments brief, annex 55, fs. 6,313 to 7,320).

<sup>82</sup> International Federation for Human Rights. International Investigation Mission, "*El femicidio en México y Guatemala*," April 2006 (file of attachments to the Merits Report, annex 34, fs. 358 to 399). This document states: "In Guatemala, over the period from 2000 to 2005, there has been an increase of violent deaths among the general population. [...] Data from the National Civil Police (PNC) reveals that[, in 2004,] while the number of violent deaths of men increased by 36%, that of women grew by 56.8%. This trend has continued in 2005."

<sup>83</sup> Amnesty International, in a document dealing with the situation between 2001 and 2005, stated that most of the murders of women have been committed in urban areas, where violent crime has increased in recent years, often linked to organized crime [...] as well as to the activities of bands of street youths known as '*maras*.'" Amnesty International, "Guatemala. No protection, no justice: killings of women", *supra*, p. 2. Similarly, regarding the fact that most of the corpses were found on vacant lots near Guatemala City: United Nations Economic and Social Council. Commission on Human Rights sixty-first session, Report of the Special Rapporteur on violence

in poor neighborhoods, were engaged in low-income activities, or were students.<sup>84</sup> The “brutality of the violence used,” the presence of “signs of sexual abuse” on the corpses or their mutilation has also been indicated as “characteristic of many of the cases of the women victims of murder.”<sup>85</sup> Also that “[m]any of [the] women were kidnapped and, in some cases, were retained for hours, or even days, before being murdered.”<sup>86</sup> Expert witness Ana Carcedo Cabañas indicated that the “Guatemala Judiciary acknowledge[d] the existence of this disproportionate cruelty in the deaths of women.”<sup>87</sup>

79. In keeping with the above, the Inter-American Commission’s April 2001 report stated that, at that time, violence against women was “a serious problem in the country,” and that “although [at that time it was] difficult to estimate the depth and breadth of the problem with precision, it [was] reported that violence based on gender [was] a leading cause of death and disability among women between 15 and 44 years of age.”<sup>88</sup> The State indicated that the “statistics may be correct.”

80. It is also worth noting that the Office of the Ombudsman, a State body, has linked the existence of violent acts perpetrated against women in 2001 to “the discrimination that is culturally-rooted in Guatemalan society,” and has considered that this violence is inserted in the context of discrimination against women in Guatemala in different spheres.<sup>89</sup> The

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against women, its causes and consequences, Yakin Ertürk, *supra*, para. 28. With regard to the observation on Guatemala City and Escuintla, the number of incidents that occurred in the former, at least in 2003, quadrupled that of the latter. Cf. Office of the Guatemalan Ombudsman, “Informe Anual Circunstanciado 2003,” Guatemala, January 2004, p. 16 (file of annexes to the motions and arguments brief, annex 106, fs. 11,153 to 11,878).

<sup>84</sup> Amnesty International, “Guatemala. No protection, no justice: killings of women”, *supra*, p. 7.

<sup>85</sup> Cf. Amnesty International, “Guatemala. No protection, no justice: killings of women”, *supra*, p. 8. It should also be indicated that, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions recognized the constant increase in murdered women since 2001, and stated that “[a] study by the [Office of the Ombudsman] [...] showed that, among those murder victims who experienced torture or abuse, the acts committed by the perpetrators were generally similar whether the victim was male or female.[...] The one notable distinction was that while 15 per cent of the female corpses showed signs of sexual abuse, none of the male corpses did. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Mission to Guatemala, UN Doc. A/HRC/4/20/Add.2, 19 February 2007, paras. 22 and 26 (file of annexes to the motions and arguments brief, annex 75, fs. 10,463 to 10,489). The Guatemalan Ombudsman, when establishing a profile for the violent deaths of women (in which he did not include gender-based murders), indicated that they were “[d]eaths with extrajudicial characteristics or characteristics of social cleansing” “because the corpses bear signs of torture, coup de grâce, ropes around feet and hands, and reveal a professional *modus operandi*. [...] A specific characteristic is that the corpses appear in a place other than that of the victim’s residence. They are committed by illegal clandestine groups linked directly or indirectly to State agencies or to gangs involved in organized crime.” Guatemalan Ombudsman, “Compendio ‘muertes violentas de mujeres’ 2003 a 2005,” p. 22 (file of attachments to the Merits Report, annex 36, fs. 581 to 718).

<sup>86</sup> Amnesty International, “Guatemala. No protection, no justice: killings of women”, *supra*, p. 8.

<sup>87</sup> The expert witness stated that the Guatemalan Judiciary considered that “this perpetration of excessive violence, before, at the time of, or after the criminal act [...] reveals special cruelty towards the body of the women, which constitutes an element that differentiates it from simple murder.”

<sup>88</sup> Inter-American Commission on Human Rights, “Fifth Report on the Situation of Human Rights in Guatemala,” *supra*, para. 41. Regarding the age of the victims, expert witness María Eugenia Solís García stated that “[m]ost of the victims are adolescents and women under 40 years of age.” Cf. Expert opinion of María Eugenia Solís García, *supra*.

<sup>89</sup> Cf. Office of the Ombudsman of Guatemala, “Informe Anual Circunstanciado 2001”, Guatemala, January 2002, pp. 44 to 46 (file of annexes to the motions and arguments brief, annex 105, fs. 10,968 to 11,151). This document indicates that discrimination “historically [...] has excluded [women] from the enjoyment of fundamental rights and, therefore, they are victims of harassment, ill-treatment and violence.” In addition, “the existence of social, economic and political conditions that keep women in a condition of inequality in relation to men” has been indicated as a possible explanation for the increase in the murder of women in Guatemala. Conflict Analysis Resource Center (CERAC), “Guatemala en la encrucijada. Panorama de una violencia transformada,” *supra*, p. 106. Similarly, Amnesty International, in a report that refers to data for 2000 to 2003, considers “the patriarchal culture to be a specific cause [of the] phenomenon [of the violence]” in Guatemala. The report explains that “[t]he patriarchal system established by a pattern of a mainly masculine exercise of power and domination easily places women in a vulnerable position.” Amnesty International, “Informe de crímenes contra mujeres en Guatemala”, August 2004, pp. 11 and 13 (file of annexes to the motions and arguments brief, annex 52, fs. 5,512 to 5,525).

Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), another State agency, has made similar observations.<sup>90</sup>

81. Based on the above, it can be concluded that, in the series of violent deaths of women that occurred in Guatemala in 2001, the existence of gender-based murder was not exceptional.<sup>91</sup> This conclusion is supported by an assessment of the expert and documentary evidence relating to dates around December 2001.<sup>92</sup> In this regard, it is opportune to consider that the type of phenomenon examined here has some degree of continuity over time and that, although it is difficult to define with complete certainty the moment at which it began, at any rate, at the time at which the facts of this case occurred a context existed of an increase in homicidal violence against women in Guatemala.

#### **A.4) The State's actions in the investigation of the murder of women**

82. It should be emphasized that the State, before<sup>93</sup> and after the facts of this case, has taken diverse measures to deal with the discrimination and violence against women and the

<sup>90</sup> It stated that "manifestations of violence [against women] reveal the historically asymmetrical relations between women and men, product of a social organization structured on the basis of inequality, and the oppression of, and discrimination against, women." Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), PLANNOVI 2004-2014: National Plan for the Prevention and Eradication of Family Violence and Violence against Women, *supra*, p. 6.

<sup>91</sup> This does not mean finding it proved that the growth in the number of murders of women is due, exclusively and mainly, to gender-based violence, or gender-based murder in Guatemala, in 2001 or subsequently, as a generalized or growing phenomenon. In this regard, reference should be made to evidence provided by the representatives: a report indicates that two explanations stand out for the increase in the murder of women in Guatemala; one related to "the overall climate of violence experienced by Guatemala that affects both men and women," and the other related to women's inequality in relation to men. In the document it is asserted that "[e]ven though violence against women has increased significantly, the available data does not allow it to be concluded that, in Guatemala, femicide is a generalized phenomenon in the country or that it is increasing." Conflict Analysis Resource Center (CERAC), *Guatemala en la encrucijada. Panorama de una violencia transformada*, *supra*, p. 59.

<sup>92</sup> Expert witness Ana Carcedo Cabañas indicated that "owing to the problems concerning information already mentioned (*supra* footnote 70), 40% of the murders of women were classified as femicides and 19% more as cases in which femicide was suspected." In this regard, Amnesty International has stated that "[i]n its 2003 report, the Office of the Ombudsman stated that, from a sample of 61 cases examined in detail, the conclusion could be reached that 22 of the women had died in a context of sexual abuse." Amnesty International, "Guatemala. No protection, no justice: killings of women", *supra*, p. 8. The Court notes that the opinion of expert witness Ana Carcedo Cabañas would lead to the conclusion that, in 2003, an estimated 59% of the murders of women in Guatemala were committed based on the victim's gender. Furthermore, the information presented by Amnesty International, based on State data, would suggest that, the same year, 36.06% of the deaths of women were associated with a context of sexual abuse. The Court, on the basis of the criteria indicated, finds it possible to conclude that a significant number of the murders of women in 2003 were committed based on the victims' gender.

<sup>93</sup> Also, with regard to that initial time, the Court notes that, prior to December 2001, the State had taken steps related to the problem of violence against women. In 1996, the Law to Prevent, Punish and Eradicate Family Violence, Decree No. 97-1996, November 28, 1996, Guatemala, was promulgated (file of annexes to the answering brief, annex 20, fs. 14,172 to 14,177). In 2000 and 2001, this was supplemented by regulations and by the creation of the Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI). In 2000, the Presidential Secretariat for Women (SEPREM) was created and the National Policy for the Promotion and Development of Guatemalan Women was established for the period from 2001 to 2006 with its Equal Opportunities Plan. In addition, the Law for the Comprehensive Promotion and Dignification of Women was enacted in March 1999 and the Social Development Act in 2001, by congressional Decrees No. 7-99 and No. 42-2001, respectively. Article 16 of the latter establishes that "social development" and "population" policies shall include measures and actions designed, *inter alia*, to eradicate and to punish any type of individual or collective violence, abuse and discrimination against women in keeping with the international conventions and treaties ratified by Guatemala. Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), PLANNOVI 2004-2014: National Plan for the Prevention and Eradication of Family Violence and Violence against Women, *supra*, p. 12. In this regard, in August 2001, the United Nations Human Rights Committee "welcome[d] the positive legislative measures adopted [by Guatemala] on behalf of women and the establishment of various bodies intended to promote and protect women's

Court takes these into account. In this regard, the Law to Prevent, Punish and Eradicate Family Violence of November 28, 1996, and the Law against Femicide and Other Forms of Violence against Women (hereinafter also "Law against Femicide") adopted in 2008 should be underlined (*supra* footnotes 68 and 93).

83. Despite the importance of the above, it is worth indicating that, in December 2001, and over the following years, there was a high level of general impunity in Guatemala in relation to different types of offenses and victims. In this context, most of the violent acts that resulted in the death of women remained unpunished. In this regard, in 2004, the United Nations Verification Mission in Guatemala (MINUGUA) stated that:

[d]espite the efforts made to strengthen the justice administration system, now that the Mission's work has ended, it can be concluded that there is no proportionality between that investment and the results obtained. Impunity continues to be a systematic and transversal phenomenon and despite the changes that have been described in different reports, the population continues to perceive that there is a situation of defenselessness and impunity.<sup>94</sup>

84. The evidence provided to the Court does not reveal that this situation (both the general and the specific one with regard to violent acts against women) have changed substantially to date. Thus, although there is data that indicates a decrease in the level of impunity in recent years, this continues to be very high (*infra* para. 86). This is pertinent in the instant case, because the information that the Court has shows that the investigation has been conducted in the years following 2001; it has not concluded, and it remains at the initial stage (*infra* para. 119). This is evident from the information described below.

85. As the State has indicated, in 2001, "a structural situation of impunity prevailed," and "there were no guidelines for the investigation and prosecution of crimes" (*supra* paras. 17 and 18). For its part, in April 2001, the Inter-American Commission stated that prior to the period between 1998 and October 2000, "impunity persisted in many cases of human rights violations and common crime [...] which is most worrying to the Commission, because it signifies that, with few exceptions, human rights are not subject to the judicial protection required under the American Convention."<sup>95</sup> Moreover, in 2003, citing documents prepared by the United Nations Verification Mission in Guatemala (MINUGUA), the Inter-American Commission indicated that "[b]etween October 1, 1999 and June 30, 2000, there were 2,991 verified violations of due process; between July 1, 2000 and June 30, 2000, the

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rights." Concluding observations of the Human Rights Committee, Republic of Guatemala. UN Doc. CCPR/CO/72/GTM, 27 August 2001, para. 6 (file of annexes to the motions and arguments brief, annex 61, fs. 8339 to 8345). With regard to CONAPREVI and SEPREM, the following merits clarification: The State indicated that CONAPREVI was created by Government Decision 831-2000 and its amendments: Government Decisions 868-2000 and 417-2003. Its mandate is based on Article 13 of the Convention of Belém do Pará and on article 17 of the Law against Femicide and Other Forms of Violence against Women." However, notwithstanding the information provided on its creation in 2000, CONAPREVI indicated that "[i]t was created in January 2001 as the highest-level institution responsible for promoting, assessing, and coordinating public policies aimed at reducing violence against women." Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), CONAPREVI Report to the Presidential Human Rights Commission (COPREDEH) in response to the request of the Inter-American Commission in the case of Claudina Isabel Velásquez Paiz, March 22, 2012, p. 2 (file of annexes to the answering brief, annex 9, fs. 14,055 to 14,071). SEPREM was created by Government Decision 200-2000, of May 17, 2000. According to the State, this agency of the Executive "assesses and coordinates public policies to promote the comprehensive advancement of women." Expert witness Ana Carcedo Cabañas considered that "the mandates of CONAPREVI and SEPREM overlap," and that this "problem" became more "complicate[d]" when "[t]he President subsequently appointed an 'Anti-Femicide Commissioner.'" Cf. Expert opinion of Ana Carcedo Cabañas, *supra*. Despite the foregoing, the State indicated, in its answering brief of December 18, 2012, that, "at the time the facts [of the case] occurred [in December 2001,] there was no specific legislation or procedures for cases of violence against women, but [that in December 2012,] such legislation and procedures exist."

<sup>94</sup> United Nations Verification Mission in Guatemala (MINUGUA), Final Report: "Asesoría en Derechos Humanos," *supra*.

<sup>95</sup> Inter-American Commission on Human Rights "Fifth Report on the Situation of Human Rights in Guatemala," *supra*, para. 19.

number was 3,672 (55% of which were prompted by government failure to investigate and punish); and between July 1, 2000, and June 30, 2002, the number was 4,719."<sup>96</sup>

86. Data for subsequent years reveals a similar situation. Indeed, in September 2007, "[o]wing to the extremely high level of impunity, the State [...] requested the support of the international community to deal with this problem, specifically, by the establishment of the International Commission against Impunity in Guatemala (CICIG)."<sup>97</sup> The problem described is reflected in other data. Thus, for example, it has been said that, in 2006, "about 40% of the cases filed at the divisional prosecution offices [were] shelved."<sup>98</sup> There is also information stating that, in 2008, "[a]ccording to official statistics, Guatemala has an average rate of 5,000 killings per year, while the criminal justice system is unable to shed light on or bring to trial even 5% of these cases."<sup>99</sup> Subsequently, according to CICIG data, a 95% impunity rate was recorded for the clarification of murders in judicial proceedings in 2009, decreasing to 72% in 2012.<sup>100</sup>

87. This situation must be examined, taking into account also that a high percentage of crimes are not reported. Thus, it is pertinent to note that a 2007 report, which focused on information from 2005 but also considered previous and subsequent years, indicated based on information from an official source that "surveys on victimization in every kind of crime in Guatemala resulted in a rate of 75% unreported crimes."<sup>101</sup> The report concluded that "this percentage is probably even higher in cases of sexual offenses."<sup>102</sup>

88. This situation includes cases involving violent acts committed against women, including violent deaths. In 2001, as well as in adjacent periods, most trials did not result in the handing down of convictions.<sup>103</sup> In this regard, expert witness María Eugenia Solís García stated that "[o]n November 2, 2004, the Ombudsman [...] indicated that, of 1,118 cases of girls and women murdered between 2001 and 2004, only 9% were investigated." Furthermore, there is information indicating that, of the 591,933 reports of violent acts against women handled by the Public Prosecution Service in 2000, 2001 and 2002, only

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<sup>96</sup> Inter-American Commission on Human Rights, "Justice and Social Inclusion: the Challenges of Democracy in Guatemala," *supra*, para. 27.

<sup>97</sup> International Commission against Impunity in Guatemala (CICIG), "Tercer año de labores", *supra*, p. 13.

<sup>98</sup> Peace Brigades International (PBI), "10 years without war... waiting for peace," a report on compliance with the Peace Accord on Strengthening Civilian Power and the Role of the Armed Forces in a Democratic Society, *supra*, p. 16.

<sup>99</sup> *Impunity Watch*, "Recognizing the past: Challenges for the Combat of Impunity in Guatemala," *supra*, p. 14.

<sup>100</sup> International Commission against Impunity in Guatemala (CICIG), *Sexto Informe de labores*, *supra*, p. 6.

<sup>101</sup> In this regard, the said report (*infra* footnote 102) refers to a "report prepared by the congressional Committee for Women's Affairs, cited by *Siglo XXI*, April 24, 2007".

<sup>102</sup> The document, according to page 17, "focuses on 2005; however, some aspects are supplemented by information from previous years and from 2006 and 2007. The qualitative information refers to perceptions that are not restricted to a specific or delimited period, but transcend this and reveal more permanent cultural ideas and practices." Guatemalan Institute for Comparative Studies in Criminal Science (ICCPG). "Por ser mujer. Limitantes del sistema de justicia ante las muertes violentas de mujeres y víctimas de delitos sexuales," Guatemala, November 2007, p. 3 (file of annexes to the motions and arguments brief, annex 74, fs. 9,703 to 10,461).

<sup>103</sup> The Inter-American Commission stated that "the statistics from the Office of the Public Prosecutor for matters concerning women reveal that more than half the cases denounced over a recent period of time [2003] were closed without prosecution and very few ever went to trial." Inter-American Commission on Human Rights, "Justice and Social Inclusion: the Challenges of Democracy in Guatemala," *supra*, para. 297. It has also been said, based on a report of the United Nations Special Rapporteur on violence against women, its causes and consequences, that "the Office of the Public Prosecutor for matters concerning women and the special section of the National Civil Police indicated that 40% of cases are shelved and never investigation." Amnesty International, "Guatemala. No protection, no justice: killings of women," *supra*, p. 13.

2,335 went to trial; in other words, 0.39%.<sup>104</sup> The Inter-American Commission has indicated that “[i]t has been stated that, of the 8,989 complaints received by the Office of the Prosecutor for matters concerning women at the end of 2001, only three concluded with convictions.”<sup>105</sup> Similarly, it has been indicated that, “of the 1,227 cases of the murder of women reported between 2002 and 2004, only seven have achieved a conviction”;<sup>106</sup> that is, 0.57%. The general situation described, of a high rate of failure to punish violent acts against women, continued at least until the beginning of 2012.<sup>107</sup>

89. The absence of effective punishment of crimes in general may be related to shortcomings in the investigations. Nevertheless, State agencies, as well as national and international civil society organizations have indicated that it is usual for investigations into violent attacks on women to have certain defects, such as the absence of measures to protect, examine, and preserve the crime scene;<sup>108</sup> errors in the chain of custody of the evidence, and failure to examine signs of violence.<sup>109</sup> In this regard, the State indicated

<sup>104</sup> Committee for the Elimination of Discrimination against Women. Pre-session working group. Thirty-fifth session, 15 May to 2 June 2006. Responses to the list of issues and questions for consideration of the sixth periodic report. Guatemala, *supra*.

<sup>105</sup> Inter-American Commission on Human Rights, “Fifth Report on the Situation of Human Rights in Guatemala,” *supra*. In addition, the Inter-American Commission’s Special Rapporteur on the Rights of Women has stated that “[o]ne serious outcome of the cycle of violence against women is the impunity associated with those violations of the fundamental rights of women. Both state authorities as well as representatives of civil society said repeatedly [...] that the system for administering justice had not responded effectively to those crimes [...]. The delegation [of the Special Rapporteur...], after visits to the civil police, the Prosecutor’s Office (Office for Crimes against Women, Office for Care of Victims), the morgue, and to the judiciary, [...] verified] that the justice required is not found. Inter-American Commission on Human Rights, Press communiqué 20/04, “The IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination,” *supra*, para. 17. In 2006, the United Nations Committee for the Elimination of Discrimination against Women expressed its “concern” owing to the “deeply-rooted culture of impunity for” crimes of the “disappearance, violation, torture and murder” of women. Committee for the Elimination of Discrimination against Women, thirty-fifth session, 15 May to 2 June 2006, *supra*, para. 23.

<sup>106</sup> International Federation for Human Rights. International Investigation Mission, “*El femicidio en México y Guatemala*,” *supra*.

<sup>107</sup> According to the National Judicial Documentation and Analysis Center (CENADOJ), in 2005, 488 cases of violent deaths of women and children entered the system, 65 judgments were delivered and a conviction was handed down in 46 of these. In 2006, there were 482 cases, 70 judgments were delivered more than half of which handed down a conviction. In 2009, there were 635 cases and 82 judgments were delivered, 44 of them handing down a conviction. In addition, between September 2008, when the Law against Femicide entered into force (*supra* footnote 68), and March 2012, 69,909 cases for the offenses established in that law (femicide, violence against women, and economic violence) were filed in the criminal courts. Over the same period, 772 judgments were delivered for these offenses; in other words, 1.10%. Cf. National Judicial Documentation and Analysis Center (CENADOJ), Judicial Statistics and Documentation Section, Report on cases filed and judgments delivered by the criminal courts, Tables of cases filed for offenses establish in the Law against Femicide, corresponding to 2008 – 2010, 2011 and January to March 2012 (file of annexes to the motions and arguments brief, annexes 88, 89 and 90, fs. 10,760 to 10,763, 10,765, 10,766, 10,768 and 10,769, respectively). Despite the above, it should be stressed that, according to uncontested data presented by the State in its answering brief, in 2011 and 2012, there was a decrease in “complaints [or] indictments” relating to sexual offenses against women and, in parallel, an increase in the judgments concerning such cases from 227 to 168. Cf. “Table of proceedings for sexual offenses, women and children, 2011-2012” (file of annexes to the answering brief, annex 7, f. 14,013). In the latter document, the State also presented data on indictments and judgments on “sexual matters” concerning “girls [and] boys.” Indicating that, in 2011, there were 523 “indictments” and 302 judgments, and that, during 2012, up until December 18 that year (the date of the answering brief), these figures were 499 and 305, respectively.

<sup>108</sup> The expert witnesses José Mario Nájera Ochoa Eugenia Solís García expressed a similar opinion. Cf. Expert opinion of José Mario Nájera Ochoa provided by affidavit dated April 23, 2013 (file of preliminary objections, merits, reparations and costs, fs. 873 to 878), and Expert opinion of María Eugenia Solís García, *supra*.

<sup>109</sup> Expert witness María Eugenia Solís García made a similar observation. Cf. Expert opinion of María Eugenia Solís García, *supra*. Meanwhile, expert witness José Mario Nájera Ochoa indicated that “[t]here are no specific protocols for recovering the corpses of women; this is done on the basis of general instructions that are used for both women and men, with the sole addition of taking swabs, scraping under the nails, and determining whether the victim was pregnant. This is significant because the violent deaths of women have [...] special aspects that should be taken into account when processing the scene.” Cf. Expert opinion of José Mario Nájera Ochoa, *supra*.



that, in 2001, “there were no pre-established circumstances in which forensic physicians were obliged to perform examinations for signs of sexual abuse.” The State also indicated that:

In 2001, the laws in force did not include autopsy guidelines or protocols. [The performance of autopsies] was not standardized [...] and they were not aimed at obtaining or producing scientific evidence, but rather at the identification and individualization of the corpse and the possible cause of death.

90. In addition, other information of different types provided to the Court explains that, within the framework of investigations into crimes against women it was frequent that the authorities behaved in a way that has been called “biased” or “discriminatory.” In this regard, some reports and testimonies of women survivors and their family members indicate a “tendency of the investigators to doubt the victims and to blame them for their lifestyle, or [clothes].” Similarly, expert witness María Eugenia Solís García stated that “there is a discriminatory bias” in the investigations because they inquire into aspects of the conduct and personal relationships of the victims, basically with regard to their “sexual activities,” which “creates [...] a series of prejudices [and] stereotypes that lead to the conclusion that these women [...] were responsible for what happened to them.” She clarified that the fact that the investigators “ask questions regarding [the victim’s conduct or relationships] is not a problem, [but rather] that prejudices and stereotypes are developed based on this information,” and that this has an impact on the effectiveness of the investigation. This is because “the discriminatory bias” leads “the agents of justice to consider that the investigation is unimportant and not a priority.”

## **B. The facts of the case**

91. The account of the facts provides a description of the most relevant procedures and actions carried out in the course of the investigation into the murder of María Isabel Veliz Franco included in the case files.<sup>110</sup> It should be noted that the murder investigation has been conducted by Agency No. 5 of the Municipal Prosecutor’s Office of the Public Prosecution Service of the municipality of Mixco (hereinafter also “Mixco Agency No. 5”) and Agency No. 32 of the Metropolitan District Prosecutor’s Office of Guatemala City (hereinafter also “Guatemala City Agency No. 32”), and by the Eighth Court of First Instance for criminal matters, drug-trafficking and crimes against the environment of Guatemala City (hereinafter also “Eighth Court of Guatemala City”) and the First Court of First Instance for criminal matters, drug-trafficking and crimes against the environment of the municipality of Mixco (hereinafter also “First Court of Mixco”). The presentation of the facts describes measures taken by these entities.

### **B.1) María Isabel Veliz Franco**

92. María Isabel Veliz Franco was born in Guatemala City, Guatemala, on January 13, 1986.<sup>111</sup> At the time of her death she was 15 years old; she was a student and had just completed the third year of basic studies; she was on vacation and working as a temporary employee of “*Almacén Taxi*” located in Zone 1 of the Guatemalan capital. María Isabel lived with her mother, Rosa Elvira Franco Sandoval,<sup>112</sup> her brothers Leonel Enrique Veliz Franco<sup>113</sup> and José Roberto Franco,<sup>114</sup> and her maternal grandparents, Cruz Elvira Sandoval<sup>115</sup> and Roberto Franco Pérez.<sup>116</sup>

<sup>110</sup> According to the evidence, the State forwarded two files relating to the investigation conducted by the Public Prosecution Service and to the proceedings before the First Court of First Instance for criminal matters, drug-trafficking and crimes against the environment of the municipality of Mixco. However, they are described together when examining the measures taken.

<sup>111</sup> Cf. Birth certificate of María Isabel Veliz Franco issued by the National Civil Registry Office of Guatemala on January 24, 1986 (file of annexes to the motions and arguments brief, tome I, annex 1, fs. 5,294 and 5,295).

<sup>112</sup> Cf. Identity document of Rosa Elvira Franco Sandoval (file of annexes to the motions and arguments brief, tome I, annex 2, f. 5,297).

<sup>113</sup> Cf. Birth certificate of Leonel Enrique Veliz Franco issued by the National Civil Registry Office of Guatemala on July 10, 1987 (file of annexes to the motions and arguments brief, tome I, annex 3, fs. 5,299 and 5,300).

## **B.2) Report of disappearance and initial steps**

93. **The report.** On December 17, 2001, at 4 p.m., Rosa Elvira Franco Sandoval visited the Bureau of Criminal Investigation of the National Civil Police of Guatemala (hereinafter “PNC Investigation Service”), to report the disappearance of her daughter, María Isabel Veliz Franco. In the report, Mrs. Franco stated that:

- a) On December 16, 2001, her 15-year old daughter left the house at 8 a.m. to go to work at “*Almacén Taxi*” and, unexpectedly, did not return at 8 p.m. that day;
- b) On December 17, 2001, at 10 a.m., she went to the store to look for [María Isabel] and a friend of her daughter’s told her that, on December 16, 2001, at around 7 p.m., a rough-looking fellow had asked for her and then waited for her, and presumably the two left together;<sup>117</sup> [Mrs. Franco Sandoval] said she knew the name of this suspicious individual, because her daughter’s friends told her that [María Isabel] had mentioned the name frequently,<sup>118</sup> and
- c) According to Rosa Elvira Franco’s statement, she had authorized her daughter María Isabel to work in this store during her school vacations as she had in previous years.

94. **Subsequent statements by Rosa Elvira Franco Sandoval.** On subsequent occasions, Mrs. Franco Sandoval provided further details:

- a) On December 19, 2001, at 10.20 a.m., when she was interviewed by the investigators assigned to the case at *Funerales Mancilla S.A.*, where she was keeping vigil over her daughter’s body, she made the following statement:

[Her] daughter had not come to have lunch at home as she usually did so, at around 2 p.m., [she] went to leave her some food and, when [she] arrived, [she] asked [María Isabel] why she had not come home to have lunch, and she answered that she had not had time and that a male friend was coming to collect her when she finished work; [she] asked her who this was, but [María Isabel] did not answer. Regarding her daughter’s attackers, she suspect[ed] someone who [she] only knew by his first name, [and she knew that he was] around 38 years old, because, about a year ago, this individual was harassing her daughter; [she] was aware of this individual because he came looking for [her] daughter almost every day. On one occasion, [her] daughter commented that she had met [this individual] in a discotheque in Zone 10, through some friends. When [she] realized that [her] daughter had not come home, [she] went to the store where María Isabel worked and spoke to one of her workmates. In answer to [her] questions, the latter indicated that at around 8 p.m. on 16-12-2001 an individual came to the said store to buy a shirt and was attended by María Isabel, and [the workmate] said that it appeared that [her] daughter knew him; she also commented that other unknown individuals were hanging around the store. The characteristics that [María Isabel’s workmate] described coincided with the characteristics of [the person who had harassed María Isabel]; this is why [Rosa Elvira Franco] suspects the said individual.<sup>119</sup>

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<sup>114</sup> Cf. Birth certificate of José Roberto Franco, issued by the National Civil Registry Office of Guatemala on August 4, 1992 (file of annexes to the motions and arguments brief, tome I, annex 4, f. 5,302).

<sup>115</sup> Cf. Death certificate of Cruz Elvira Sandoval Polanco issued by the National Civil Registry Office of Guatemala on February 25, 2011 (file of annexes to the motions and arguments brief, tome I, annex 5, fs. 5,304 and 5,305).

<sup>116</sup> Cf. Death certificate of Roberto Franco Pérez issued by the National Civil Registry Office of Guatemala on June 21, 2004 (file of annexes to the motions and arguments brief, tome XI, annex 6, fs. 5,307 and 5,308).

<sup>117</sup> Cf. Report of the disappearance of María Isabel filed by Rosa Elvira Franco Sandoval before the Bureau of Criminal Investigation, Disappeared Children’s Section, National Civil Police of Guatemala on December 17, 2001 (file of attachments to the Merits Report, annex 1, f. 55).

<sup>118</sup> Cf. Report of the disappearance of María Isabel filed by Rosa Elvira Franco Sandoval, *supra*.

<sup>119</sup> Cf. Report of the Homicide Section of the Bureau of Criminal Investigation of the National Civil Police of February 21, 2002 (file of attachments to the Merits Report, annex 16, fs. 105 to 110).

b) On January 14, 2002, in her expanded report, she added that María Isabel had dated a youth who belonged to a *mara* (youth gang) and was thinking of ending the relationship. Mrs. Franco recounted that she did not know with which of the two men she was suspicious of her daughter had gone on the day she disappeared. She also indicated that she suspected one of her daughter's girlfriends, because María Isabel's co-workers had told her that she had called her the day she disappeared,<sup>120</sup> and

c) During the public hearing before the Court on May 15, 2013, she mentioned for the first time that the last person who saw her daughter alive was "one of her co-workers [in the store], who saw when they took her, they forced her into a car." She also stated that at midday on December 17, 2001, she went to the disappeared persons' section of the PNC, in order to report her daughter's disappearance. However, according to her, the State officials did not allow her to make an official report; they told her to come back later, and then stated that they could not attend her because she had to wait from 24 to 72 hours before filing a report.<sup>121</sup> These elements are not found within the factual framework of the Merits Report.

95. **The State's inaction.** There is no record in the case files provided by the parties that State officials or agencies made an effort to look for María Isabel Veliz Franco on December 17, 2001. In particular, there is no record that this was done after Mrs. Franco filed an official report at 4 p.m. on December 17, 2001. Furthermore, the body of evidence does not show that any actions were taken the following day, other than those carried out as a result of the discovery of the corpse. The only record in the case file is the report filed by Rosa Elvira Franco before the PNC Investigation Service on December 17, 2001.

96. **Discovery of the corpse.** On December 18, 2001, the operator on duty received an anonymous telephone call indicating that there was a corpse on Avenue 21 in front of 4-48, Zone 8 of Mixco, San Cristóbal II; accordingly, she sent out a message through the central dispatch service of the 16<sup>th</sup> Precinct for the pertinent authorities to go there. At 2 p.m. police agents arrived at the said address and, at 2.15 p.m., they found the body of a woman in the undergrowth of a vacant lot at that address and therefore telephoned the authorities of the Public Prosecution Service. These authorities arrived at 2.30 p.m. and, subsequently, at 3.20 p.m., Site Inspection Unit I-005 arrived to take the corresponding steps, completing this procedure with the transfer of the corpse to the morgue in police vehicle No. 16-045 at 3.45 p.m., according to the State agents.<sup>122</sup>

97. **Removal of the corpse.** At 2.30 p.m. on December 18, 2001, the Assistant Prosecutor arrived to supervise the removal of the corpse, and at 2.45 p.m., proceeded to try to identify the corpse which, according to the authorities who intervened, showed signs of violence (*infra* para. 99). The body was not identified immediately, but was called "XX" because no identify document was found.<sup>123</sup> The Assistant Prosecutor's record of the

<sup>120</sup> Cf. Expansion of statement and ratification of complaint of Rosa Elvira Franco Sandoval before Agency No. 32 of the Public Prosecution Service of Guatemala City of January 14, 2002 (file of attachments to the Merits Report, annex 7, fs. 75 to 82).

<sup>121</sup> Cf. Statement made by Rosa Elvira Franco Sandoval during the public hearing held before the Court on May 15, 2013.

<sup>122</sup> Cf. Note No. 1,131-2001 of December 18, 2001, issued by the Head of Sub-Station 1651 of the National Civil Police addressed to the Assistant Prosecutor of the Public Prosecution Service of the municipality of Mixco (file of attachments to the Merits Report, annex 2, f. 57). Although the evidence does not reveal a specific document recording the first telephone call, there is no dispute between the State and the representatives that it was received. The evidence includes Note. No. 1,131-2001, recording the communication made to the central dispatch service of the 16<sup>th</sup> Precinct about the discovery of the body. In addition, during the public hearing, both the representatives and the State referred to the first telephone call that informed the authorities of the existence of a corpse. It should be noted, in relation to this first anonymous call, that, in its Merits Report, the Commission stated that "what the case file does not reveal is why the authorities went to the place where the body was found: specifically how did the central dispatch service of the 16<sup>th</sup> Precinct learn that a body had been discovered." Merits Report, *supra*, f. 33.

<sup>123</sup> Cf. Note No. 1,131-2001, *supra*.

removal of the corpse, and the report of the PNC agents present where it was found, both indicate that the body was transferred by a PNC vehicle, and that the autopsy order was handed to an agent of the PNC. This procedure ending at 3.45 p.m., while the report of the Site Inspection Unit of December 18, 2001, indicates that it ended at 4.15 p.m.<sup>124</sup>

98. **Identification of the corpse.** On December 18, 2001, María Isabel's mother, on seeing the news that a body had been found on television, went to the morgue where she verified that it was the body of her daughter.<sup>125</sup> Mrs. Franco Sandoval then indicated, as revealed by a document in the judicial case file, that:

When [she] had to go to the morgue to identify [her] daughter, who was labelled XX, she went mad with grief, [she] yelled, cried, collapsed; but at some moment [she] asked the pathologist for his opinion [and] he told [her] that [her] daughter had been raped and, in his opinion, had been murdered during the night of December 17.<sup>126</sup>

99. **Record of the recovery of the corpse.** On December 18, 2001, the record of the recovery of the corpse was prepared. Also, note No. 1,131-2001, of the same date, indicates the following:

It was verified that the [corpse's] face was covered with a green towel and a black towel; there was a brown plastic cord around her neck; the head was covered with a black nylon bag. When the body was discovered, the mouth and nose were full of food (vomit); the body was lying flat, with the face look west, and the legs east; the arms were at the side, the legs were extended, and the body was face down [...] CLOTHING: blue denim trousers, short-sleeved black cotton blouse brand Bobil Shirr; white underpants with purple figures; white socks, black leather shoes, beige brassiere. [...] THE FOLLOWING INJURIES: one wound to the front of the head, in the left parietal region near the pinna, presumably inflicted with a knife. The above-described objects are in the custody of the assistant prosecutor [...].<sup>127</sup>

Other documents prepared in the context of the investigation contain similar assertions and explicitly mention the presence of signs that the corpse had been strangled.<sup>128</sup>

100. **Testimony of a witness.** The agents of the PNC Bureau of Criminal Investigation, Homicide Section, interviewed a witness at the scene of the crime, who stated that he was a guard at a house under construction near that sector. He refused to provide his personal information for fear of reprisals and, with regard to the case, stated the following:

[On December 18, 2001, he] heard a neighbor's dogs barking for about 10 minutes; possibly, at that time they killed the girl. [He] found out about her death at about 11 a.m. from some construction

<sup>124</sup> Cf. Record of the removal of the corpse by the first Assistant Prosecutor of Mixco Agency No. 5 of December 18, 2001 (file of attachments to the Merits Report, annex 3, fs. 59 and 60); Note No. 1,131-2001, *supra*, and Site inspection report of December 18, 2001, issued by an expert from the Site Inspection Section of the Bureau of Criminal Investigation of the National Civil Police (file of attachments to the Merits Report, annex 5, fs. 70 and 71).

<sup>125</sup> Cf. Expansion of statement of Rosa Elvira Franco Sandoval and ratification of complaint, *supra*.

<sup>126</sup> Cf. Brief of Rosa Elvira Franco Sandoval of August 28, 2004, addressed to the Prosecutor General and Head of the Public Prosecution Service (file before the Commission, judicial case file, part I, fs. 2,869 to 2,872).

<sup>127</sup> Cf. Note No. 1,131-2001, *supra*. Regarding the green towel and the black towel that appeared with the body when it was found, the case file reveals some confusion as a blue towel is mentioned later. Nevertheless, the parties have not contested the fact that it was in fact a green towel and a black towel. See also, Expert opinion No. BIOL-01-15-12 of the Biology Section of the Bureau of Criminal Investigations of January 7, 2002 (file of attachments to the Merits Report, annex 14, fs. 99 to 101), and Report of the criminal investigation expert of December 29, 2001 (file of attachments to the Merits Report, annex 13, fs. 96 and 97).

<sup>128</sup> Cf. Record of the removal of the corpse by the first Assistant Prosecutor of Mixco Agency No. 5, *supra*; Record of the transfer of the corpse of María Isabel Veliz Franco addressed by the Assistant Prosecutor I of Mixco Agency No. 5 to the forensic physician for the autopsy of December 18, 2001 (file of attachments to the Merits Report, annex 4, fs. 66 and 67); Site inspection report issued by an expert from the Site Inspection Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*, and Medical certificate recording the death of María Isabel Veliz Franco dated December 18, 2001 (file of annexes to the motions and arguments brief, tome I, annex 9, f. 5,321).

workers and therefore went to the house of the man where the dogs were barking in the early morning hours, and think[s] that it was possibly this man who advised the Fire Department.<sup>129</sup>

The investigator's record mentions: "as pending measures, the need to interview the guard again because, at the time, he did not provide a great deal of information, possibly owing to the number of curious onlookers and that, perhaps, he would say more if he was alone."<sup>130</sup>

101. **Other actions.** PNC agents, investigators and the Assistant Prosecutor of Mixco Agency No. 5 also went to the scene and contacted the person who lives in the building located beside the lot where the corpse was found. Subsequently, officials of the PNC and the Public Prosecution Service searched the area with negative results, and asked the Criminalistics Bureau to compare the fingerprints in the post-mortem file of the corpse with the database to establish its identity.<sup>131</sup> Also, on December 18, 2001, an order was drawn up referring the corpse to the pathologist, but it did not request tests to determine whether the deceased had been sexually abused (*supra* para. 97). In addition, a site inspection was made and the respective report determined that, the crime scene had been contaminated prior to this inspection (*supra* footnote 124). The day the body was found, it was reported that several items were confiscated, and were being kept by the Site Inspection Unit.<sup>132</sup>

102. **Cause of death according to the death certificate.** The death certificate, prepared by a professional of the Judiciary's Forensic Medicine Service on December 18, 2001, established as the cause of death "fourth-degree trauma to the cranium caused by a knife wound."<sup>133</sup>

103. **Anonymous telephone call.** On December 18, 2001, at 10.30 p.m., a telephone call was received through the 110 confidential information system from an anonymous informant who said he was a messenger and that, during the evening of December 17, 2001, on 6<sup>th</sup> street 5-24, Colonia Nueva Monserrat, Zone 7, he had seen a woman get out of a vehicle and drop a black sack in some bushes; the sack turned out to be the body of a woman. He therefore followed the vehicle and saw when it turned into a house in the same locality. He also said that he called the police when he saw on the evening news that the body of a woman had been found in the place where he had seen the sack dropped the previous evening.<sup>134</sup>

104. **Other interviews.** On December 19, 2001, at 9:10 a.m., María Isabel's grandmother, some employees of "Almacén Taxi,"<sup>135</sup> and neighbors of the building where the vehicle used to transfer the body supposedly entered were interviewed.

105. **Appointment of a team of experts.** Also, on December 19, 2001, the Assistant Prosecutor of the Metropolitan District Prosecutor's Office contacted the Head of the Bureau

<sup>129</sup> Cf. Report of December 18, 2001, on inquiries concerning the death (file of attachments to the Merits Report, annex 4, fs. 63 to 65). Regarding the alert reportedly given to the Fire Department, the case file contains no record of the presence of the Fire Department at any time.

<sup>130</sup> Cf. Report on inquiries concerning the death, *supra*.

<sup>131</sup> Cf. Report on inquiries concerning the death, *supra*.

<sup>132</sup> Cf. Report of the Homicide Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*.

<sup>133</sup> Cf. Death certificate of María Isabel Veliz Franco, *supra*.

<sup>134</sup> Cf. Report of the 110 confidential information system of the National Civil Police of December 18, 2001 (file of attachments to the Merits Report, annex 6, f. 73). According to the annexes presented by the State, a PNC report indicated that "the 110 system received a telephone call from an anonymous informant. The 110 number is the number for emergencies and reports to the PNC; it operates 24 hours a day all year round. The address of the place where the corpse was found differed in the first call that the PNC received and the second received by the 110 system. In the first anonymous call the following address was given: avenue 21, in front of 4-48, Zone 8 of Mixco, San Cristobal II. During the second telephone call, the address received was: in 6th Street 5-24, Colonia Nueva Monserrat, Zone 7.

<sup>135</sup> Cf. Report of the Homicide Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*.

of Criminal Investigations asking him to “appoint a team of crime scene experts in order to collect evidence (clothes), in the hands of the victim’s mother,” in order to conduct the corresponding tests, looking for samples of blood, hair, pubic hair, semen and any other element that could be incorporated into the file as a probative element. The collection of the evidence found at the site where the corpse appeared was carried out at “*Funerales Mancilla S.A.*”, where the members of María Isabel’s family were keeping vigil over her body, and her mother had her clothes.<sup>136</sup>

### **B.3) Subsequent actions**

106. Subsequently, measures to investigate the facts have continued, but have been unsuccessful. Consequently, at the date of this Judgment, the respective actions are still at the preparatory or investigative stage.

107. **Jurisdictional dispute.** At the initial stage, there was a delay of several months owing to a jurisdictional dispute between two courts:

- a) At the beginning, the court hearing the case was the Eighth Court of Guatemala City;
- b) On March 11, 2002, this court disqualified itself from hearing the case, presuming that the incident had occurred at 2nd avenue and 4th Street of San Cristóbal, Zone 8, Mixco, because María Isabel’s body was found there, and forwarded the proceedings to the Mixco First Court for the latter to hear the matter;<sup>137</sup>
- c) The Mixco First Court took over the proceedings on March 26, 2002, and decided to authorize that information be obtained from telecommunication companies as requested by the Public Prosecution Service;<sup>138</sup>
- d) On May 17, 2002, the prosecutor of Guatemala City Agency No. 32 recused himself from examining the case because, on March 11, 2002, the Eighth Court of Guatemala City had also disqualified itself from examining it; the case file was therefore forwarded to the Deputy District Prosecutor of the Mixco Municipal Prosecutor’s Office together with a detailed report;<sup>139</sup>
- e) On July 12, 2002, the prosecutor of Mixco Agency No. 5 ruled on the recusal by the Eighth Court of Guatemala City, explaining to the First Instance Judge of Mixco, to whom the proceedings had been forwarded, that, in his opinion, the competent judge was the Guatemala City judge, because the report on the disappearance of María Isabel had been filed in that jurisdiction;<sup>140</sup>
- f) Based on this concern of the prosecutor of Mixco Agency No. 5, on September 2, 2002, the Mixco First Court issued a decision in which it indicated that, from Rosa Elvira Franco’s statement it could be inferred that the murder of María Isabel had occurred in Guatemala City and that, on these legal grounds, the First Court of Mixco would not be competent to hear the case, and again referred the case to the Eighth Court of Guatemala City;<sup>141</sup>

<sup>136</sup> Cf. Note No. 2727-01/SIC of December 19, 2001, from the Assistant Prosecutor of the Public Prosecution Service to the Bureau of Criminal Investigations of the Public Prosecution Service (file of attachments to the Merits Report, annex 12, f. 94).

<sup>137</sup> Cf. Note issued by the Eighth Court of Guatemala City on March 11, 2002 (file of attachments to the Merits Report, annex 18, fs. 114 and 115).

<sup>138</sup> Cf. Note C-105-2002/6° issued by the Mixco Court of First Instance on March 26, 2002 (file of annexes to the answering brief, annex 2, fs. 12,864 to 12,868).

<sup>139</sup> Cf. Note from the prosecutor of Agency No. 32 to the Deputy District Prosecutor of the Mixco Municipal Prosecutor’s Office dated May 17, 2002 (file of annexes to the motions and arguments brief, tome I, Annex 15, fs. 5,351 and 5,352).

<sup>140</sup> Cf. Note REF. M.P. 7897-01 C 105-02-of6 issued by the prosecutor of Mixco Agency No. 5 on March 11, 2002 (file of annexes to the answering brief, annex 2, fs. 12,878 to 12,890).

<sup>141</sup> Cf. Note issued by the First Court of Mixco on September 2, 2002 (file of attachments to the Merits Report, annex 20, fs. 122 and 123). It should be noted that an agent of the Mixco Prosecutor’s Office addressed a note

- g) The Eighth Court of Guatemala City filed the jurisdictional dispute before the Supreme Court of Justice on September 25, 2002,<sup>142</sup> and
- h) On November 21, 2002, the Criminal Chamber of the Supreme Court decided that the competent court to hear the case was the First Court of Mixco.<sup>143</sup> During the jurisdictional dispute, several actions other than those described were taken (*infra* para. 108.c).

108. **Examination of mobile telephone calls.** Part of the investigation related to telephone calls made with a mobile telephone:

- a) On December 3, 2002, the investigator forwarded to the Assistant Prosecutor of Guatemala City Agency No. 32 a report on the analysis of the incoming and outgoing calls made on María Isabel's mobile telephone and indicated that "attached to the report [he was sending] the victim's telephone directory [and] four photographs of the place where the body was found";<sup>144</sup>
- b) The report of February 20, 2002, issued by the criminal investigations experts provided information on the interviews conducted with a girlfriend and a former boyfriend of María Isabel. Following the interviews and other measures, they recommended to the prosecutor of Guatemala City Agency No. 32 that he ask the telephone company "Telecomunicaciones de Guatemala" (Telgua) for the address recorded for the telephone number of one of the suspects;<sup>145</sup>
- c) On March 3, 2002, the prosecutor asked the Mixco First Court for a court order to request the report of the telephone calls made from the mobile telephone carried by the presumed victim.<sup>146</sup> On April 1, 2002, based on the authorization of the Mixco First Court dated March 26, 2002, the prosecutor asked the General Manager of Telgua to provide the list of telephone calls made and received by María Isabel's telephone number.<sup>147</sup> On May 9, 2002, the Telgua Legal Department sent the information requested, which was forwarded to the investigator of the case on September 4, 2002, and
- d) In June 2005 the telephone records of two suspects with whom María Isabel had been in communication on the day she disappeared were examined.<sup>148</sup>

109. **Examination of vehicles.**

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dated September 16, 2002, to the Deputy Executive Secretary of the Public Prosecution Service indicating that he had received the case file on June 3, 2002, but had not continued with the investigation because he had received instructions from his superior that he should not continue because the case did not correspond to that office. He indicated that once the judge decided the recusal of jurisdiction, the file would be send to Mixco Agency No. 5. He also indicated that he had been cautioned for attending to the victim's mother. *Cf.* Note sent by the agent of the Mixco Prosecutor's Office to the Deputy Executive Secretary of the Public Prosecution Service on September 16, 2002 (file of attachments to the Merits Report, annex 19, fs. 117 to 120).

<sup>142</sup> *Cf.* Note issued by the Eighth Court of Guatemala City on September 25, 2002 (file of attachments to the Merits Report, annex 21, fs. 125 and 126).

<sup>143</sup> *Cf.* Ruling on jurisdictional dispute No. 93-2002 issued by the Supreme Court of Justice, Criminal Chamber, on November 21, 2002 (file of attachments to the Merits Report, annex 22, fs. 129 to 132).

<sup>144</sup> *Cf.* Report of the criminal investigations expert addressed to Guatemala City Agency No. 32 on December 3, 2002 (file of annexes to the motions and arguments brief, tome I, annex 18, f. 5,378).

<sup>145</sup> *Cf.* Report of the criminal investigation experts addressed to Guatemala City Agency No. 32 on February 20, 2002 (file before the Commission, judicial case file, part I, fs. 2,805 to 2,810).

<sup>146</sup> *Cf.* Note 3.18.01/3 issued by the prosecutor of Guatemala City Agency No. 32 on March 3, 2002 (file of annexes to the answering brief, annex 2, fs. 12,856 to 12,860).

<sup>147</sup> *Cf.* Court order addressed to the General Manager of *Telecomunicaciones de Guatemala S.A.* dated April 1, 2002 (file of attachments to the Merits Report, annex 24, fs. 139 and 140), and Note C-105-2002/6 issued by the Mixco Court of First Instance, *supra*.

<sup>148</sup> *Cf.* Report of telephone calls provided by Telgua on June 8, 2005 (file of annexes to the Merits Report, annex 27, fs. 148 and 149), and Request for an investigation by the Bureau of Criminal Investigations of June 20, 2005 (file before the Commission, judicial case file, part I, fs. 2,843 to 2,846).

- a) On December 20, 2001, following a request to the Land Register Department of the municipality of Mixco, the investigators of the Bureau of Criminal Investigation of the PNC Homicide Section in charge of the case obtained the name of the owner of the building indicated by the anonymous informant as the place where the vehicle from which the corpse had been taken had entered.<sup>149</sup> On January 8, 2002, the investigator tried to interview the owner of the building, but was unable to find him. Subsequently, on January 18, 2002, a site inspection was conducted and the investigator went to the house again and observed that there was no vehicle with the characteristics described by the anonymous informant.<sup>150</sup> On July 8, 2003, Assistant Prosecutor I searched the building and reported that the vehicle described by the anonymous informant had not been found, or any other evidence related to the murder,<sup>151</sup> and
- b) In June and August 2005, the vehicles owned by two suspects with whom María Isabel had been in communication the day she disappeared were examined.<sup>152</sup>

110. **Analysis of clothes and other items of evidence.** On December 29, 2001, the criminal investigations expert reported that the evidence collected on December 19, 2001, in *Funerales Mancilla S.A.* had subsequently been sent to the laboratory of the Scientific and Technical Department of the Public Prosecution Service for different analyses to be carried out.<sup>153</sup> The results of the analyses were as follows:

- a) On January 4, 2002, the expert witness from the Biology Section of the Public Prosecution Service issued a report on the analyses performed on the clothes,<sup>154</sup> and concluded that the denim trousers, black shirt, two towels, underpants, brassiere, socks and nylon bag had traces of blood, but not of toxic substances or semen.<sup>155</sup> The same day, a test was also carried out to determine the blood group of a cloth sample with blood;<sup>156</sup>
- b) On January 7, 2002, the expert witness issued a report on the analysis of the clothes<sup>157</sup> and indicated that the elements of hair found on the denim trousers, and on the blue towel were of animal origin, and on the other clothes they were of human origin;<sup>158</sup>
- c) On February 19, 2002, the Toxicology Section of the Bureau of Criminal Investigations transmitted expert appraisal TOXI 01-2886 carried out on the trousers and socks and on one towel that was found by the body. The results were negative

<sup>149</sup> Cf. Report of the Homicide Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*.

<sup>150</sup> Cf. Report of the Homicide Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*, and Request for authorization for a search of June 26, 2006 (file of annexes to the motions and arguments brief, tome I, annex 20, f. 5,383).

<sup>151</sup> Cf. Report of Assistant Prosecutor I of Mixco Agency No. 5 of July 8, 2003 (file of attachments to the Merits Report, annex 17, f. 112), and Decision of the Mixco Court of First Instance of October 8, 2009 (file of annexes to the motions and arguments brief, tome I, annex 27, f. 5,411).

<sup>152</sup> Cf. Report of telephone calls provided by Telgua, *supra*; Request for an investigation by the Bureau of Criminal Investigations, *supra*, and Note of the District Prosecutor of the municipality of Mixco of August 5, 2005 (file of annexes to the motions and arguments brief, tome I, annex 24, f. 5,405).

<sup>153</sup> Cf. Report of the criminal investigation expert, *supra*.

<sup>154</sup> According to the expert appraisal presented, the analyses performed on María Isabel's clothes consisted in phenolphthalein tests, a test to determine the origin of the species, a test to determine the blood group of the dry blood, luminescence tests with ultraviolet lamp and acid phosphatase test, and test to detect seminal protein P-30.

<sup>155</sup> Cf. Expert opinion No. BIOL-01-1512 of the Biology Section of the Bureau of Criminal Investigations of January 4, 2002 (file of annexes to the motions and arguments brief, tome I, annex 11, fs. 5,330 to 5,332).

<sup>156</sup> Cf. Expert opinion No. BIOL-01-1510 of the Biology Section of the Bureau of Criminal Investigations of January 4, 2002 (file of attachments to the Merits Report, annex 15, f. 103).

<sup>157</sup> According to the expert appraisal presented, the hairs were measured and then fixed with chemical elements on glass slides to observe their microscopic characteristics.

<sup>158</sup> Cf. Expert appraisal No. BIOL-01-15-12 of the Biology Section of the Bureau of Criminal Investigations, *supra*.



for the presence of pesticides, and it was mentioned that the stains of stomach contents were dry when they were analyzed.<sup>159</sup> The report BIOL-01-1512 documents and concludes, among other matters, that “[t]he lower part of the blouse was torn,” and that the “lower part of the white underpants was torn,”<sup>160</sup> and

d) On February 27, 2002, Assistant Prosecutor I of Mixco Agency No. 5 sent a note to the forensic physician asking him “whether, when vaginal and anal swabs and nail scraping tests are not requested, these are still carried out automatically.”<sup>161</sup> On March 9, 2006, the forensic physician informed Assistant Prosecutor I that the said tests were not performed automatically.<sup>162</sup>

#### 111. ***Autopsy report***

a) The Autopsy Report issued by the Legal Unit of the Forensic Medicine Service on February 13, 2002, stated that the cause María Isabel’s death was “epidural hematoma resulting from a fourth-degree trauma to the cranium”; it also concluded that there was a “cerebral edema, fracture of the cranium, signs of asphyxiation, among other findings and injuries,” and indicated that the genital organs were “normal.”<sup>163</sup> There is no record in the case file that any other test was performed to determine whether Isabel had been raped, and

b) On August 2, 2011, the Assistant Prosecutor of Mixco Agency No. 5 asked the Head of the INACIF to appoint a forensic expert to make a complete interpretation of the autopsy performed on María Isabel Veliz Franco on December 18, 2001.<sup>164</sup> On August 4, 2011, an INACIF medical professional provided an expert opinion interpreting the autopsy and establishing that, based on the findings of the autopsy, it would not be possible to rule on the time or manner of her death; nevertheless, he indicated that: (i) “the cause of death was an “epidural hematoma following a fourth-

<sup>159</sup> Cf. Report of the Toxicology Section issued by the pharmaceutical chemist of the Public Prosecution Service on February 19, 2002 (file of annexes to the motions and arguments brief, tome I, annex 12, f. 5,334).

<sup>160</sup> Cf. Expert appraisal No. BIOL-01-15-12 of the Biology Section of the Bureau of Criminal Investigations, *supra*.

<sup>161</sup> Note sent by Assistant Prosecutor I of Mixco Agency No. 5 to the forensic physician dated February 27, 2006 (file of attachments to the Merits Report, annex 10, f. 90).

<sup>162</sup> Cf. Note sent by the forensic physician to Assistant Prosecutor I of the Mixco Municipal Prosecutor’s Office dated March 9, 2006 (file of attachments to the Merits Report, annex 11, f. 92).

<sup>163</sup> Autopsy Report No. 2865/2001 of February 13, 2002 (file of attachments to the Merits Report, annex 4, f. 62), which indicates:

“EXTERNAL EXAMINATION: [...] Lividity: on the dorsal region of the body. Rigor mortis: generalized. Putrefaction: apparently not initiated. INJURIES: wound with bruising of six by six centimeters with irregular edges on the left parietal area of scalp, another wound with bruising of four by six centimeters with irregular edges that caused a fracture to the left temporal-occipital area. Violaceous-colored scratches on the right shoulder and neck, on the back of the neck (nape), violet-colored ecchymosis throughout this area with hemorrhagic infiltration, as well as abrasions on the shoulder, right posterior thorax and left bilateral; there is a dislocation of the right posterior thorax and the posterior part of the right arm, ecchymosis and an area of bruising in the left outer ear, the abrasions on the neck and right arm are repetitive suggesting bite marks. CRANIUM: blood infiltration over the whole scalp with subaponeurotic hematoma in the left temporal-parietal area with fracture of the right occipito-temporal lobe and fracture of the base on the right side. BRAIN: bruised, hemorrhagic, epidural hematoma on the left side, cut section reveals firm consistency. Cerebellum: bruised, hemorrhagic. [...] GENITAL ORGANS: normal. NOTE. Samples were sent to the Toxicology Laboratory for an analysis of the blood and internal organs. CONCLUSIONS: (a) fourth degree trauma to the cranium; (b) epidural hematoma; (c) Cerebral edema; (d) fracture of the cranium; (e) syndrome of asphyxiation; (f) findings described. CAUSE OF DEATH: epidural hematoma following fourth degree trauma to the cranium.”

<sup>164</sup> Cf. Note with request to the Head of the Institute of Forensic Science dated August 2, 2011 (file of annexes to the motions and arguments brief, tome I, annex 46, f. 5,461).

degree cranium trauma," and (ii) "the time of death was from six to twelve hours."<sup>165</sup>

112. **Measures taken with regard to the suspects:** Several measures were taken with regard to the suspects, namely:

a) On January 11, 2002, the investigator in charge of the case provided information on the interrogation that day of a male acquaintance of María Isabel<sup>166</sup> (*supra* para. 94.b). During the interrogation, the suspect recounted that he had known María Isabel. He stated that, on December 17, 2001, he had been in the municipality of Petén and had heard of María Isabel's death through a friend, but when he went to present his condolences to Mrs. Franco Sandoval, she told him that she suspected him. On January 15, 2002, the investigator interviewed the friend mentioned by the suspect who confirmed that he had informed the latter of María Isabel's death;<sup>167</sup>

b) On March 15, 2002, Criminal Investigations I expert sent a note to the prosecutor in charge of the investigation with a "photofit picture" of a suspect, elaborated on the basis of a description provided by someone or worked in the store next door to "*Almacén Taxi*";<sup>168</sup>

c) On April 10, 2002, the experts expanded their report and indicated that one of the suspects, known as "the Cuban," was a young wrestler and, according to the Technical Director of the Wrestling Federation, his appearance was similar to the "photofit picture" he had been shown. Also, according to an analysis of the relationship between María Isabel and the suspect, and the indications that could suggest that he might be responsible for [her] murder, [...] they suggested that he should be captured in view of the risk that he would escape";<sup>169</sup>

d) On April 15, 2002, the suspect known as "the Cuban" was summoned to make a statement before the Public Prosecution Service and indicated that he knew María Isabel.<sup>170</sup> Subsequently, on April 30, 2002, the report sent on February 20, 2002, was expanded and concluded establishing that, observing the "photofit picture" the suspect was very different from this photo, so that his responsibility should be ruled out.<sup>171</sup> The expanded report indicated that another friend of María Isabel had been interviewed, and she recounted that, the Saturday before the disappearance, she had been to a discotheque with María Isabel who had met a young man similar in appearance to the person in the "photofit picture." It was then stated that this individual could be a suspect. In this report the investigator mentioned that when the

<sup>165</sup> Cf. Expert report provided by the medical professional of the Institute of Forensic Science of August 4, 2011 (file of annexes to the motions and arguments brief, tome I, annex 47, f. 5,463).

<sup>166</sup> Cf. Report of the investigator of the Bureau of Criminal Investigation, Homicide Section, of the National Civil Police of January 11, 2002 (file of annexes to the answering brief, annexes 3-3b, fs. 13,047 and 13,048).

<sup>167</sup> Cf. Report of Homicide Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*.

<sup>168</sup> Cf. Report No. 169A-2002-Fotorobot issued by Criminal Investigation Expert I (file of annexes to the answering brief, annexes 3-3b, fs. 13,146 to 13,148).

<sup>169</sup> Cf. Report of Criminal Investigation Expert I of April 10, 2002 (file before the Commission, judicial case file, part I, fs. 2,838 to 2,840).

<sup>170</sup> Cf. Statement of the suspect known as "the Cuban" of April 15, 2002 (file of annexes to the answering brief, annexes 3-3b, fs. 13,155 and 13,156).

<sup>171</sup> However, on June 21, 2006, the experts and professionals of the Bureau of Criminal Investigation, forwarded to the Deputy District Prosecutor of the Prosecution Service of the municipality of Mixco the second report on the investigation into the murder of María Isabel, which indicates that an attempt was made to find the suspect known as "the Cuban" in the Wrestling Federation, but an employee of the Federation advised them, by telephone, that the suspect had visited the Federation's facilities for around two years, but that, since 2003, he had not seen him anymore and was unaware of his whereabouts. The investigators indicated that they had asked the General Directorate of Immigration for a report on the migratory movements of the suspect. Cf. Second investigation report prepared by the Bureau of Criminal Investigations of the Public Prosecution Service dated June 21, 2006 (file before the Commission, judicial case file, part I, fs. 2,847 to 2,849).

victim's body was recovered, no one asked that the autopsy include the tests necessary to establish whether she had been drugged or raped before her death;<sup>172</sup>

e) In March, June and July 2003, and in September 2004, more interviews were held and suspects were summoned to make statements; but they stated that they had nothing to do with the murder.<sup>173</sup> On May 19, 2004, the District Prosecutor of the municipality of Mixco sent a report to the General Secretariat of the Public Prosecution Service concluding that it had not been possible to identify the perpetrator, but that the investigations continued;<sup>174</sup>

f) On October 4, 2005, Mixco Agency No. 5 conducted a psychological test on the first suspect indicated by Mrs. Franco Sandoval, and inquiries were made to verify his statement as regards his whereabouts on the day of the incident;<sup>175</sup>

g) On August 31, 2006, another possible suspect was summoned to make a statement;<sup>176</sup>

h) During the second half of 2006 several actions were taken with regard to the vehicle and building mentioned by the anonymous informant in 2001, as well as in relation to individuals who had been considered suspects; among other matters, requests for information and interviews;

i) In February 2007, the Public Prosecution Service continued to request residential and migratory information with regard to those suspected of María Isabel's murder,<sup>177</sup> and

j) In December 2010, a DNA test was performed on one of the suspects<sup>178</sup> and, on May 16, 2011, the expert appraisal was issued comparing the DNA and the evidence in the case file, establishing that the trousers, socks, and one of the towels were missing so that no comparison could be made with them. The appraisal determined that the blood of a female was to be found on several items of clothing, and there was no genetic material on the other clothing that could usefully be tested.<sup>179</sup>

113. **Photographic report.** On March 3, 2002, an investigator of the Site Inspection Section of the PNC Bureau of Criminal Investigation sent the Assistant Prosecutor of Guatemala City Agency No. 32 the photographic report of the body of María Isabel and of the area where it was found.<sup>180</sup>

114. **Changes in the investigators and prosecutors.** In the course of the prolonged but unsuccessful procedures conducted, there were changes in the personnel involved:

a) On May 21, 2004, the chief investigator issued a report on the investigations and actions of Mixco Agency No. 5, in which she explained to the Assistant

<sup>172</sup> Cf. Expansion and conclusion of the report prepared by the criminal investigation expert of April 30, 2002 (file of attachments to the Merits Report, annex 9, fs. 86 to 88).

<sup>173</sup> Cf. Statements by two suspects before Mixco Agency No. 5 on July 21, 2003 (file of annexes to the answering brief, annexes 3-3b, fs. 13,326 to 13,333)

<sup>174</sup> Cf. Detailed report issued by the Mixco District Prosecutor on May 19, 2004 (file of annexes to the answering brief, annex 3-3b, fs. 13,387 to 13,395).

<sup>175</sup> Cf. Report of February 8, 2007, of the criminal investigations expert addressed to the District Prosecutor of the municipality of Mixco (file of annexes to the motions and arguments brief, tome I, annex 26, f. 5,409).

<sup>176</sup> Cf. Statement given by a suspect before Mixco Agency No. 5 on August 31, 2006 (file of annexes to the answering brief, annex 3c, fs. 13,701 and 13,702).

<sup>177</sup> Cf. Note requesting information of the Assistant Prosecutor of Mixco Agency No. 5 dated February 8, 2007 (file of annexes to the answering brief, annex 3c, f. 13,732).

<sup>178</sup> Cf. Record of hearing on pre-trial evidence of December 16, 2010 (file of annexes to the motions and arguments brief, tome I, annex 36, fs. 5,435 and 5,436).

<sup>179</sup> Cf. Expert appraisal of May 16, 2011 (file of annexes to the motions and arguments brief, tome I, annex 42, fs. 5,449 to 5451).

<sup>180</sup> Cf. Photographic report No. 4791-2001 (file of annexes to the motions and arguments brief, tome I, annex 8, fs. 5,313 to 5319).

Prosecutor “that [in] relation to the death of MARÍA ISABEL VELIZ FRANCO, investigations had been conducted [by] the investigators of the Public Prosecution Service, but that the human rights [authorities] and oversight officials of the Public Prosecution Service [had asked] that the investigation be carried out again in order to elucidate this act,” and asked that further interviews be conducted with individuals who had already testified.<sup>181</sup> On September 3, 2004, one of María Isabel’s female friends was interviewed;<sup>182</sup>

b) On August 24, 2004, the Assistant Prosecutor of Mixco Agency No. 5 issued a note indicating that, on August 23, 2004, Mrs. Franco had come to the Agency and stated that the “investigation had not been conducted appropriately” and requested that the Assistant Prosecutor in charge of the case be changed.<sup>183</sup> On September 8, 2004, the Assistant Prosecutor asked that another prosecutor be assigned.<sup>184</sup> On September 13, 2004, the Assistant Supervisor of the Public Prosecution Service decided Mrs. Franco’s complaint concluding that an administrative disciplinary proceeding would not be opened<sup>185</sup> and, on October 28, 2004, a new Assistant Prosecutor was appointed,<sup>186</sup> and

c) In January 2006, the Deputy District Prosecutor of Mixco Agency No. 5 requested full-time investigators in order to make progress in finding those responsible for María Isabel’s death, and the elaboration of new guidelines for the investigation.<sup>187</sup>

115. ***Complaint filed before the Guatemalan Ombudsman.*** On January 31, 2003, Rosa Elvira Franco filed a complaint before the Guatemalan Ombudsman (hereinafter “the Ombudsman”) “concerning the violation of the human right to due process of law by the Assistant Prosecutor [...] of Prosecution Agency [No. 5] of the Mixco municipality of the department of Guatemala” because the investigation into her daughter’s murder was not advancing and had come to a standstill.<sup>188</sup> On November 2, 2004, the Ombudsman issued a decision in which he indicated that there had been a violation of Mrs. Franco Sandoval’s right to certainty and to due process because “the Public Prosecution Service had not proceeded based on the principle of objectiveness in the exercise of the criminal action [...] within the time frames established by law” and the prosecutors of Guatemala City Agency No. 32 and Mixco Agency No. 5 had “delayed justice by requesting and processing the recusal to hear the case based on territorial jurisdiction that was finally declared inadmissible.” He recommended to the Prosecutor General and Head of the Public Prosecution Service that greater control should be exercised to ensure that actions were taken promptly and efficiently.<sup>189</sup>

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<sup>181</sup> Cf. Report of the investigator of the National Civil Police dated May 21, 2004 (file of annexes to the motions and arguments brief, tome I, annex 22, fs. 5388 to 5390).

<sup>182</sup> Cf. Expansion of the statement of a friend of María Isabel of September 3, 2004 (file of annexes to the answering brief, annex 3-3b, f. 13,427). She stated that none of María Isabel’s boyfriends and acquaintances that she had known bore a similarity to the face of the “photofit picture.”

<sup>183</sup> Cf. Note issued by Assistant Prosecutor I of Mixco Agency No. 5 on August 24, 2004 (file of annexes to the answering brief, annex 3-3b, fs. 13,417 and 13,418).

<sup>184</sup> Cf. Note issued by Assistant Prosecutor I of Mixco Agency No. 5 requesting a change of Assistant Prosecutor dated September 8, 2004 (file of annexes to the answering brief, annex 3-3b, f. 13,430).

<sup>185</sup> Cf. Report No. 534-2004 issued by the Assistant Supervisor of the Public Prosecution Service on September 13, 2004 (file of annexes to the answering brief, annex 3-3b, fs. 13,439 to 13,441).

<sup>186</sup> Cf. Note issued by the prosecutor of Mixco Agency No. 5 granting a change of Assistant Prosecutor dated October 28, 2004 (file of annexes to the answering brief, annex 3-3b, f. 13,443).

<sup>187</sup> Cf. Note of request issued by the Deputy District Prosecutor of Mixco Agency No. 5 on January 31, 2006 (file of annexes to the answering brief, annex 3c, f. 13,671), and Note of guidelines issued by the Deputy District Prosecutor of Mixco Agency No. 5 of January 31, 2006 (file of annexes to the answering brief, annex 3c, f. 13,672).

<sup>188</sup> Cf. Order of the Ombudsman of January 31, 2003 (file of annexes to the motions and arguments brief, tome I, annex 23, f. 5,392).

<sup>189</sup> Cf. Decision of the Guatemalan Ombudsman of November 2, 2004 (file of attachments to the Merits Report, annex 23, fs. 135 to 137).

116. **Request for reports from the Fire Department and the police.** During July 2009, the Assistant Prosecutor of Mixco Agency No. 5 requested information from the Head of the Fire Department and from a police agent in relation to actions taken on December 18, 2001<sup>190</sup> (*infra* para. 196.d).

117. **Unsuccessful search for mislaid evidence.** Several pieces of evidence that were mislaid have been sought unsuccessfully:

a) On January 5, 2011, the Assistant Prosecutor of Agency No. 1 of the Mixco Municipal Prosecutor's Office sent a note to the Head of the Evidence Warehouse of the Public Prosecution Service requesting information on the whereabouts of the evidence that could not be found;<sup>191</sup>

b) The same January 5, the Head of the Evidence Warehouse responded that the denim trousers, the two towels and the sock had not entered the warehouse and, subsequently, repeated his reply on January 24, 2011, indicating that the three pieces of evidence had remained in the hands of a pharmaceutical chemist of the Technical and Scientific Sub-Directorate, which later became the National Institute of Forensic Science (hereinafter INACIF);<sup>192</sup>

c) On January 14, 2011, the prosecutor of Agency No 1 of the Mixco Municipal Prosecutor's Office sent a request to the Head of the Central Evidence Warehouse of the Public Prosecution Service to carry out "an exhaustive search for the [mislaid] evidence, as the case was important,"<sup>193</sup> and

d) In view of the repeated request for this evidence by the prosecutor of Agency No 1 of the Mixco Municipal Prosecutor's Office, on June 10<sup>194</sup> and on July 11, 2011, the INACIF General Secretariat sent a communication to the prosecutor of the Mixco Municipal Prosecutor's Office, advising him that "INACIF initiated its crime laboratory work<sup>195</sup> on November 12, 2007, [...] so that, unfortunately, it could not respond to the request."<sup>196</sup> To date, there is no indication in the case file that the mislaid clothes have been found.

118. **Aspects related to the allegations of discrimination.** It has been alleged that, in this case, there has been a discriminatory bias that impeded any progress in the investigations. The following facts can be indicated in this regard:

a) On February 20, 2002, the criminal investigations experts responsible for the case issued a report on the result of the preliminary measures taken with regard to María Isabel's murder. Among other matters, the experts stated that María Isabel's nickname was "*la loca*" [the crazy one] and referred to aspects of her behavior, the way she dressed, her social life and her night life, and her religious beliefs, as well as

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<sup>190</sup> Cf. Note issued by the Assistant Prosecutor of Agency No. 1 of the Mixco Municipal Prosecutor's Office addressed to the Chief of the Municipal Fire Department of Guatemala City on July 13, 2009 (file of annexes to the motions and arguments brief, annex 113, f. 12,644).

<sup>191</sup> Cf. Note issued by the Assistant Prosecutor of Agency No. 1 of the Mixco Municipal Prosecutor's Office to the Head of the Evidence Warehouse of the Public Prosecution Service dated January 5, 2011 (file of annexes to the motions and arguments brief, tome I, annex 37, f. 5,438).

<sup>192</sup> Cf. Note of the Head of the Evidence Warehouse of the Public Prosecution Service of January 24, 2011 (file of annexes to the motions and arguments brief, tome I, annex 39, f. 5,442).

<sup>193</sup> Cf. Request to obtain evidence of January 14, 2011 (file of annexes to the motions and arguments brief, tome I, annex 38, f. 5,440).

<sup>194</sup> Cf. Repetition of the request for evidence of June 10, 2011 (file of annexes to the motions and arguments brief, tome I, annex 43, f. 5,454).

<sup>195</sup> This is a unit of the Scientific and Technical Department of the General Directorate of the Guatemalan National Institute of Forensic Science.

<sup>196</sup> Cf. Note of the Secretariat General of the Guatemalan National Institute of Forensic Science dated July 11, 2011 (file of annexes to the motions and arguments brief, tome I, annex 45, f. 5,459).

to the lack of supervision by her family.<sup>197</sup> On February 21, 2002, the investigator of the PNC Bureau of Criminal Investigation, Homicide Section, presented a report on the actions taken up until that time, and concluded that the motive for María Isabel's murder had been "possible infidelity in the case of a boyfriend";<sup>198</sup>

b) On March 18, 2003, the chief investigator issued a report for the Assistant Prosecutor of Mixco Agency No. 5 in which he recommended that María Isabel's mother should be summoned in order to question her about her daughter's life, especially about "her nocturnal activities, her relationship with members of *maras*, addiction to any drugs and relationship with her stepfather";<sup>199</sup>

c) On August 30, 2004, Mrs. Franco Sandoval sent a brief to the Prosecutor General and Head of the Public Prosecution Service informing him that the Assistant Prosecutor of Mixco Agency No. 5 had told her that María Isabel "was a tart," and asked that the slurs against her daughter's reputation should cease.<sup>200</sup> In the Merits Report, the Commission referred to the testimony of Rosa Elvira Franco during the hearing before the Commission, and to the communication she sent to the Commission on April 27, 2007, in which she stated that approximately one week before August 28, 2004, she went to inquire about the progress made in the investigation; the Assistant Prosecutor, "took out [her] daughter's file from the bottom of one of the drawers in her filing cabinets, in the presence of the person who was her boss at the time and told [her] 'they killed your daughter because she was a tart, a prostitute'; she even made gestures with her shoulders and head, laughing at my daughter and my pain. [Her boss] lowered his head, but didn't apologize; he just watched, and [the Assistant Prosecutor] began to laugh loudly,"<sup>201</sup> and

d) On September 14, 2011, an expert of the Guatemalan National Institute of Forensic Science issued a report on a psychological assessment conducted on one of María Isabel's girlfriends, in which he concluded that the victim had revealed "emotional instability because she went out with several boyfriends and male friends."<sup>202</sup>

119. ***Current status of the investigation.*** As already indicated (*supra* para. 106), the investigative measures have not been successful. More than 12 years after María Isabel's murder, the investigation has not gone beyond the preparatory or investigation stage. The latest steps taken in this regard are as follows:

a) On October 12, 2009, the First Court of Mixco asked for information from the prosecutor on "what else needs to be investigated" and "what had been investigated to date"<sup>203</sup> and, on October 21, 2009, the Assistant Prosecutor requested that the case be left in the situation that it was, "because the [investigation] is being processed by the Inter-American Court" and the Presidential Human Rights Commission (COPREDH) and the Center for Justice and International Law (CEJIL)

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<sup>197</sup> Cf. Report of the experts in criminal investigation addressed to Guatemala City Agency No. 32, *supra*.

<sup>198</sup> Cf. Report of the Homicide Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*.

<sup>199</sup> Cf. Report of the criminal investigation expert of March 18, 2003 (file of annexes to the motions and arguments brief, annex 19, f. 5,380).

<sup>200</sup> Cf. Brief of Rosa Elvira Franco Sandoval addressed to the Prosecutor General and Head of the Public Prosecution Service, *supra*.

<sup>201</sup> Cf. Brief of Rosa Elvira Franco Sandoval of April 27, 2007, addressed to the Inter-American Commission (file before the Commission, judicial case file, part I, fs. 2,811 to 2,815).

<sup>202</sup> Cf. Expert opinion issued by the Psychiatric Unit of the Guatemalan National Institute of Forensic Science dated September 14, 2011 (file of annexes to the motions and arguments brief, tome I, annex 48, fs. 5,466 to 5,469).

<sup>203</sup> Cf. Decision of the Mixco Court of First Instance of October 12, 2009 (file of annexes to the motions and arguments brief, tome I, annex 29, f. 5,415).

were aware of this[,] so that, at this moment, [it was] one of the cases of Guatemalan Femicides in Impunity";<sup>204</sup>

b) On May 16, 2012, the Mixco Municipal Prosecutor's Office asked the Secretary General of the Public Prosecution Service to assign three investigators to the office in order to follow up on the case, because "the office no longer had the investigators who were working on it";<sup>205</sup>

c) On February 8, 2012, the Mixco Court of First Instance issued an order to end the investigation and gave the Public Prosecution Service eight days to rule in this regard. On February 23, 2012, the prosecutor asked the judge not to close the case and repeated this request in a hearing held on March 29, 2012,<sup>206</sup> and

d) On September 27, 2012, "an oral hearing to end the investigation" was held in which the Public Prosecution Service requested that the "proceedings continue with the investigation stage, because [a] statement [was] pending." The judge "decided that the request was admissible," and "set the date of December [3,] [2012,] for the hearing to end the investigation."<sup>207</sup>

## VIII RIGHTS TO LIFE, PERSONAL INTEGRITY AND PERSONAL LIBERTY, IN RELATION TO THE RIGHTS OF THE CHILD, AND THE OBLIGATIONS TO RESPECT AND ENSURE RIGHTS WITHOUT DISCRIMINATION, AND TO PREVENT VIOLENCE AGAINST WOMEN

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

120. The Inter-American Commission indicated that respect for Article 4 of the Convention, in relation to Article 1(1) of this instrument, presupposes not only that no person may be deprived of his life arbitrarily, but also requires the States to adopt all appropriate measures to protect and preserve the right to life, and added that:

Protection of the right to life is a critical component of a State's due diligence obligation to protect women from acts of violence, [and that this] obligation pertains to the entire State apparatus, and also includes any obligations the State may have to prevent and to respond to actions of non-State actors and private parties.

121. It also considered that the States must "have an appropriate legal framework of protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to complaints." In this regard, it indicated that the Convention of Belém do Pará establishes obligations for the States "to adopt reasonable and diligent measures to prevent violence against women and girls, regardless of whether this occurs in the home, the community or the public sphere."

122. It also indicated that:

In cases of violence against women, an obligation of strict due diligence arises with regard to reports of missing women, in relation to search operations during the first hours and days, [which] demands

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<sup>204</sup> Cf. Report of the Assistant Prosecutor of Agency No. 1 of the Mixco Municipal Prosecutor's Office of October 21, 2009 (file of annexes to the motions and arguments brief, tome I, annex 30, fs. 5,417 and 5,418).

<sup>205</sup> Cf. Note issued by the prosecutor of Agency No. 1 of the Mixco Municipal Prosecutor's Office of May 16, 2012 (file of annexes to the motions and arguments brief, tome I, annex 50, f. 5,473).

<sup>206</sup> Cf. Note dated March 21, 2012, from the prosecutor of Agency No. 1 of the Mixco Municipal Prosecutor's Office to the Mixco First Court (file of annexes to the motions and arguments brief, annex 120, fs. 12,660 and 12,661).

<sup>207</sup> Record of the hearing of September 29, 2012 to end the investigation (annexes to the brief with final arguments of the State, f. 14,729). In its answer, the State advised that "[o]n December 3, 2012, a hearing was held because the judge had summoned the parties in order to hold a hearing to end the investigation. Once again the Public Prosecution Service requested that the proceedings remain open because the investigation was ongoing."

an immediate and effective response on the part of the authorities when complaints of disappearance are filed, to prevent adequately the violence against women.

123. The Commission also stated that “in cases of violence against girls, the State’s duty to protect the right to life is particularly strict.”<sup>208</sup> It affirmed that “States have the obligation to ensure that missing girls are found as soon as possible, once their family has reported that they are missing. Accordingly, it must set in motion all resources to mobilize the different institutions and to deploy domestic mechanisms to obtain information in order to locate the girls rapidly.”

124. In this particular case it asserted that “the State had an enhanced duty to protect the rights of María Isabel Veliz Franco because she was a minor, and an obligation to adopt special measures of protection, prevention and guarantee.” Specifically, it indicated that “given the fact that the State was aware that María Isabel Veliz Franco was in peril from the moment she was reported missing, its duty was to take immediate steps to search for her.” It also affirmed that State authorities had told Rosa Elvira that “they could not receive her complaint because 48 hours had not passed since the disappearance” of her daughter. The Commission stressed that “no statement was taken from [Rosa Elvira Franco] that might have shed light on investigative leads to follow; no one went to the place where [María Isabel] was last seen alive; and the last persons to see her alive on the day of her disappearance and/or those persons closest to the victim were not interviewed.”

125. Based on the foregoing, it concluded that the State has failed to show that reasonable measures were taken to find [María Isabel].” Furthermore, it underscored that “[t]his failure to comply with the obligation to ensure rights is particularly serious in a context of violence against women and girls of which the State was aware.” In addition, it considered that “the State did not show that it had adopted the norms or implemented the measures required under the Convention of Belém do Pará, to enable the authorities to offer an immediate and effective response to complaints of missing persons and adequately prevent violence against women at the time of these events.” The Commission concluded that, consequently, the State had violated Articles 4, 5, 19 and 24 of the Convention, in relation to Article 1(1) thereof, and also Article 7 of the Convention of Belém do Pará.

126. The representative indicated that the “State failed entirely to comply with its obligation to prevent violations of the rights to personal liberty, integrity and life of the child, María Isabel Veliz Franco, despite its awareness of her situation of real and imminent danger.” In this regard, it indicated that, in response to the complaint presented by María Isabel’s mother, the State “failed to take a single measure to protect María Isabel and to prevent what happened.” According to the representative, this “was particularly serious owing to the protection that the State was obliged to provide to María Isabel due to her condition as a minor and the increase in the murder of women recorded at the time of the events according to information provided by the National Police, the agency that received the report of her disappearance.”

127. The representative also indicated that the “State failed to comply with its procedural obligations in relation to ensuring the rights to liberty, integrity, and life of the minor María Isabel Veliz Franco.” In this regard, it argued that “the authorities in charge of the investigation have flagrantly violated the obligation of due diligence from the initial stages of the investigation.”

128. Owing to the said “failure to comply with the obligation of prevention” and “failure to conduct an effective investigation into the events relating to [the] disappearance, ill-treatment and death” of María Isabel Veliz Franco, the representative affirmed that the

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<sup>208</sup> It added that “[t]his stems, on the one hand, from the broadly-recognized international obligation to provide special protection to children, due to their physical and emotional development. On the other, it is linked to the international recognition that the due diligence obligation of States to protect and prevent violence has special connotations in the case of women, owing to the discrimination they have historically faced as a group.”



State had violated, to her detriment, Articles “7, 5 and 4 of the [American] Convention, together with [...] Articles 1(1), 2 and 19 of this instrument, and 7 of the Convention of Belém do Pará.”

129. The State indicated that “the right to life is respected and ensured by [...] Guatemala, because it is recognized in Guatemalan law, and in the policies of the Republic” and that Guatemala is “aware that the obligation of States to protect the right to life is both negative and positive.” Accordingly, it indicated that it “has taken the pertinent measures to ensure the life of its population, giving everyone access to justice to obtain either safety or investigative measures from the Public Prosecution Service in order to prosecute anyone accused who it is possible to identify.”

130. The State also indicated that, in the instant case, it had not violated the right to life of María Isabel Veliz Franco, because, “in compliance with its obligations to respect and protect the said right, and aware of the phenomenon of violence, it had established child welfare and protection institutions by law.” In addition, it indicated that it “had [...] created institutions that supervise and monitor the full enjoyment of human rights, as well as institutions to which recourse can be had in order to gain access to the system of justice.” The foregoing is designed “to share supervision of respect for and guarantee of the rights of the child with parents and guardians [...], paying special attention to safeguarding the respect for and guarantee of the right to life of María Isabel.” It explained that:

In principle, the family should provide the best protection of children against abuse, neglect and exploitation and, when the State was advised of María Isabel's disappearance, that was when its obligation to intervene in the direct protection of the child started, because her effective safeguard was no longer in the hands of her family, and the State had established adequate policies and measures for the mother to request the help of the State.

131. Guatemala also asserted that:

If it had been possible to identify the person or persons responsible for the tragic result of María Isabel's disappearance, [it] would have applied the laws in force at the time the offense was committed in order to punish them; however, this has not been possible, despite the extensive efforts made by the investigating body [...]; moreover, it is not possible to convict someone arbitrarily, even though the State repudiates what happened to the girl.

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

132. The Court notes that the representative has alleged, *inter alia*, failure to observe Article 2 of the Convention American.<sup>209</sup> The Inter-American Commission did not indicate that this article had been violated in its submission brief or in the Merits Report. In this regard, the Court reiterates that “the presumed victims or their representatives may cite rights other than those included by the Commission, based on the facts presented by the latter.”<sup>210</sup> The representative also alleged the violation of the rights to personal integrity and liberty recognized, respectively, in Articles 5 and 7 of the American Convention,<sup>211</sup> to the detriment of María Isabel Veliz Franco. The Court notes that, in relation to the initial petition lodged before the Commission, the alleged violation of these two articles to the detriment of the minor had been declared inadmissible in the respective Admissibility Report.

<sup>209</sup> This article stipulates: “[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”

<sup>210</sup> Cf. *Case of the “Five Pensioners”*, *supra*, para. 155, and *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.

<sup>211</sup> The pertinent part of Article 5 of the American Convention establishes: “1. Every person has the right to have his physical, mental, and moral integrity respected.” Article 7 of the Convention establishes: “1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.”

Nevertheless, this was based on a *prima facie* assessment of the facts by the Commission. Later on, in the Merits Report, although it did not consider that Article 7 had been violated to the detriment of María Isabel, it concluded that she had been the victim of the violation of Article 5. In the instant case, in view of the grounds indicated by the Commission in the Admissibility Report, it is in order for the Court to examine the alleged failure to respect these norms.<sup>212</sup> In this regard, the Court finds it pertinent to make a joint analysis of the alleged violations of the rights to life,<sup>213</sup> personal integrity, and personal liberty, in relation to the rights of the child,<sup>214</sup> the right to equal protection of the law,<sup>215</sup> and the obligations to ensure the rights without discrimination,<sup>216</sup> to adopt domestic legal provisions, and to prevent, punish and eradicate violence against women.<sup>217</sup> This is because the specific circumstances of the events that occurred in this case reveal the interrelation of the said violations of different rights and obligations making it appropriate to examine them together.

### **B.1) Guarantee obligations**

133. Based on the characteristics of the case *sub examine*, it should be noted that, with regard to children, the above-mentioned rights and obligations must be observed within the framework of compliance with Article 19 of the American Convention and, when pertinent, based on the provisions of the Convention of Belém do Pará. As the Court has stated on other occasions, Article 19 of the Convention establishes the right of “children to [...] special measures of protection [that] must be defined in accordance with the particular circumstances of each specific case.”<sup>218</sup> The Court has also indicated that “[a]doption of

<sup>212</sup> In its decision on admissibility, the Commission considered “that the facts described [in the petition] do not provide sufficient grounds to characterize a violation of the right to personal integrity [...], or the right to personal liberty [...] with regard to María Isabel Veliz Franco.” Despite this, the Commission also stated “that, at this stage of the proceedings, it is not incumbent on the Commission to determine whether or not the alleged violations occurred.”

<sup>213</sup> The pertinent part of Article 4 of the American Convention establishes: “1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [...]”.

<sup>214</sup> Article 19 of the American Convention stipulates: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.”

<sup>215</sup> Article 24 of the American Convention establishes: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”

<sup>216</sup> Article 1(1) of the American Convention stipulates:

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

2. For the purposes of this Convention, “person” means every human being.

<sup>217</sup> Article 7 of the Convention of Belém do Pará indicates : “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: (a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; (b) apply due diligence to prevent, investigate and impose penalties for violence against women; (c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; (d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; (e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; (f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; (g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and (h) adopt such legislative or other measures as may be necessary to give effect to this Convention.”

<sup>218</sup> *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 121, and *Case of Pacheco Tineo, supra*, para. 277.

[such] measures [...] is a responsibility both of the State, and of the family, the community and the society to which the [child] belongs."<sup>219</sup> In addition, the Court has "reiterated that cases in which the victims of human rights violations are children are especially egregious"<sup>220</sup> because, "[o]wing to their level of development and vulnerability, they require protection that ensures the exercise of their rights within the family and society and with regard to the State."<sup>221</sup> Thus, the "[a]ctions taken by the State and by society regarding protection of children and promotion and preservation of their rights should follow [the criteria of the best interests of the child]."<sup>222</sup> Furthermore, Article 7 of the Convention of Belém do Pará, over which the Court has competence (*supra* para. 32), establishes the State's duties "to prevent, punish and eradicate violence [against women],"<sup>223</sup> which specify and complement the rights established in the American Convention, such as those established in Articles 4, 5 and 7.<sup>224</sup>

134. From the above it can be inferred that, in keeping with this normative framework concerning violence against women, the obligation to ensure rights acquires special significance in relation to girl children. This is so because the intrinsic vulnerability of childhood<sup>225</sup> may be enhanced, due to the fact that they are female. In this regard, it should be noted that girls are, as has been stated, "particularly vulnerable to violence."<sup>226</sup> The special significance mentioned translates into the State's obligation to act with greater and more rigorous diligence to protect and ensure the exercise and enjoyment of the rights of girl children in response to the fact or the mere possibility of their vulnerability in the presence of acts that actually or potentially involve gender-based violence or could result in this type of violence.

135. The obligation of prevention is one aspect of the obligation to ensure rights that, as the Court has stated:

Includes all those measures of a juridical, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as wrongful acts that, as such, may lead to the punishment of those responsible, and the obligation to

<sup>219</sup> *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 62, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*. Judgment of May 14, 2013. Series C No. 260, *supra*, para. 141.

<sup>220</sup> *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 146, and *Case of the Pacheco Tineo Family*, *supra*, para. 217.

<sup>221</sup> *Cf. Juridical Status and Human Rights of the Child*, *supra*, para. 93, and *Case of Mendoza et al.*, *supra*, para. 144.

<sup>222</sup> *Cf. Juridical Status and Human Rights of the Child*, *supra*, para. 59, and *Case of Mendoza et al.*, *supra*, para. 143.

<sup>223</sup> Regarding the concept of "violence against women" established in the treaty, it is pertinent to refer to Article 3 of the Convention of Belém do Pará, which indicates the right of "[e]very woman to be free from violence in both the public and private spheres."

<sup>224</sup> *Cf. Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 346, and *Case of Gudiel Álvarez (Diario Militar)*, *supra*, para. 275.

<sup>225</sup> The Committee on the Rights of the Child has indicated that "[a]t a universal level all children aged 0-18 years are considered vulnerable until the completion of their neural, psychological, social and physical growth and development." Committee on the Rights of the Child. General Comment No. 13: *The right of the child to freedom from all forms of violence*. UN Doc. CRC/C/GC/13, 18 April 2011, para. 72. María Isabel Veliz Franco, who was 15 years of age at the time of her disappearance and death, is considered to be a child, because neither the arguments nor the evidence provided to the Court reveal that domestic law provides for a different age of majority.

<sup>226</sup> The Beijing Declaration and Platform for Action, adopted at the sixteenth plenary session of the Fourth World Conference on Women on 15 September 1995, para. 116. Similarly, the former United Nations Commission on Human Rights had stated that "some groups of women, such as [...] the girl child, [...] are especially targeted and vulnerable to violence." *Cf.* The elimination of violence against women. Resolution 1998/52 of the Commission on Human Rights. Fifty-second session, 17 April 1998, sixth preambular paragraph. More recently, the Committee on the Rights of the Child has indicated that "[b]oth girls and boys are at risk of all forms of violence, but violence often has a gender component." *Cf.* Committee on the Rights of the Child. General Comment No. 13: *The right of the child to freedom from all forms of violence*, *supra*, para. 19.

compensate the victims for the harm caused. [...] Evidently, while the State is obliged to prevent human rights abuses, the existence of a specific violation does not, in itself, prove the failure to take preventive measures.<sup>227</sup>

136. The obligation of prevention has been indicated specifically with regard to women, and also girl children, since before 2001, and by instruments other than the Convention of Belém do Pará,<sup>228</sup> a treaty that expressly establishes this in the above-mentioned Article 7(b). In addition, girl children, including those who are adolescent, require special measures of protection.<sup>229</sup> The Court has already had the occasion to state, with regard to women and girls, that:

The strategy of prevention must be comprehensive; in other words, it must prevent risk factors and also strengthen institutions so that these can respond effectively to cases of violence against women. Furthermore, States must adopt preventive measures in specific cases in which it is clear that certain women and girls may be victims of violence.<sup>230</sup>

137. Moreover, as the Court has indicated:

It is clear that a State cannot be responsible for every human rights violation committed among private persons. Indeed, the States' treaty-based obligation to ensure rights does not entail an unlimited responsibility of States in the case of any act or fact of private persons, because its duty to adopt measures of prevention and protection for individuals in their interrelations is conditioned to awareness of a situation of real and imminent danger for a specific individual or group of individuals, and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act or omission of a private person has the legal consequence of the violation of certain human rights of another private person, this cannot be automatically attributed to the State, because the

<sup>227</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 175; *Case of González et al. ("Cotton Field")*, *supra*, para. 252, and *Case of Luna López v. Honduras. Merits, reparations and costs*. Judgment of October 10, 2013. Series C No. 269, para. 118.

<sup>228</sup> Thus, the Court has already noted that "CEDAW established that 'States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and to provide compensation.'" (*Case of González et al. ("Cotton Field")*, *supra*, para. 254. The respective document was cited by the Court: "CEDAW, General Recommendation 19: Violence against women (Eleventh session, 1992), UN Doc. HRI/GEN/1/Rev.1 at 84 (1994), para. 9." In addition, article 4 of the Declaration on the Elimination of Violence against Women (adopted by the General Assembly of the United Nations at its eighty-fifth plenary meeting on 20 December 1993) indicates, *inter alia*, that "States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...] (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons." Furthermore, in 1995, the twenty-ninth paragraph of the Beijing Declaration, adopted at the sixteenth plenary session of the Fourth World Conference on Women on 15 September 1995, indicated the determination of Governments to "prevent and eliminate all forms of violence against women and girls." In addition, subparagraphs (b) and (d) of paragraph 124 of the Platform for Action indicate the obligation of Governments to adopt measures to prevent and investigate acts of violence against women, including when they are perpetrated by private persons. Guatemala took part in this Conference, and stated that it "did not accept [...] any form of violence against women" and also that "the State has the obligation to protect women and to provide the conditions to ensure that they may enjoy their rights on an equal basis." Cf. Message of the President of the Republic of Guatemala, Ramiro De León Carpio to the Fourth World Conference on Women, *supra*. Furthermore, the United Nations Special Rapporteur on violence against women, its causes and consequences observed that customary international law establishes the State's responsibility for violations of human rights of women by private persons. (Inter-American Commission of Women (CIM) of the Organization of American States, the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), Women, Justice and Gender Program: Violence in the Americas – A Regional Analysis Including a Review of the Implementation of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) Final Report, July 2001, p. 33. The document cites the following text: "Coomaraswamy, Radhika (1995). Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45. Geneva: United Nations Commission on Human Rights, fiftieth session (E/CN.4/1995/42)."

<sup>229</sup> The Committee on the Rights of the Child has indicated that "adolescents up to 18 years old are holders of all the rights enshrined in the Convention [on the Rights of the Child]; they are entitled to special protection measures." Committee on the Rights of the Child. General Comment No. 4: *Adolescent health and development in the context of the Convention on the Rights of the Child*. UN Doc. CRC/GC/2003/4, 21 July 2003, paras. 1 and 2.

<sup>230</sup> *Case of González et al. ("Cotton Field")*, *supra*, para. 258.

particular circumstances of the case must be taken into account, and the implementation of the said guarantee obligations.<sup>231</sup>

138. In this case, there are two key moments at which the obligation of prevention must be analyzed. The first is before the disappearance of the presumed victim, and the second is before the discovery of her body.

139. Regarding the first moment – before the victim’s disappearance – the Court, as it has in the past,<sup>232</sup> considers that the eventual failure to prevent the disappearance does not entail *per se* the international responsibility of the State because, even though it was aware or should have been aware (*supra* para. 79) of a situation where violent acts, including acts committed against women and even girl children, were perpetrated, it has not been established that it knew of a real and immediate danger for the victim in this case. Despite the fact that the context of this case and the “international obligations impose on the State an increased responsibility as regards the protection of women,”<sup>233</sup> especially girls, which includes the obligation of prevention (*supra* para. 136), the State does not have an unlimited responsibility in relation to any illegal act against them. Furthermore, regarding this first moment, the Court notes that, prior to December 2001, the State had implemented actions in relation to the problem of violence against women (*supra* para. 82).

140. In the instant case, the Court observes that the arguments of the representatives and the Commission related to the second moment indicated above; in other words, the time that elapsed between the report filed by Mrs. Franco Sandoval and the discovery of her daughter’s body. Thus, they argue that the State was aware of a risk as of the report filed before the authorities by María Isabel’s mother (*supra* para. 93).

141. Regarding this moment – before the discovery of the body – it must be decided whether, in view of the particular circumstances of the case and the context in which they occurred, the State was aware that a real and immediate danger existed that María Isabel would be attacked and whether, consequently, an obligation of due diligence arose that, since it was more rigorous, required the implementation of a thorough search. In particular, the prompt and immediate action of the police, prosecution and judicial authorities is necessary ordering prompt and necessary measures aimed at discovering the victim’s whereabouts. Adequate procedures should exist for reports and these should lead to an effective investigation from the very start. The authorities should presume that the missing person is still alive until the uncertainty about his or her fate has been resolved.<sup>234</sup>

142. Based on the above, in order to determine if the State is internationally responsible, the Court must decide whether, in this specific case, the girl was in a dangerous situation and whether, in this regard, the State, acting within its sphere of competence, could have adopted measures that could reasonably have been expected to prevent or to avoid that situation. To this end, the Court must assess: (a) whether the State was, or should have been, aware of the situation of real and immediate danger of María Isabel Veliz Franco;<sup>235</sup> (b) whether, being aware, it had a reasonable possibility of preventing or avoiding the perpetration of the crime and, if so,<sup>236</sup> (c) whether it exercised due diligence with measures or actions to avoid the violation of the rights of this child.<sup>237</sup>

<sup>231</sup> *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 123; *Case of González et al. (“Cotton Field”)*, *supra*, para. 280, and *Case of Luna López*, *supra*, para. 120.

<sup>232</sup> *Case of González et al. (“Cotton Field”)*, *supra*, para. 282.

<sup>233</sup> *Case of González et al. (“Cotton Field”)*, *supra*, para. 282.

<sup>234</sup> *Case of González et al. (“Cotton Field”)*, *supra*, para. 283.

<sup>235</sup> *Case of the Pueblo Bello Massacre*, *supra*, para. 123, and *Case of Luna López*, *supra*, para. 112.

<sup>236</sup> *Case of the Pueblo Bello Massacre*, *supra*, para. 123, and *Case of the Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270, para. 224.

<sup>237</sup> *Case of Durand and Ugarte v. Peru. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 122, and *Case of Mendoza et al.*, *supra*, para. 214.

143. This analysis must be made taking into consideration what has been said about the State's duty to act with strict diligence to ensure the rights of girl children (*supra* para. 134). Also, as established by this Court's case law, in order to determine that a violation of the rights recognized in the Convention has occurred, it is not necessary to prove the State's responsibility beyond any reasonable doubt or to identify individually the agents to whom the violations are attributed;<sup>238</sup> rather it is sufficient to prove that acts or omissions have been verified that have allowed the perpetration of these violations or that, with regard to them, the State had an obligation which it has failed to meet.<sup>239</sup>

B.1.1. Existence of a dangerous situation for María Isabel Veliz Franco

144. Having established the foregoing, it should be underlined that it must be assumed as a real possibility that, when the State became aware of the disappearance of María Isabel Veliz Franco, she was alive and in great danger. In this regard, the body of evidence does not reveal that the time of her death was determined during the investigation, and the only indications in this regard suggest that she had not died before 4 p.m. on December 17, 2001, when the PNC Investigation Service formally received the report presented by the girl's mother (*supra* para. 95). To the contrary, inconclusively, the existing evidence indicates that she died during the early hours of December 18, 2001 (*supra* para. 98 and 111).

145. In addition, given the characteristics of the events and the circumstances in which the body was found, it can be assumed that María Isabel Veliz Franco suffered ill-treatment before she succumbed to a violent death. Nevertheless, there is no conclusive evidence that she remained deprived of liberty prior to the moment at which she suffered the acts that resulted in her death. Therefore, the Court finds no evidence to justify the arguments connecting acts or omissions by the State to the alleged violation of her right to personal liberty protected by Article 7 of the American Convention.

146. In relation to the State's awareness of this dangerous situation, it is necessary to consider the particular circumstances of the case as regards the way in which the State was informed of the relevant facts. The proven facts reveal that, based on the report filed by Rosa Elvira Franco on December 17, 2001, the authorities knew that María Isabel was missing and that almost 20 hours had passed, including a whole night, since the time at which she should have returned home. They also knew, owing to this report, that the girl's mother had already looked for her unsuccessfully. Mrs. Franco Sandoval had also indicated that, according to the information she had been able to obtain, it was probable that, during the evening of the day before the report, her daughter had met up with a man who she (Rosa Elvira Franco) did not know, but only had suggestions about his possible name.

147. Based on the account given in the report filed by Mrs. Franco Sandoval, and also considering that María Isabel was a girl child and that, as indicated (*supra* para. 74), the incident took place during a time when the annual figures for homicidal violence in Guatemala were increasing more than the population growth, the Court concludes that the State authorities should have understood the events reported by Rosa Elvira Franco as an indication that the child's rights would probably be violated. Even though this report did not indicate explicitly that María Isabel had been the victim of an illegal act, it was reasonable to infer that she was in danger. The Court understands that, in the context of the strict due diligence that the State should observe in order to ensure the rights to life and to personal integrity of girl children (*supra* para. 134), in the circumstances of the case, the information provided by Rosa Elvira Franco should have been considered an indication of the real possibility that María Isabel's life would be in danger in order to implement preventive actions.

<sup>238</sup> *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 91, and *Case of J.*, *supra*, para. 305.

<sup>239</sup> *Cf. Case of Velásquez Rodríguez. Merits, supra*, para. 173, and *Case of Luna López, supra*, para. 118.

148. In this regard, it should be noted that, in July 2001, the United Nations Committee on the Rights of the Child stated with regard to Guatemala that it was “deeply disturbed by information that violence against children is increasing,” and recommended to Guatemala that it “take, as a matter of the highest priority, all the necessary steps to prevent these serious violations of children’s rights and to ensure that they are properly investigated.”<sup>240</sup>

149. In view of the context in which the events of the case occurred, the fact that María Isabel was female is a factor in the above-mentioned conclusion. Thus, as indicated (*supra* para. 81), in December 2001, in the context of the increase in the number of murders, the occurrence of the murder of women for reasons of gender was not exceptional. In this regard it should be emphasized that, in April 2001, the Inter-American Commission issued a report in which it expressed its concern due to the gender-based violence in Guatemala. On that occasion, the Commission also made recommendations to Guatemala in order to achieve for the “victims” of gender-based violence, an increase in “the sensitivity and effectiveness of the response” of “the officials” who “were responsible for receiving the complaints,” “particularly [of] the National Civil Police and of the Public Prosecution Service.”<sup>241</sup>

150. The insufficiency of statistical information on violence against women has even been indicated by the Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), a State entity (*supra* para. 71, and *infra* footnote 244). This does not necessarily signify that the State was unaware of this context in December 2001, because the evidence includes relevant data, from both State databases and those of State entities, as well as the ruling of an international agency working in this area (*supra* paras. 76 and 79). Furthermore, prior to 2001, the State had adopted measures relating to the situation and to discrimination against women, and the creation of CONAPREVI in November 2000 (*supra* footnote 93) was especially relevant for the problem of violence against women. In addition, despite what CONAPREVI indicated, Guatemala has reported that it had agencies created before December 2001 whose functions included “monitoring the implementation” of the Convention of Belém do Pará.<sup>242</sup>

151. In addition, it should be pointed out that, even before December 2001, the State had the obligation to take the necessary measures to obtain sufficient information on the situation of the rights of girl children in Guatemala, at least at the minimum level required to be able to meet satisfactorily its obligations at that time. Because it is evident that in order to comply satisfactorily with the obligations established in Articles 1(1) and 2 of the American Convention, States must obtain pertinent information on the situation of the treaty-based rights, since this is necessary to be able to evaluate the measures or actions that must be taken. This is relevant in relation to the rights of girl children.<sup>243</sup> It also

<sup>240</sup> Concluding observations of the Committee on the Rights of the Child: Guatemala. Twenty-seventh session CRC/C/15/Add.154, 9 July 2001, paras. 30 and 31.

<sup>241</sup> IACHR, Follow-up Report on the compliance by the State of Guatemala with the recommendations made by the Commission in the Fifth Report on the Situation of Human Rights in Guatemala, of December 18, 2002, para. 53.

<sup>242</sup> In response to the question posed by MESECVI of whether “[a] domestic mechanism has been established to follow up on the implementation of the Convention of Belém Do Pará,” the State reported that “[p]ursuant to article 13 of the Law to Prevent, Eradicate and Punish Family Violence, Decree 97-96 of the Congress of the Republic, the Attorney General’s Office is the entity responsible for monitoring compliance with the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women. According to article 11(c) of the regulations to the Law to Prevent, Eradicate and Punish Family Violence, Government decision No. 831-2000, the Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women [(CONAPREVI)], is responsible for monitoring compliance with the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women.” Convention of Belém do Pará. MESECVI-II/doc.31/08. Second Conference of States parties. June 24, 2008. Doc. OEA/Ser.L/II.7.10, pp. 56 and 57.

<sup>243</sup> The Committee on the Rights of the Child has said that the implementation of the Convention on the Rights of the Child requires “rigorous monitoring” and, *inter alia*, the elaboration of a “rights-based national strategy, rooted in [that] Convention,” and that this “strategy will need to include arrangements for monitoring and continuous review, for regular updating and for periodic reports to parliament and to the public.” It has also stated

corresponds to the “measures of protection” that Article 19 requires the State to take with regard to children. Regarding the State’s duties in relation to dealing with violence against women, the said obligation is also clear in the sphere of application of the Convention of Belém do Pará.<sup>244</sup> Hence, it is also necessary in order to implement the measures and “policies” referred to in Article 7 of this treaty. Furthermore, the said obligation to obtain relevant information also arises from the stipulations in the respective treaties in relation to the international mechanisms to monitor the situation of different rights. Thus, the American Convention and the Convention of Belém do Pará, independently of the system of individual petitions, establish in their Articles 41 to 43, and 10, respectively, the submission by the States of reports to international bodies. This is also true of other international treaties in force and to which Guatemala is a party, such as the Convention on the Rights of the Child (article 44);<sup>245</sup> the Convention on the Elimination of All Forms of Discrimination against Women (article 18), and the International Covenant on Civil and Political Rights (Article 40).

152. Evidently, it is not for the Court to evaluate whether Guatemala collected and systematized information regarding the situation of children’s rights, or whether the information that the State possesses is sufficient and appropriate to comply with its obligations. In terms of what concerns the Court and is pertinent for the analysis of the case *sub examine*, it is sufficient to note that the State has the duty to collect the basic information required to comply with its treaty-based obligations in relation to the rights of girl children and, in order to ensure such rights, it has an obligation to act with the greatest and most rigorous due diligence. Consequently, when there are clear indications of the existence of the said context and that the State was aware of it, the eventual lack of sufficient State information cannot adversely affect the binding nature of the above-mentioned obligation to ensure rights. In this regard, the considerations mentioned above (*supra* paras. 73 to 81) reveal that, in December 2001, a context existed of an increase in violent criminality in Guatemala, including the murder of women, and there is evidence that the State knew about this.

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that “collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation [of the treaty].” Committee on the Rights of the Child. General Comment No. 5: *General measures of implementation of the Convention on the Rights of the Child*. UN Doc. CRC/GC/2003/5, November 27, 2003, paras. 27, 28, 33 and 48. Then, on June 2000, the General Assembly of the United Nations established a special Ad Hoc Committee to examine the evaluation of the progress made in the implementation of the Beijing Platform for Action. This Committee reaffirmed the commitment to the goals and objectives adopted in Beijing and indicated that Government should “continue to undertake research to develop a better understanding of the root causes of all forms of violence against women in order to design programmes and take measures towards eliminating those forms of violence.” Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly. General Assembly. Official records. Twenty-third special session. Supplement No. 3 (A/S-23/10/Rev.1).

<sup>244</sup> In this regard, the Follow-up Mechanism on the Convention of Belém do Pará (MESECVI), has indicated with regard to Guatemala, in relation to the monitoring of the implementation of the Convention of Belém do Pará that: “[t]he greatest obstacle is the lack of well-organized information as required by the Mechanism; specifically in the first section on the chapter about Information and Statistics.” It also stated that, when it was asked about “femicide,” Guatemala forwarded a “report [that] shows a statistical table by type of crime. The figures seem too low compared to the actual situation, and the table does not show figures for killings of women or femicides. [...] Practically all agencies fail to submit the requested data, holding that they have the information but have not processed it, or their information is not public.” Convention of Belém do Pará (MESECVI). MESECVI-II/doc.31/08. Second Conference of States parties, *supra*, pp. 56 and 57.

<sup>245</sup> It is worth pointing out that, in 1994, the Committee on the Rights of the Child drew up guidelines for the presentation of the 1994 State reports. Cf. Committee on the Rights of the Child. Seventh session. “Overview of the reporting procedures.” UN Doc. CRC/C/33. 24 October 1994. In July 2001, the same Committee expressed, with regard to Guatemala, its “concern that the collection of data is still focused on health and education and does not include all areas covered by the Convention [on the Rights of the Child]. It “recommend[ed] that the State party continue to develop a system to collect data and indicators reflecting the provisions of the Convention [on the Rights of the Child], disaggregated by gender, age, indigenous and minority groups, urban or rural area. This system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable.” Concluding observations of the Committee on the Rights of the Child: Guatemala. Twenty-seventh session, 09/07/2001. CRC/C/15/Add.154, paras. 16 and 17.



153. Furthermore, this context, or at least its general aspects, cannot be separated from the general impunity existing in the country (*supra* para. 83). Consequently, the existence of this circumstance is an additional factor that contributes to the State's awareness of a situation of risk.

154. Based on the above, the Court concludes that, as of the official report filed by Rosa Elvira Franco Sandoval, the State was aware of the dangerous situation of her daughter, María Isabel Veliz Franco. The State also knew, or should have known, that it was possible that the events described in the complaint were inserted in a context that increased the possibility of harm to the rights of that girl child.

B.1.2. Possibilities of a diligent action by the State to prevent the risk and its implementation

155. Added to the foregoing, it has been established that there was a real possibility that María Isabel Veliz Franco was alive when her mother reported her disappearance to the authorities (*supra* para. 144). The lack of certainty in this regard can also be attributed to the State's failure to determine the precise time of her death during the investigation. After receiving the report, and until the discovery of the body, the State did not take any substantive action to investigate what had happened or to avoid possible violations of the girl's rights. In view of the uncertainty that existed at that time about María Isabel Veliz Franco's situation, and in view of the risk that she ran, it was urgent to act diligently to ensure her rights.<sup>246</sup>

156. This conclusions is not changed by the State's arguments concerning the guarantee of the right to life by its legal recognition, by regulation of the "mechanisms of paternal authority and guardianship" and by access to justice. The Court notes that the legal recognition of the right to life is, indeed, of fundamental importance, as well as the regulation of paternal authority and guardianship in relation to, *inter alia*, the rights of girl children.<sup>247</sup> Despite this, States are not exempted from taking other necessary measures, in keeping with the circumstances, to ensure these rights.<sup>248</sup> As the State itself has noted, it was when the State was advised of María Isabel's disappearance that its obligation to intervene in her direct protection began.

157. Regarding access to justice, the representative has indicated that the State failed to comply with its "procedural obligations" in relation to the rights of María Isabel Veliz Franco owing to the lack of due diligence in the investigation since the outset, which has resulted in the above-mentioned facts remaining unpunished. Moreover, this includes the State's actions in the initial hours following the report of the child's disappearance. As regards the other measures taken during the investigation, these will be considered when analyzing the alleged violations of the rights to judicial guarantees<sup>249</sup> and judicial protection<sup>250</sup> in the case (*infra* para. 178 to 226).

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<sup>246</sup> In this regard, the Court has indicated that following a report of a disappearance or kidnapping, States must act promptly during the first hours and days. *Cf. Case of González et al. ("Cotton Field")*, *supra*, para. 284, and *Case of Palma Mendoza et al. v. Ecuador. Preliminary objection and merits*. Judgment of September 3, 2012. Series C No. 247, para. 91.

<sup>247</sup> In this regard, the Court has asserted that "States Parties undertake to ensure children such protection and care as is necessary for their well-being, taking into account the rights and duties of their parents, legal guardians, or other individuals legally responsible for them and, to this end, shall take all appropriate legislative and administrative measures." *Cf. Juridical Status and Human Rights of the Child*, *supra*, para. 63.2.

<sup>248</sup> The Court has indicated that "[i]n principle, the family should provide the best protection of children against abuse, abandonment and exploitation. And the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family unit." Nevertheless, on the same occasion, the Court asserted that the State, also, must provide measures of protection for children and implement them directly. *Cf. Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/07*, *supra*, para. 66.

<sup>249</sup> Article 8(1) of the Convention stipulates:

## **B.2) Conclusion**

158. Based on the above, the Inter-American Court concludes that Guatemala violated its obligation to ensure the free and full exercise of the rights to life and to personal integrity recognized in Articles 4(1) and 5(1) of the American Convention, in relation to the rights of the child established in Article 19 of the Convention and to the general obligation to ensure rights without discrimination, established in Article 1(1) of this instrument, as well as the obligations contemplated in Article 7(b) of the Convention of Belém do Pará, to the detriment of María Isabel Veliz Franco.

## **IX**

### **JUDICIAL GUARANTEES, EQUAL PROTECTION AND JUDICIAL PROTECTION, IN RELATION TO THE GENERAL OBLIGATION TO RESPECT AND ENSURE RIGHTS AND TO ADOPT DOMESTIC LEGAL PROVISIONS, AND TO THE OBLIGATION TO PREVENT, PUNISH AND ERADICATE VIOLENCE AGAINST WOMEN**

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

159. In its Merits Report, the Commission indicated that the Convention of Belém do Pará “stipulates that the obligation to act with due diligence, has a special connotation in cases of violence against women,” and its Article 7 establishes a series of immediate and supplementary State obligations in order to achieve effective prevention, investigation, punishment and reparation in cases of violence against women. The Commission also referred to the judgment in the case of *González et al. (“Cotton Field”)*, which indicated that “the lack of due diligence that leads to impunity engenders further incidents of the very violence that was to be targeted, and is itself a form of discrimination in access to justice.” In the instant case, it stated that “[w]hile the State has taken and continues to take measures, it has not complied with its obligation to act with due diligence to identify the persons responsible for the disappearance and murder of María Isabel Veliz Franco. Thus, no one has been made to answer for this act of violence, which has the effect of creating a climate conducive to chronic recidivism of acts of violence against women.”

160. The Commission argued that, from the time the report that María Isabel was missing was presented, the State authorities did not act with due diligence to investigate her disappearance and subsequent death as a case of gender-based violence, contrary to the obligations imposed by the Convention of Belém do Pará in this type of case. It considered that this lack of due diligence represented a form of discrimination, as well as a violation of the right to equal protection. It indicated that, despite the efforts made by the State in recent years to address the problem of violence against women, “at the time the events occurred, the State had not adopted the necessary measures and policies, in keeping with the obligations it undertook upon its ratification of the Convention of Belém do Pará, to ensure effective investigation and punishment of violent acts committed against the women of Guatemala.”

161. It stated that, in this case, a series of irregularities occurred during the investigation into the disappearance and subsequent death of María Isabel owing to the lack of due

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Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>250</sup> Article 25(1) of the Convention establishes:

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

diligence, and referred to the facts of the case.<sup>251</sup> It also indicated that the authorities should have preserved specific evidence if rape was suspected in keeping with the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; hence the State had not complied with the minimum standards established in this Manual and by the case law of the Court. In addition, it mentioned that, in the proceedings before the Commission, the State had acknowledged its responsibility “for the lack of due diligence in the investigation into the death of María Isabel Veliz Franco, specifically by virtue of its failure to conduct certain forensic tests on the body, the unwarranted delay in the investigation caused by the dispute over jurisdiction, and because no effective precautionary measure was taken to secure the presence of [the] suspect in the murder.” In this regard, it underscored that, for nine months, from March to December 2002, the investigation was brought to a halt owing to a jurisdictional dispute among the authorities.

162. The Commission also indicated that the attitudes of the State officials, as reflected in their behavior toward Rosa Elvira Franco, are evidence of stereotyping and would have contributed to the lack of due diligence in the investigation. The Commission concluded that, “in the instant case, the State failed to comply with its duty to act with due diligence to conduct a proper investigation of the facts surrounding the death of María Isabel Veliz Franco, to punish those responsible, and thereby avoid impunity” in violation of Articles “7 of the Convention of Belém do Pará in relation to Article 24 of the American Convention, together with [...] Article 1(1) of this international instrument,” as well as in violation of Articles 8(1) and 25 of the Convention, in relation to Articles 1(1) and 24 of this treaty to the detriment of her family members.

163. The representative indicated that main errors and omissions of the authorities in the investigation into what happened to María Isabel Veliz Franco relate to the stigmatization of the victim. In this regard, it referred to this Court’s case law and considered that the guidelines established in cases of violence against women such as this one “constitute irrevocable standards to ensure access to justice for women and girls.” The representative also referred to the report of the Inter-American Commission on “Access to Justice for Women Victims of Sexual Violence in Mesoamerica,” and to various experts and international organizations<sup>252</sup> that have documented the problem of sexual violence, prejudices and discriminatory stereotypes that tend to make the judicial response biased. It considered that the investigation into what happened to María Isabel was paradigmatic in relation to [such] practices, as well as the consequences that they have for the investigation and punishment of those responsible.” It added that “the discriminatory bias with which the investigators in this case acted resulted in the inquiry into María Isabel’s death being considered a very low priority, which was reflected in the negligent way in which the initial steps were taken, and the numerous acts and omissions of the authorities that, to date, have resulted in the facts remaining in the most absolute impunity.”

164. The representative asserted that the other error was that the State “did not act with

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<sup>251</sup> Among others, relating to the removal of the body, in the site inspection report which indicates that the crime scene had already been contaminated, that the inspection was not conducted with the necessary rigor, as important details are missing about how the body was found, the condition of the clothing, and whether there were bloodstains, fibers, threads or other clues. The inspection report does not say whether the site was examined for footprints or any other relevant evidence; nor does it indicate the measures taken by the investigators and the nature of the evidence collected. The police report documented that there was a large black plastic bag, but this was not reported by the Assistance Prosecutor; the chain of custody of the evidence was not respected; there were contradictions and omissions in the description of the position of the body; the autopsy was incomplete and did not indicate the means, place and time of death; if rape was suspected, specific evidence was not preserved; there was no follow up on a telephone call made by an anonymous informant who provided information on the murder, and it was not until July 18, 2003, that a building was searched; the report of the calls made from the telephone that María Isabel was carrying was not examined diligently, and the testimony of witnesses was not obtained promptly.

<sup>252</sup> Namely: Inter-American Commission of Women (CIM), the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), and Amnesty International.

due diligence in investigating the facts"; but rather "incurred in acts and omissions that led to the loss of useful – and, in some case, essential – evidence to determine the truth of what happened, which cannot be reconstituted." It indicated that the State incurred in irregularities in the preservation of the scene where the body was discovered; that the investigation failed to collect and handle the evidence properly; committed omissions and irregularities in conducting essential appraisals, and has not examined all the violations committed against María Isabel, because "it only examined the [presumed] victim's murder, even though the body had injuries and showed other signs indicating that she could have been a victim of sexual abuse. The complete failure to investigate the acts of sexual violence and cruelty to the child [...] is especially egregious owing to the context in which the facts of this case are inserted." Lastly, it argued that "[t]his omission not only prevents the eventual punishment of those responsible in keeping with the gravity of their actions, but also sends a clear message that the State tolerates violations of the integrity of women and this have no consequences for the perpetrators."

165. The representative also stated that the proceedings were not conducted within a reasonable time, because the events took place in December 2001, and more than 10 years had passed without anyone having been prosecuted. It acknowledged that "this case is rather complex, [but that] the delay must be attributed totally to the State [...] owing to the acts and omissions of its agents at the start of the investigation, which had an adverse impact on the possibilities of obtaining essential evidence that could not be reconstituted" and who, subsequently, "took measures that led to additional delays, with the result that the proceedings are still at the investigation stage." It also asserted that María Isabel's mother "has not only cooperated with the investigation, but the case file shows [that] she has suggested and contributed evidence to the proceedings and has taken numerous steps to advance it ever since the events occurred." It indicated that, to the contrary, the conduct of the authorities "has been characterized by periods of inaction, the implementation of belated and reactive measures, and by the mechanical reiteration of procedures without an investigation plan or well-defined hypotheses." Thus, among other matters, it indicated that a jurisdictional dispute arose only three months after the events had occurred, "on March 11, 2002, that was only decided in December 2002, seven months later." This contributed to the fact that the authorities did not take essential steps until months or even years later, leading to a delay in the proceedings at, at times, causing the measures taken to be unsuccessful. The representative concluded that the delay in the investigations can be attributed solely to the actions of the State.

166. The representative also mentioned that the analysis of the calls to María Isabel's mobile telephone "was only made in June 2005, [...] and] most of the statements made before the Public Prosecution Service and the other evidence [...] were obtained months or years after [María Isabel's murder], reducing the possibility of clarifying what happened." It also argued that "the measures [implemented] were only taken in order to show procedural activity, because the interviews conducted by the authorities were not thorough, and there is no evidence that they were the result of a pre-defined line of investigation."

167. The representative indicated that, in keeping with the Court's standards, the investigation undertaken by the State should have "included a gender perspective;<sup>253</sup> follow up on specific lines of investigation relating to sexual violence, including lines of investigation on the respective patterns in the geographical area, [...], and should have been carried out by officials who were highly trained in similar cases involving victims of discrimination and gender-based violence."

168. Lastly, the representative referred to the failure to sanction the public authorities responsible for the irregularities in the processing of the domestic proceedings in this case. It indicated that the failure to investigate this conduct "causes [...] concern because, during the international proceedings, the State has acknowledged some of these errors, and this

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<sup>253</sup> The representative did not make an individual analysis of Article 7 of the Convention of Belém do Pará, but referred to this article together with several articles of the American Convention.

has not led to any action to sanction those responsible and to prevent their repetition within the framework of the problematic context of violence against women that exists in Guatemala." It added that no investigation was undertaken even though "the Ombudsman issued a decision determining that there had been a violation of due process and holding the prosecutors in charge of the case directly responsible."

169. Based on the above, the representative asked the Court to declare the State responsible for the violation, to the detriment of the next of kin of María Isabel Veliz Franco, of the rights contained in Articles 8 and 25 of the American Convention and of non-compliance with the obligations contained in Article 1(1) of this instrument, and Article 7 of the Convention of Belém do Pará, because it had not investigated the different irregularities incurred by the authorities in charge of the investigations. It also argued that Articles 4, 5, and 7 of the American Convention "had been violated to the detriment of María Isabel Veliz Franco, in relation to non-compliance with the obligations contained in Articles 1(1), 2 and 19 of this instrument, and 7 of the Convention of Belém do Pará."

170. The State indicated that it cannot be accused of omission or lack of diligence in the investigation, because "the case files [...] and the facts investigated show [...] that numerous steps have been taken to clarify the events; [n]evertheless, [...] it has not been possible to advance towards the trial established in Articles 8 and 25 of the [Convention], because it has been impossible to attribute the abduction and subsequent death of María Isabel to any specific individual." It also indicated that "if the State should bring charges against anyone, or against any of the suspects indicated by [María Isabel's] mother, the accusation would be arbitrary and illegal" because "the State cannot prosecute unless it can substantiated its charges on sound factual grounds." It also reiterated that "the State, through its investigating agency, [...] has done everything possible to clarify the events and it has never denied [the members of María Isabel's family] access to the relevant information or legal remedies."

171. Furthermore, regarding the supposed irregularities in the preservation of the scene where the body was found, and the improper collection and handling of evidence, the State explained that, during the processing of the case before the Commission, it had acknowledged its international responsibility for the lack of due diligence owing to some omissions in the investigation. However, it indicated that "at the time of the events, the examinations carried out on the corpses of both men and women were performed in accordance with the procedures requested by the prosecutors and judges at that time and, according to [the] possibilities." The State added that "with the passage of time, the State has been overcoming these shortcomings over the last 10 years, adopting a series of measures that, today, make the procedure for recovering a corpse and the way in which evidence is collected more uniform and methodical"; consequently, it cannot be held internationally responsible for "failing to collect evidence that can only be obtained since the creation of the National Institute of Forensic Science" in 2007. The State explained that "at the time of the facts [of the case, in December 2001,] there were no specific laws or procedures for cases of violence against women, but [by December 2012] these had been established."

172. In its final written arguments, the State indicated that the autopsy performed on María Isabel established that the main cause of death was "the trauma to the cranium" and several examinations were performed: "an external examination establishing the injuries revealed by the corpse; an examination of the cranium, of the cervical and thoracic organs, and of the thorax, abdomen and genital region, where it was established that these were normal, which did not reveal rape." It indicated that, in 2001, the laws in force did not establish autopsy guidelines or protocols, so that "each autopsy was carried out according to the criteria and requests of the prosecutors" in charge of the investigation, above all in order to "identify [...] the] corpses and [establish the cause of] death." Also, at that time, "only an external examination of the body was carried out," "based only on a visual procedure." "No pre-established circumstances had been defined in which forensic physicians were obliged to perform tests for sexual violence." It added that, "in the cases in which other tests were performed, this was because the prosecutors in charge of the

investigation into the death had requested them." Even though some forensic tests were not performed, the autopsy was carried out, and also luminescence tests with ultraviolet lamp and acid phosphatase test, a biological analysis of the underwear and of two towels, which identified the presence of blood and hairs, but did not find semen, and the procedure of comparing the hairs has not been carried out, because the presumed perpetrator has not been identified.

173. Despite what it had indicated in the proceedings before the Commission (*supra* para. 19), the State denied that it had incurred in an unjustified delay in the investigations due to the jurisdictional dispute, because this was "legitimate under domestic law and must be decided by the Supreme Court of Justice"; moreover, "it was not that the judges responsible for overseeing the investigation did not want to supervise it, but rather they must be authorized and competent to do so." It emphasized "that the obligation of the Public Prosecution Service is to conduct an objective investigation, and although investigations take time, despite the said jurisdictional dispute, the investigation has progressed over time." It also indicated the different steps taken while the "interlocutory issue" was underway and, therefore, stressed that this lapse "does not mean that the State did not obtain any evidence at that time."

174. The State also asserted that arguing the violation of Article 7 of the Convention of Belém do Pará "is meaningless, because the State [...] condemns all forms of violence against women and has attempted to adopt policies guided by the principles of the relevant legal norms promptly and using all appropriate means." It argued that both the Commission and the representatives are seeking to attribute María Isabel's death to [the State] based on an omission; however, it rejected this accusation, because "the State bodies responsible for investigating her whereabouts, did this."

175. The State argued that, "although it does not accept or in any way approve of violence against women, not all crimes committed against individuals of the female gender are perpetrated against them because they are women." Specifically, it indicated that, in the instant case, neither the Commission nor the representatives had proved or even stated "that María Isabel disappeared and was murdered because she was female." Accordingly, it asked the Court to "rule in this regard because, even though the case relates to someone's life, there is no evidence that those responsible killed her because she was female."

176. With regard to the accusations that the investigation was conducted in a biased and discriminatory manner, the State asserted that "there is no record anywhere that the authorities acted arbitrarily in this regard; [t]o the contrary, they have performed their work within the framework of the law in force at the time of the events." In addition, regarding the allegations of the representatives and the Commission that the reports drawn up by the authorities contained some biased or discriminatory statements, it indicated that these were made by third parties, who "stated what they knew and provided the information that, in their opinion, was necessary" and that, therefore, "it is clear that the officials in charge of the investigation had never attacked the honor and dignity of the victim or dealt with the case on an unequal footing because the victim was a woman, and they have not discriminated against her mother on that basis." It added that "in no way had María Isabel been afforded an unequal treatment because she was a female victim, or because she was a girl." The State also maintained that neither had it accorded the presumed victim's mother unequal treatment in her search to obtain justice, and that the latter had freely exercised all her rights with the full equal protection of the law, even though the result of the investigation had not been satisfactory.

177. Regarding the allegation that the State had not investigated or sanctioned the respective public officials, it indicated that "although Mrs. Franco Sandoval has expressed her disagreement with the proceedings and with the persons in charge of the corresponding entities, this does not mean that the matter was not investigated to determine whether any sanction was in order." It repeated that the State agents "acted in keeping with the law in force at the time the events occurred and, consequently, these persons cannot be reproached for the way in which they performed their task."

## B. Considerations of the Court

178. The Court has already determined that, even though it cannot be asserted that every murder of a woman that occurred at the time of the events was gender-based, it is probable that this was true of María Isabel's murder based on how the girl's body was found. Indeed, it has been said that women victims of gender-based murder frequently show signs of cruelty during the violence perpetrated against them, as well as signs of sexual abuse or mutilation (*supra* para. 78). In line with these characteristics, María Isabel's body was found with clear signs of violence, including signs of strangulation, a wound to the head, a cut on one ear and bites on her upper arms; her head was covered by towels and a plastic bag, and she had food in her mouth and nose (*supra* para. 99); in addition, the bottom part of her blouse and underpants were torn (*supra* para. 110). This is relevant and sufficient for applying Article 7 of the Convention of Belém do Pará to the case.<sup>254</sup> It should be noted that the lack of absolute certainty in this regard is a result of the failure to complete the domestic investigation, as well as the way in which, to date, this has been conducted. Thus, for example, significant elements, such as the presence of sexual violence in the incident, has not been determined with certainty (*supra* para. 111 and *infra* para. 196.b).

179. The Court also finds it relevant to recall its case law with regard to the criteria applicable to the assessment of the evidence in a case. Since its first contentious case, this Court has indicated that, for an international court, the criteria for assessment of evidence are less strict than under domestic legal systems, and has maintained that it may assess the evidence unreservedly. The Court must assess the evidence in a way that takes into account the significance of attributing international responsibility to a State and that, despite this, is able to establish conviction about the truth of the alleged facts.<sup>255</sup>

180. With regard to the alleged impediments to the correct implementation of certain procedures at the time of the events (*supra* para. 171), the Court recalls that it is a basic principle of international law, supported by international jurisprudence, that States are bound to observe their treaty-based obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, States may not invoke the provisions of their internal law as justification for failure to do so.<sup>256</sup> Hence, the State cannot excuse failure to comply with its obligation to investigate with the due diligence by affirming that, at the time of the events, there were no laws, procedures or measures for conducting the initial investigative measures properly in keeping with the standards of international law that are evident in the applicable treaties in force at the time of the events, and that this Court has indicated in its case law (*infra* para. 188 and 189). Nevertheless, the Court has noted that Guatemala has

<sup>254</sup> Article 1 of the Convention of Belém do Pará defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." The Court has stated that "CEDAW [...] has indicated that '[v]iolence against women is a form of discrimination that creates a significant impediment to their enjoyment of rights and freedoms on an equal footing with men.'" *Case of González et al. ("Cotton Field")*, *supra*, paras. 143, 401 and 395. Furthermore, the Court has also indicated that "not every violation of a human right committed against a woman necessarily results in a violation of the provisions of the Convention of Belém do Pará." *Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 194, para. 279. This does not mean that, in relation to the investigation of acts committed against women, application of the Convention of Belém do Pará depends on the absolute certainty about whether or not the act to be investigated constitutes violence against women in the terms of that Convention. In this regard, it should be stressed that it is by compliance with the duty to investigate established in Article 7 of the Convention of Belém do Pará that, in different cases, certainty can be reached on whether or not the act investigated constituted violence against the woman. Consequently, compliance with the obligation cannot be made dependent on this certainty. Consequently, it is sufficient that the act in question has material characteristics that, reasonably considered, indicate the possibility that it was an act of violence against a woman in order to give rise to the obligation to investigate in the terms of the Convention of Belém do Pará,

<sup>255</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, paras. 127, 128 and 129, and *Case of J.*, *supra*, para. 305.

<sup>256</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of J.*, *supra*, para. 349.

made progress, with the laws now in force and the creation of several agencies, such as the INACIF, which have allowed measures to be taken in a scientific and technical manner (*infra* para. 267).

181. The Court also recalls that, during the proceedings before the Commission, Guatemala acknowledged the lack of due diligence in the investigation conducted into the death of María Isabel Veliz Franco based on the following facts: failure to perform some forensic tests on the corpse relating to the recovery of the corpse; the delay in the investigation owing to the jurisdictional dispute, and failure to establish an effective precautionary measure to ensure the presence of a persons suspected of María Isabel's murder (*supra* para. 19).

182. Based on the foregoing, and considering the arguments of the parties and the Commission, the Court must examine whether or not the alleged irregularities in the investigation underway for the events that occurred to María Isabel constitute a violation of the obligations derived from rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 24 and 1(1) of this instrument, and to Article 7 of the Convention of Belém do Pará.

183. The Court reiterates that the obligation to investigate human rights violations is one of the positive measures that the State must take to ensure the rights recognized in the Convention.<sup>257</sup> The obligation to investigate is an obligation of means and not of results. However, it must be assumed by the State as an inherent legal obligation and not as a simple formality preordained to be ineffective, or as a step taken by private interests that depends on the procedural initiative of the victims or their family or upon their offer of probative elements.<sup>258</sup> In light of this obligation, once the State authorities become aware of an incident, they should open a serious, impartial and effective investigation *ex officio* and immediately.<sup>259</sup> This investigation should be conducted using all legal means available and be designed to determine the truth. The State's obligation to investigate must be fulfilled diligently in order to avoid impunity and a repetition of this type of act. Thus, the Court recalls that impunity encourages the repetition of human rights violations.<sup>260</sup> The Court has also noted that this obligation persists "whosoever the agent to whom the violation may eventually be attributed, even private persons, because, if their acts are not genuinely investigated, they would, to some extent, be aided by the public authorities, which would involve the international responsibility of the State."<sup>261</sup>

184. The Court has also indicated that it is clear from Article 8 of the Convention that the victims of human rights violations, or their next of kin, should have extensive possibilities of being heard and acting in the respective proceedings, both in order to clarify the facts and the punishment of those responsible, and to seek satisfactory redress.<sup>262</sup> The Court has also established that the obligation to investigate, and the corresponding right of the presumed victims or their next of kin is evident not only from the treaty-based norms of international law that are binding for the States parties, but also arise from domestic laws concerning the duty to investigation *ex officio* certain unlawful conducts, and from norms that allow the

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<sup>257</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, paras. 166 and 176, and *Case of Luna López, supra*, para. 153.

<sup>258</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of Osorio Rivera and family members v. Peru. Preliminary objections, merits, reparations and costs. Judgment of November 26, 2013. Series C No. 274, para. 178.*

<sup>259</sup> Cf. *Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs. Judgment of September 15, 2005. Series C No. 134, paras. 219, 222 and 223, and Case of J., supra*, para. 342.

<sup>260</sup> Cf. *Case of the Ituango Massacres, supra*, para. 319; *Case of González et al. ("Cotton Field"), supra*, para. 289, and *Case of García and family members v. Guatemala. Merits, reparations and costs. Judgment of November 29, 2012 Series C No. 258, para. 132.*

<sup>261</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of Luna López, supra*, para. 155.

<sup>262</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.). Merits, supra*, para. 227, and *Case of Luna López, supra*, para. 155.



victims or their next of kin to file complaints or submit claims, evidence or petitions or take any other step in order to play a procedural role in the criminal investigation to establish the truth of the events.<sup>263</sup>

185. The Court recalls that, in cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are supplemented and enhanced for those States that are a party to it by the obligations arising from the specific inter-American treaty, the Convention of Belém do Pará.<sup>264</sup> Article 7(b) of this Convention specifically obliges the States parties to use due diligence to prevent, punish and eradicate violence against women.<sup>265</sup> Article 7(c) of the Convention of Belém do Pará obliges the States parties to adopt the necessary laws to investigate and punish violence against women.<sup>266</sup> In such cases, the State authorities should open a genuine, impartial and effective investigation *ex officio* as soon as they are made aware of acts that constitute violence against women, including sexual violence.<sup>267</sup> Thus, in the case of an act of violence against a woman, it is particularly important that the authorities in charge of the investigation conduct it in a determined and effective manner, taking into account society's duty to reject violence against women and the State's obligation to eradicate this and to ensure that victims have confidence in the State institutions established to protect them.<sup>268</sup>

186. The Court has also indicated that the duty to investigate has additional implications in the case of women who are killed or suffer ill-treatment or constraint of their personal liberty within the framework of a general context of violence against women.<sup>269</sup>

187. This standard is wholly applicable when analyzing the scope of the obligation of due diligence in the investigation of cases of gender-based violence.<sup>270</sup> In practice, it is often difficult to prove that a murder or act of violent aggression against a woman is gender-based. At times this impossibility stems from the absence of a thorough and effective investigation of the violent incident and its causes by the authorities. This is why the State authorities are bound to investigate *ex officio* the possible gender-based discriminatory connotations of an act of violence perpetrated against a woman, especially when there are specific indications of sexual violence or some type of evidence of cruelty towards the body of the woman (for example, mutilations), or when such an act takes place in a context of violence against women in a specific country or region.

188. Furthermore, the Court has established that, in cases when gender-based murder is suspected, the State's obligation to investigate with due diligence includes the duty to order, *ex officio*, the pertinent expert appraisals and examinations aimed at verifying whether the murder was sexually motivated or whether some kind of sexual violence occurred. Thus, the investigation into a supposed gender-based murder should not be limited to the death of the victim, but should include other specific violations of personal integrity such as torture and acts of sexual violence. In a criminal investigation into sexual violence, the investigative procedures must be coordinated and documented, and the evidence handled diligently, taking sufficient samples, performing tests to determine the possible authors of the act, obtaining other evidence such as the victim's clothes, the immediate inspection of the crime scene, and ensuring the correct chain of custody.<sup>271</sup> In

<sup>263</sup> Cf. *Case of García Prieto et al.*, *supra*, para. 104, and *Case of Mendoza et al.*, *supra*, para. 217.

<sup>264</sup> Cf. *Case of Fernández Ortega et al.*, *supra*, para. 193, and *Case of the Massacres of El Mozote and nearby places*, *supra*, para. 243.

<sup>265</sup> Cf. *Case of Fernández Ortega et al.*, *supra*, para. 193, and *Case of J.*, *supra*, para. 350.

<sup>266</sup> Cf. *Case of the Miguel Castro Castro Prison*, *supra*, para. 344, and *Case of González et al. ("Cotton Field")*, *supra*, para. 287.

<sup>267</sup> Cf. *Case of the Miguel Castro Castro Prison*, *supra*, para. 378, and *Case of J.*, *supra*, para. 342.

<sup>268</sup> Cf. *Case of Fernández Ortega et al.*, *supra*, para. 193, and *Case of J.*, *supra*, para. 342.

<sup>269</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, para. 293.

<sup>270</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, para. 293.

<sup>271</sup> Cf. *Case of Fernández Ortega et al.*, *supra*, para. 194, and *Case of J.*, *supra*, para. 344.

this regard, the first stages of the investigation can be especially crucial in cases of the gender-based murder of a woman, because any errors that occur in procedures such as the autopsy and the collection and preservation of physical evidence can result in preventing or obstructing the possibility of proving relevant aspects such as sexual violence. With regard to the autopsies performed in a case of gender-based murder, the Court has stipulated that the genitalia should be examined carefully for signs of sexual abuse, and oral, vaginal and rectal fluids should be preserved, as well as foreign hairs and the pubic hair of the victim.<sup>272</sup> Also, in cases where acts of violence against women are suspected, the criminal investigation should include a gender perspective and be carried out by officials with training in similar cases and in attending to victims of discrimination and gender-based violence.<sup>273</sup>

189. In addition, the Court indicates that, pursuant to Article 2 of the American Convention and Article 7(c) of the Convention of Belém do Pará, States have the obligation to adopt laws or implement the necessary measures to allow the authorities to investigate with due diligence in cases where violence against women is suspected.<sup>274</sup>

190. In this section, the Court will examine the following aspects: B.1) Irregularities following the discovery of the body of María Isabel, and subsequent actions of State officials (preservation of the crime scene, site inspection, removal of the body, chain of custody of the evidence, autopsy, and expert appraisals); B.2) Tracing of telephone calls; B.3) Failure to adopt precautionary measures for a suspect; B.4) Discrimination and absence of gender-based investigation, and B.5) Reasonable time.

***B.1) Irregularities following the discovery of the body of María Isabel, and subsequent actions of State officials (preservation of the crime scene, site inspection, removal of the body, chain of custody of the evidence, autopsy and expert appraisals)***

191. On other occasions this Court has established that the proficient determination of the truth, in accordance with the obligation to investigate a death, must be demonstrated meticulously starting with the very first procedures.<sup>275</sup> Thus, the Court has described the guiding principles that must be observed in an investigation into a violent death. The State authorities who conduct an investigation of this type should try, at least to: (i) identify the victim; (ii) recover and preserve the probative elements related to the death in order to assist any potential criminal investigation of those responsible; (iii) identify possible witnesses and obtain their statements concerning the death investigated; (iv) determine the cause, manner, place and time of death, as well as any pattern or practice that may have resulted in the death, and (v) distinguish between natural or accidental death, suicide and murder. It is also necessary to carry out a thorough investigation of the scene of the crime, and rigorous autopsies and analyses of human remains must be performed by competent professionals, using the most appropriate procedures.<sup>276</sup> The Court has established that the

<sup>272</sup> Cf. *Case of González et al. ("Cotton Field")*, supra, para. 310, and United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions - Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), UN Doc. E/ST/CSDHA/12 (1991).

<sup>273</sup> Cf. *Case of González et al. ("Cotton Field")*, supra, para. 455.

<sup>274</sup> Cf. *Case of González et al. ("Cotton Field")*, supra, para. 388. This can be done by standardizing the protocols, manuals, and expert and justice services, used to investigate any crime related to the disappearance, sexual violence or murder of women, in keeping with the Istanbul Protocol, the United Nations Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions, and international standards for searching for missing persons, based on a gender perspective.

<sup>275</sup> Cf. *Case of Servellón García et al. v. Honduras. Merits, reparations and costs*. Judgment of September 21, 2006. Series C No. 152, para. 120; *Case of González et al. ("Cotton Field")*, supra, para. 300, and *Case of Luna López*, supra, para. 159.

<sup>276</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127; *Case of González et al. ("Cotton Field")*, supra, para. 300, and *Case of Luna López*, supra, footnote 256.

failure to protect the scene of a crime properly can impair the investigation, since this is an essential element to enable it to be successful.<sup>277</sup>

192. In addition, international standards indicate that, with regard to the crime scene, the investigator must, at least, photograph the scene, any other physical evidence and the body as it was found and after it has been moved; collect and preserve any samples of blood, hair, fibers, threads or other evidence; examine the area for footprints or any other impressions of an evidentiary nature, and draw up a report detailing any observations at the scene, actions of investigators, and location of all the evidence recovered.<sup>278</sup> One of the most delicate actions at the site of the discovery is the handling of the corpse; this must only be done in the presence of professionals who should examine and move it correctly, based on the condition of the body.<sup>279</sup> Among other obligations, the Minnesota Protocol establishes that, when investigating the scene of a crime, the area around the body should be closed off, and only the investigators and their staff should be allowed entry into the area.<sup>280</sup> Until this has been done, any contamination of the area should be avoided and it should be guarded permanently.<sup>281</sup> The Minnesota Protocol also establishes that it is essential that "[l]aw enforcement personnel and other non-medical investigators should coordinate their efforts [...] with those of medical personnel."<sup>282</sup>

193. Furthermore, due diligence in a forensic investigation of a death requires maintaining the chain of custody of all forensic evidence.<sup>283</sup> This consists in keeping a precise record, supplemented when appropriate by photographs and other graphic elements, to document the background to the evidence as it passes through the hands of different investigators responsible for the case.<sup>284</sup>

194. Regarding autopsies, as the Court has indicated, their purpose is to collect, at least, information to identify the deceased, the time, date, cause and manner of death. They should observe certain basic formalities, such as recording the date, starting and finishing times, and place where they are performed, and also the name of the professional who performs them. In addition, it is necessary, *inter alia*, to photograph the body adequately; to radiograph the body before it is removed from its pouch or wrappings; X-rays should be repeated both before and after undressing the body and any injury documented. Any absence, looseness or damage to the teeth should be documented, as well as all dental work, and the genitalia carefully examined looking for signs of sexual assault (*supra* para. 188). The United Nations Manual indicates that, at the scene of the crime, autopsy protocols should note the position of the body and its condition, including whether it is warm or cool, flexible or rigid; protect the deceased's hands; note the ambient temperature, and collect

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<sup>277</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, para. 166, and *Case of Luna López*, *supra*, para. 164.

<sup>278</sup> Cf. United Nations Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*, and *Case of González et al. ("Cotton Field")*, *supra*, para. 301.

<sup>279</sup> Office of the United Nations High Commission for Human Rights. *Modelo de protocolo latinoamericano de investigación de las muertes violentas de mujeres por razones de género*, MEX/00/AH/10, p. 58.

<sup>280</sup> Cf. United Nations Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*, and *Case of González et al. ("Cotton Field")*, *supra*, para. 301.

<sup>281</sup> Cf. United Nations Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*, and Office of the United Nations High Commission for Human Rights. *Modelo de protocolo latinoamericano de investigación de las muertes violentas de mujeres por razones de género*, *supra*.

<sup>282</sup> Cf. United Nations Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*.

<sup>283</sup> Cf. United Nations Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*, and *Case of González et al. ("Cotton Field")*, *supra*, para. 305.

<sup>284</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, para. 305.

any insects present.<sup>285</sup>

195. In its case law, the Court has also indicated that a State may be held responsible for failing "to order, obtain or assess evidence that would have been extremely important for the proper elucidation of a murder."<sup>286</sup>

196. The Court has verified the following:

a) The State authorities failed to take adequate measures to safeguard the site where María Isabel's body was found and to avoid the loss of evidence and the contamination of areas near the crime scene from which useful evidence might have been collected (*infra* para. 197). The same authorities indicated that the scene was "contaminated" and that, when the site inspection was carried out, it was already contaminated<sup>287</sup> (*supra* para. 101);

b) When removing the body, in view of the existence of the evident signs of abuse or violence on the victim's body, the authorities failed to request that the pertinent tests be performed during the autopsy (such as vaginal and rectal swabs)<sup>288</sup> to determine whether María Isabel Veliz Franco had been a victim of sexual assault<sup>289</sup> (*supra* para. 110), this omission was later classified as "unfortunate"<sup>290</sup> by the State agents in charge of investigating the case. There was also a failure to verify the existence of semen in her body. The autopsy report dated February 13, 2002, merely indicated with regard to the examination of the abdominal area that the genital organs were "normal" (*supra* para. 111). Even though the victim's clothes were examined by the expert with negative results for the presence of semen, this examination was performed after the clothes had been in her mother's possession, so that they had been contaminated (*supra* para. 105 and *infra* para. 197);

c) The site inspection report and the record of the removal of the corpse<sup>291</sup> prepared by Assistant Prosecutor I of Mixco Agency No. 5 are incomplete and

<sup>285</sup> Cf. United Nations Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), *supra*; and *Case of González et al. ("Cotton Field")*, *supra*, para. 310, and *Case of Luna López*, *supra*, footnote 261.

<sup>286</sup> *Case of the "Street Children" (Villagrán Morales et al.)*. Merits, *supra*, para. 349.

<sup>287</sup> During the site inspection carried out on December 18, 2001, the expert determined that the scene of the crime had been processed and contaminated. Cf. Site inspection report issued by the expert of the Site Inspection Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*. Expert witness José Mario Nájera Ochoa referred to the way in which forensic procedures were carried out and indicated that: (a) the Public Prosecution Service reported the crime (to the monitoring unit in the case of the Metropolitan area or directly to the prosecutors in the district prosecution offices), and (b) the team went to the scene of the crime; when they arrived, other individuals were already present: firemen, police etc. and they had usually contaminated the crime scene. Cf. Expert opinion provided by José Mario Nájera Ochoa, *supra*.

<sup>288</sup> On February 27, 2006, Assistant Prosecutor I of Mixco Agency No. 5 sent a note to the Judiciary's forensic physician who performed the autopsy, indicating that, when the record of the removal of the body was prepared, "he was not asked to take vaginal and rectal swabs or nail scraping from the deceased," and asking whether he had done so *ex officio*; to which the latter replied negatively and indicated that he had not been asked to do this. Cf. Note sent by Assistant Prosecutor I of Mixco Agency No. 5 to the forensic physician, *supra*. Also, on August 2, 2011, the Assistant Prosecutor asked the forensic physician who signed the autopsy to interpret it and, on August 4, 2011, the physician responded "that it was not possible to rule on the time and manner of the victim's death based on the autopsy findings" (*supra* para. 111). Cf. Request sent to the Head of the Institute of Forensic Science, *supra*, and expert appraisal provided by the medical expert of the Institute of Forensic Science, *supra*.

<sup>289</sup> This is true for cases of sexual assault and rape, in which a medical examination does not necessarily confirm that they have occurred, because not all cases of rape and/or sexual assault cause physical injuries or disease that can be verified by a medical examination. Cf. *Case of Fernández Ortega et al.*, *supra*, para. 124, and *Case of J.*, *supra*, para. 329. See also, ECHR, *M.C. v. Bulgaria*, no. 39272/98, 4 December 2003, para. 166.

<sup>290</sup> Cf. Expansion and conclusion of report issued by Criminal Investigation Expert I, *supra*.

<sup>291</sup> Regarding the procedures carried out in this case, expert witness José Mario Nájera Ochoa indicated that "a forensic physician was not present during the removal of the corpse, owing to the area in which it took place

inconsistent.<sup>292</sup> The report indicates that a sketch was made of the site, but this is not attached; there is no record of the position of the body in relation to the place where it appeared, or who moved it prior to its recovery (*supra* para. 97). There is no record of whether the victim's hands were protected for subsequent examination; how the evidence was positioned; the condition of the clothes and whether they had blood stains, hairs, fibers; whether a search was made for footprints or other evidence. Also, the corpse was taken to the morgue in a police vehicle. Moreover, the "Photographic Report" sent to the Public Prosecution Office in March 2002 (*supra* para. 113), almost three months after María Isabel's body was found, contains eight photographs that do not portray satisfactorily what is described in the above-mentioned reports in relation to the scene of the crime (*supra* paras. 96 and 97);

d) In view of the omissions in the report, in 2009, eight years after it was prepared, the Public Prosecution Service tried to locate the police agents who had taken part in the procedures in order to establish factual aspects related to the position of the body and evidence at the time the body was found; specifically, if the victim was in a bag. In this regard, a police agent testified before the Public Prosecution Service on July 21, 2009, and indicated that "when [...] he] arrived at the crime scene" he moved away the "curious onlookers" and "the deceased was covered, but [he did] not remember the position of the body owing to the time that ha[d] passed."<sup>293</sup> In addition, on July 13, 2009, the Assistant Prosecutor of Agency No 1 of the Mixco Municipal Prosecutor's Office asked the Head of the Municipal Fire Department of Guatemala City about the "procedures they were involved in on December 18, 2001, on the site where the body of María Isabel Veliz Franco was

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and, at that time, no forensic physician was assigned to the Prosecutor's Office." It should be added that, in his expert report, he stated that if a forensic physician is not present for the removal of the body, "when the forensic autopsy is performed, the forensic physician does not have important information such as: the original position of the body, the condition of the body, indications and/or evidence found, amount of blood, data that should be assessed in the final autopsy report." He considered that "one of the main limitations in [...] this case is that the group that carried out the procedures of removing bodies did not include a forensic physician. Cf. Expert opinion provided by José Mario Nájera Ochoa, *supra*. Similarly, the State acknowledged that, at the time of the events, there was no forensic physician in the Mixco Municipal Prosecutor's Office; consequently, "owing to the lack of a forensic physician at the scene of the crime (for budgetary reasons)," the State, "to the best of its ability and in keeping with the procedures in force at the time of the events, did everything possible with regard to the recovery of the body."

<sup>292</sup> For example, the record of the recovery of the body on December 18, 2001, prepared by Assistant Prosecutor I of Mixco Agency No. 5 merely includes a description of the physical conditions of how the girl's body was found, the clothes she was wearing, and different objects that were found in the pockets of the clothing (*supra* para. 99). The site inspection report makes no mention of the position of the corpse but, in the record of the removal of the body, the Assistant Prosecutor indicated that the corpse was in position "ventral decubitus" "face downwards," while, in the respective photographs, the body appears on its back (*supra* para. 113). In addition, the expert describes the nylon cord as "white, black, brown and green," but the Assistant Prosecutor describes it as "black" (*supra* para. 99). Also, the Assistant Prosecutor describes "a cut on the upper part of the ear possibly caused by a knife, [...] bite marks on the upper arms," and "abundant remains of food in the mouth and nose," aspects that were not described by the expert who carried out the site inspection. The same is true with regard to "the large black nylon bag decorated with a picture of a kangaroo"; in the site inspection report, the expert indicates that he "observed a large black nylon bag decorated with a picture of a white kangaroo about 25 centimeters to the southwest of the deceased's head," and in the same report he indicates that the Assistant Prosecutor said that "it was placed [...] on the face of the deceased." However, this Court points out that the latter observation was not mentioned by the Assistant Prosecutor in the record of the recovery of the corpse. The site inspection report indicates that photographs were taken and a sketch was made of the site. These photographs appear in the four-page PNC Photographic Report No. 1791-200, which contains eight photographs and which was issued by the Site Inspection Service of the PNC Bureau of Criminal Investigation on March 3, 2002. However, this photographic report is not accompanied by the sketch mentioned in the site inspection report issued by the expert, according to the files provided by the parties. Cf. Site inspection report issued by an expert of the Site Inspection Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*; Report on recovery of the corpse prepared by Assistant Prosecutor I of Mixco Agency No. 5, *supra*, and Photographic Report No. 4791-2001, *supra*.

<sup>293</sup> Testimony of an agent of the National Civil Police of July 21, 2009 (file of annexes to the motions and arguments brief, annex 112, fs. 12,641 and 12,642).

found.”<sup>294</sup> On July 27, 2009, the Executive Secretary of the Municipal Fire Department responded that his files did not contain any information on the incident in question (*supra* footnote 190);<sup>295</sup>

e) The initial procedures were reported inconsistently by the authorities. Thus, the site inspection report indicates that the procedure ended at 4.15 p.m., but, according to the PNC agents who went to the crime scene, the site inspection experts of the Homicide Unit arrived at 3.20 p.m. Moreover, the record of the recovery of the corpse indicates that it was taken to the morgue in police vehicle No. 16-045 at 3.45 p.m., after the procedure had been completed<sup>296</sup> (*supra* para. 97);

f) The police report indicates that the objects found were handed over to the Assistant Prosecutor of the Public Prosecution Service, but the record that she drew up does not report what happened to them. Moreover, María Isabel’s clothes and a transparent nylon bag, described in the record of the handing over of evidence, were given to the girl’s mother and, on December 19, 2001, were collected from her at the place where she was keeping vigil over her daughter’s body. The said objects were packed up that same day, with nine identified pieces of evidence, and sent to the laboratory of the Scientific and Technical Department of the Public Prosecution Service (*supra* para. 110). However, subsequently, “a pair of denim trousers, two towels and a pair of socks” were mislaid. On January 14, 2011, the prosecutor asked that a thorough search be made to locate them; but, at least, up until July 2011, they had not been found, and

g) The autopsy does not include either the date or time of María Isabel’s death and an interpretation of the autopsy was subsequently requested, in which it was merely estimated that the time of death was “from six to twelve hours” (*supra* para. 111), without indicating whether this is prior to the discovery of the body, or prior to the autopsy; and, according to the doctor who signed the autopsy, it was not possible to determine “the time and manner in which [María Isabel] died” (*supra* para. 111). In addition, no examinations were made to establish whether the child had been subjected to sexual violence.<sup>297</sup> Expert witness José Mario Nájera Ochoa stated that: “the description of the condition of the corpse [was] incomplete,” even though it was indicated that the corpse had “signs of bites, there was no mention of obtaining samples of these areas in order to carry out DNA testing,”<sup>298</sup> “there was no information compatible with mechanical asphyxia,”<sup>299</sup> and even though “remains of food were found in the stomach, there was no record that these had been sent to the laboratory.” He therefore concluded that, in this case, “the forensic examination was deficient.” In this regard, the State indicated that, “[i]n 2001, the laws in force did not establish guidelines or protocols for performing autopsies.”

197. As revealed with regard to María Isabel’s clothes and the two towels, the chain of

<sup>294</sup> Cf. Note issued by the Assistant Prosecutor of Agency No. 1 of the Mixco Municipal Prosecutor’s Office addressed to the Head of the Municipal Fire Department of Guatemala City, *supra*.

<sup>295</sup> Cf. Report of the Fire Department of July 27, 2009 (file of annexes to the motions and arguments brief, annex 114, f. 12,646).

<sup>296</sup> Cf. Note No. 1,131-2,001 issued by the Head of Sub-Station 1651 of the National Civil Police addressed to the Assistant Prosecutor of the Public Prosecution Service of the municipality of Mixco, *supra*; Site inspection report issued by an expert of the Site Inspection Section of the Bureau of Criminal Investigation of the National Civil Police, *supra*, and Report on recovery of the corpse prepared by Assistant Prosecutor I of Mixco Agency No. 5, *supra*.

<sup>297</sup> As revealed by the facts, the tests were not requested and, when consulted, the respective forensic physician stated that he had not performed them *ex officio* (*supra* para. 110).

<sup>298</sup> Cf. Expert opinion provided by José Mario Nájera Ochoa, *supra*.

<sup>299</sup> The expert witness stated that signs of asphyxia are mentioned among the conclusions, and the report on recovery of the corpse indicates that it “[s]hows signs of strangulation with a black plastic cord around the neck.” Cf. Expert opinion provided by José Mario Nájera Ochoa, *supra*.

custody was not safeguarded, so that they were exposed and may have been contaminated. This evidence was later subjected to different tests to determine the existence of blood, semen and hairs, among other elements and, as indicated in the section on the facts (*supra* para. 110), the result of the tests on some of the clothes was negative for the presence of blood and semen. The vomit on the clothes was also subjected to toxicological testing, and the report reveals that the sample provided was insufficient or was already dry (*supra* para. 110), which shows that, since the evidence was not properly safeguarded, the analyses were unsuccessful. Subsequently, and only in 2011, DNA tests have been carried out and a comparison was made between the DNA of a suspect and some of María Isabel's clothes, since there is no DNA sample of the child herself.<sup>300</sup> The expert report underlines that "in some of the clothes there was no genetic material that could usefully be compared" (*supra* para. 112). In this regard, the State alleged that "although it acknowledged its responsibility for not having performed all the tests on the corpse, it did what was possible in light of the possibilities as of 2007 when the [INACIF] had been established, so that the State's acknowledgement should not be interpreted in the sense that it had not performed the tests that were available at the time of the events." Expert witness Nájera Ochoa stated that, when "the incident occurred, DNA testing was not done in Guatemala and the samples were sent abroad,"<sup>301</sup> and the State did not contest this. Nevertheless, although the State did not have this evidence, it should at least have observed the minimum international standards for the collection and preservation of evidence. The above-mentioned shortcomings in the investigation could hardly be rectified by the belated and insufficient probative measures that the State has tried to take. It is obvious that the appropriate protocols were not followed in accordance with the standards established by this Court in light of different international instruments to ensure the chain of custody of the evidence and preserve this for later tests, and this had an impact on the expert appraisals. The loss of evidence may have prevented the identification of the true perpetrator of the acts.

198. The foregoing reveals that the State did not carry out essential procedures following the discovery of María Isabel's body on December 18, 2001. Different irregularities occurred during this first stage that have had repercussions on the investigation and that it would be difficult to rectify by belated procedures. These irregularities were: (a) failure to secure the site where the body was found; (b) lack of rigor in the site inspection; (c) shortcomings in the preparation of the record of the recovery of the corpse; (d) inadequate transport of the corpse; (e) inadequate collection and improper handling of evidence; (f) failure to safeguard the chain of custody of the evidence, and (g) incomplete autopsy.

## **B.2) Tracing of telephone calls**

199. In relation to tracing the telephone call made by an anonymous informant on December 18, 2001, in which he provided information on María Isabel's death, the State indicated that a "search" had been carried out at the address he provided (*supra* para. 109).<sup>302</sup> However, this was done on July 8, 2003; in other words, more than eighteen months after the said call. Neither this action nor the site inspection (*supra* para. 109) yielded positive results.

200. As regards the list of calls made from the mobile telephone that María Isabel was

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<sup>300</sup> In April 2006, the International Federation for Human Rights presented the report of its International Investigation Mission, "*El femicidio en México y Guatemala*," in which it indicated, as an example of the lack of technical means to carry out effective investigations, the inexistence of databases to compare fingerprints or DNA samples, among other factors. It also indicated that, despite the existence of patterns in the case of the corpses of women, the absence of profiles of attackers prevented making the necessary crosschecks, and that a serious shortcoming at the investigative stage was that, in many cases when a woman is found murdered, no tests were performed to determine if she had been raped. "*El Femicidio en México y Guatemala*, No. 446/3 (2006) (file of attachments to the Merits Report, annex 34, f. 438).

<sup>301</sup> Cf. Expert opinion provided by José Mario Nájera Ochoa, *supra*.

<sup>302</sup> The State also clarified that it had not gone to the wrong place, as the Commission and the representatives had indicated, because the search was carried out in the building located in Zone 3 of the municipality of Mixco, and is no longer part of Zone 7, but adjoins it.

carrying on the day of the events, the case file reveals that, on March 26, 2002, authorization was granted to request the list of telephone calls from several telecommunications companies in order to establish to whom certain telephone numbers belonged, the address where the owner of the number could be located, and the incoming and outgoing calls between December 15 and 24, 2001.<sup>303</sup> Nevertheless, it was only on June 8, 2005, that the criminal investigations expert sent the Assistant Prosecutor the report on the telephone calls with a description and an analysis of their pattern (*supra* footnote 148). Some additional inquiries were made based on this report.

201. Notwithstanding the pertinence of the steps taken, the foregoing shows that, in the case *sub judice*, the State did not act with the promptness required in order to ensure that certain procedures aimed at clarifying the events were effective, because the search was carried out more than eighteen months after reception of the anonymous telephone call on December 18, 2001, and the analysis of the mobile telephone calls was examined more than three years after the information had been obtained.

### **B.3) Failure to adopt precautionary measures for a suspect**

202. The Court has verified that the April 10, 2002, expansion of a report provided on February 20, 2002, contains an analysis of the relationship between María Isabel and one of the suspects, and indications that could suggest that he might be responsible for María Isabel's murder. The investigators therefore suggested that the suspect should be captured in view of "the danger of his flight." Subsequently, on June 21, 2006, the Bureau of Criminal Investigations indicated in its report that it had not been possible to find him (*supra* footnote 171).

203. The State acknowledged its responsibility on this point (*supra* para. 19). According to the case files provided to the Court, no precautionary measure was issued for the suspect and, when another effort to find him was made four years later, it was unsuccessful. Based on the State's acknowledgement, the Court finds that the State did not follow up appropriately on the evidence or circumstances of the suspect that could have provided grounds for the need to adopt a precautionary measure. This prevented a proper investigation of the suspect, which adversely affected the investigation.

### **B.4) Discrimination and absence of a gender-based investigation**

204. The Court has established in its case law that Article 1(1) of the Convention is a general norm, the content of which extends to all the provisions of this treaty because it establishes the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein "without any discrimination." In other words, whatever its origin or form, any treatment that can be considered discriminatory in relation to the exercise of any of the rights ensured in the Convention is, *per se*, incompatible with this instrument.<sup>304</sup> A State's failure to comply with the general obligation to respect and ensure rights, due to any type of discriminatory treatment, results in its international responsibility.<sup>305</sup> Hence there is an indissoluble link between the obligation to respect and ensure human rights and the principle of equality and non-discrimination.<sup>306</sup>

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<sup>303</sup> Cf. Note C-105-2002/6° issued by the Mixco Court of First Instance, *supra*.

<sup>304</sup> Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53, and *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis)*, *supra*, para. 332.

<sup>305</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 85, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 236.

<sup>306</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 53, and *Case of Nadege Dorzema et al.*, *supra*, para. 224.



205. The principle of equal and effective protection by the law and non-discrimination is an salient element of the system for the protection of human rights established in numerous international instruments and developed by legal doctrine and case law.<sup>307</sup> At the actual stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*. The juridical structure of national and international public order is based on this principles and it permeates the whole legal system.<sup>308</sup>

206. The Court has also established that States must abstain from actions that, in any way, are addressed, directly or indirectly, at creating situations of discrimination *de jure* or *de facto*.<sup>309</sup> States are obliged to adopt positive measures to reverse or change any discriminatory situations which exist in their societies that prejudice a specific group of individuals. This entails the special duty of protection that the State must exercise with regard to the acts and practices of third parties that, with its tolerance or acquiescence, maintain or encourage discriminatory situations.<sup>310</sup>

207. The Court considers that gender-based violence – that is, violence directed against a woman because she is a woman, or violence that affects women disproportionately – is a form of discrimination against women, as indicated by other international bodies involved in the protection of human rights, such as the European Court of Human Rights and CEDAW.<sup>311</sup> Both the Convention of Belém do Pará (preamble and Article 6) and the Convention for the Elimination of All Forms of Discrimination against Women (preamble) have recognized the connection that exists between violence against women and discrimination. Similarly, the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul, 2011) recognizes that “violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full development of women,” and also “the structural nature of violence against women as gender-based violence.”<sup>312</sup>

208. The Court reiterates that the ineffectiveness of the courts in individual cases of violence against women encourages an environment of impunity that facilitates and promotes the general repetition of such acts of violence and sends a message that violence against women can be tolerated and accepted, which encourages its perpetuation and society’s acceptance of the phenomenon, the perception and sensation of insecurity for women, and also their continued lack of confidence in the system for the administration of justice.<sup>313</sup> This ineffectiveness or indifference is, in itself, discrimination against women in access to justice.<sup>314</sup> Consequently, when there are specific indications or suspicions of gender-based violence, the failure of the authorities to investigate the possible

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<sup>307</sup> Cf. *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 269, and *Case of Nadege Dorzema et al.*, *supra*, para. 225.

<sup>308</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 101, and *Case of Nadege Dorzema et al.*, *supra*, para. 225.

<sup>309</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 103, and *Case of Nadege Dorzema et al.*, *supra*, para. 236.

<sup>310</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*, *supra*, para. 104, and *Case of Nadege Dorzema et al.*, *supra*, para. 236.

<sup>311</sup> Cf. *Case of the Miguel Castro Castro Prison*, *supra*, para. 303, and *Case of González et al. (“Cotton Field”)*, *supra*, paras. 394 to 402. See also, ECHR, *Opuz v. Turkey*, Judgment of 9 June 2009, para. 200, and CEDAW, General recommendation 19: Violence against women (1992), paras. 1 and 6.

<sup>312</sup> Preamble to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul, 2011). This Convention has not entered into force yet due to insufficient ratifications (10 ratifications are required).

<sup>313</sup> Cf. *Case of González et al. (“Cotton Field”)*, *supra*, paras. 388 and 400.

<sup>314</sup> Cf. *Case of González et al. (“Cotton Field”)*, *supra*, and United Nations Development Programme, *supra*, para. 400.

discriminatory motives for an act of violence against a woman may constitute, in itself, a form of gender-based discrimination.

209. According to certain international standards concerning violence against women and sexual violence,<sup>315</sup> evidence relating to the sexual history of the victim is inadmissible, in principle; hence, opening lines of investigation into the previous social or sexual behavior of the victims in cases of gender violence is merely a manifestation of policies or attitudes based on gender stereotypes.

210. As already demonstrated in this case, the authorities in charge of the investigation failed to obtain pertinent evidence to determine that sexual violence had occurred, or obtained this belatedly when the probative elements, whose chain of custody had not been safeguarded, had been contaminated (*supra* para. 196.b). In addition, the Court considers that the lack of due diligence in the investigation of the victim's murder is closely related to the absence of specific norms or protocols for the investigation of cases of the gender-based murder of women and violence against women in general. As the State has acknowledged, at the time of the events, there were no specific laws or procedures for investigating cases of violence against women. The State adopted most of the laws and measures for combating this phenomenon after the events of this case,<sup>316</sup> so that it has not been possible to apply them to it, and they have not helped to make the investigation into the death of María Isabel Veliz Franco more effective. The foregoing could partly explain the State's negligence, but cannot justify it or exempt the State from international responsibility. And this is because the norms on which the rights and obligations examined herein are based require their full and immediate observance by the State as of the entry into force of the respective treaties. Consequently, the Court cannot admit the State's argument that it is exempted from responsibility because the State authorities took all the pertinent measures under the laws in force at the time and to the best of their ability.

211. Additionally, the difficulties to establish whether María Isabel Veliz Franco was a victim of violence against women according to the Convention of Belém do Pará result, in part, from the absence of a thorough and effective investigation by the State authorities into the violent incident that led to the victim's death, as well as its possible causes and motives. The Court has already indicated that, in 2001, at the time of the events, a context of an increase in murders involving acts against women existed in Guatemala (*supra* para. 81); to this can be added the fact that, in this case, there was sufficient evidence to suspect that the victim's murder could have had a discriminatory motive, owing to hatred or contempt based on her condition as a woman, or that it was perpetrated with some kind of sexual violence (*supra* paras. 178 and 196.b and *infra* para. 225). In addition, the judicial case file reveals that Rosa Elvira Franco Sandoval informed the Prosecutor General and Head of the Public Prosecution Service that when she went to the morgue to identify her daughter, the forensic physician "told her that her daughter had been raped" (*supra* para. 98).

212. This failure to comply with the obligation of non-discrimination was increased in this

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<sup>315</sup> Article 54 of the Council of Europe Convention on preventing and combating violence against women and domestic violence establishes that: "Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary." Cf. Council of Europe Convention on preventing and combating violence against women and domestic violence *supra*, art. 54. In its Rules of Procedure and Evidence, the International Criminal Court has also ruled on the importance that consent cannot be inferred from the victim in cases of sexual violence. Thus, for example, "[c]redibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim" and "a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim." Cf. International Criminal Court, Rules of Procedure and Evidence.

<sup>316</sup> Law against Femicide and all forms of Violence against Women (2008); Law against Sexual Violence, Exploitation and People Trafficking (2009); creation of courts and tribunals with competence in cases of femicide and all forms of violence against women (2010), and specific protocols for the proper recovery of corpses (used by the National Institute of Forensic Science).

case by the fact that some officials in charge of the investigation of the case made statements that denote the existence of prejudices and stereotypes about the role of women in society. The body of evidence reveals that, in some investigation reports, explicit reference was made to María Isabel's way of dressing, her social and night life, her religious beliefs, and also her family's lack of concern or supervision. According to a brief of the victim's mother dated April 27, 2007 (*supra* para. 118), the Assistant Prosecutor of Mixco Agency No. 5 had told her that María Isabel "was a tart, a prostitute."<sup>317</sup> Also, based on information provided in a psychological appraisal of one of María Isabel's friends, the expert, without any grounds, concluded in his report that the victim had suffered from "emotional instability because she went out with several boyfriends and male acquaintances" (*supra* para. 118). Even though, as the State argues, it is true that some of these statements come from testimony provided by witnesses or individuals who were interviewed during the investigation (friends and acquaintances of the victim), the fact that, during the interrogations and in the reports, relevance was given to certain aspects of the private life and prior behavior of María Isabel reveals the existence of gender stereotypes. This conclusion is in keeping with the context referred to in several reports and the testimony of women survivors and their family members, as well as of expert witness Solís García, about the "tendency of the investigators to discredit the victims and blame them for their lifestyle, or clothes," and to inquire into aspects relating to the personal relationships and sexuality of the victims (*supra* para. 90).

213. In this case, gender stereotypes had a negative influence on the investigation of the case, insofar as they transferred the blame for what happened to the victim and to her family members, closing other possible lines of investigation into the circumstances of the case and the identification of the perpetrators. In this regard, the Court has already had the occasion to indicate that the creation and use of stereotypes becomes a cause and consequence of gender-based violence against women.<sup>318</sup>

214. The Court, referring to Articles 1(1) and 24 of the Convention, has indicated that "the difference between the two articles stems from the fact that the general obligation of Article 1(1) refers to the State's obligation to respect and ensure, 'without discrimination,' the rights contained in the American Convention. In other words, if a State discriminates in the respect or guarantee of a treaty-based right, it would violate Article 1(1) and the substantive right in question. If, to the contrary, the discrimination refers to unequal protection of domestic law or its application, the fact must be examined in light of Article 24."<sup>319</sup>

215. The facts of the instant case include both types of discrimination and, therefore, it is not necessary make a distinction; accordingly the Court finds that both the right to equal protection of the law (Article 24) and the obligation to respect and ensure the rights contained in the American Convention (Article 1(1)) have been violated.

216. Consequently, the Court considers that the investigation into the murder of María Isabel has not been conducted with a gender perspective in keeping with the special obligations imposed by the Convention of Belém do Pará. Therefore, in the context of the investigation in this case, the State violated the right to equal protection of the law contained in Article 24 of the American Convention, in relation to the obligation of non-discrimination contained in Article 1(1).

### **B.5) Reasonable time**

<sup>317</sup> Cf. Brief of Rosa Elvira Franco Sandoval addressed to the Inter-American Commission, *supra*.

<sup>318</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, paras. 400 and 401, and IACHR, *Access to justice for women victims of violence in the Mesoamerica*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

<sup>319</sup> Cf. *Case of Apitz Barbera et al. v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis)*, *supra*, para. 333.

217. Meanwhile, regarding the alleged violation of reasonable time argued by the representatives, the Court refers back to previous rulings in which it has indicated that, for the investigation to be conducted seriously, impartially and as an inherent legal duty, the right of access to justice requires that the events investigated are clarified within a reasonable time.<sup>320</sup> The Court has stated that the “reasonable time” referred to in Article 8(1) of the Convention must be assessed in relation to the total duration of the proceedings up until the final judgment is handed down.<sup>321</sup> The Court considers that, in principle, a prolonged delay, such as the one that occurred in this case, constitutes, of itself, a violation of judicial guarantees.<sup>322</sup>

218. In the instant case, the Court underlines that, as the State itself has acknowledged, the investigation was delayed for at least eight months at the start during the jurisdictional dispute between March 11 and November 21, 2002 (*supra* para. 19). It should be pointed out that, although it is permissible to raise a concern about jurisdiction<sup>323</sup> as this is regulated in the Guatemalan Code of Criminal Procedure,<sup>324</sup> it is also essential that a dispute of this type be decided promptly in order to avoid delays in the investigation or the criminal proceedings. The case files provided by the parties show that, while the jurisdictional dispute lasted, only one substantive investigative measure was ordered by the Mixco First Court and various communications were processed.<sup>325</sup> However, a note signed by an agent of the Mixco Prosecutor’s Office indicates that this Office had not continued the investigation because it had received instructions from its superior not to proceed with it, because it did not have competence to do so, and indicated that when the judge had decided the jurisdiction dispute, the file would be sent to Mixco Agency No. 5.<sup>326</sup> Based on the State’s acknowledgement and on the foregoing, the Court finds that the jurisdictional dispute led to a period of inactivity in the investigation of around eight months.

219. There were also other prolonged periods of inactivity. Thus, the facts reveal that

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<sup>320</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 14, and *Case of García and family members, supra*, para. 152.

<sup>321</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, paras. 70 and 71, and *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 22, 2013. Series C No. 265, para. 171.

<sup>322</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al., supra*, para. 229, and *Case of Osorio Rivera and family members, supra*, para. 192.

<sup>323</sup> Matters relating to competence are regulated in articles 56 to 61 of the Fifth Section of the Guatemalan Code of Criminal Procedure. Cf. Congress of the Republic of Guatemala. Code of Criminal Procedure. Decree 51-92 and its amendments, *supra*.

<sup>324</sup> The pertinent part of article 332 indicates that “[t]he purpose of the intermediary stage is for the judge to assess whether or not there are grounds to subject a person to a public and oral trial, based on the probability of participation in a crime or to verify the substantiation of the other requests of the Public Prosecution Service”. Cf. Congress of the Republic of Guatemala. Code of Criminal Procedure. Decree 51-92 and its amendments, *supra*.

<sup>325</sup> Ruling of March 26, 2002, issued by the First Instance Court of Mixco indicating that it “has before it for a decision the memorandum presented by the prosecutor of the Public Prosecution Service [...], in which he requests [...] that the Court require the list of telephone calls from [several] telecommunications companies,” and indicating that “after examining this case, the judge who supervises the investigation considers that it is in order to grant this request, and this consists in GRANTING AUTHORIZATION to request the list of telephone calls to the telecommunications companies.” In other words, the judge only ordered one procedure, even though different notes were processed. Cf. Note C-105-2002/6° issued by the First Instance Court of Mixco, *supra*. In addition, there are requests by the Prosecutor of Guatemala City Agency No. 32 to the Bureau of Criminal Investigation of the Public Prosecution Service that it send investigators to this Agency to give them new guidelines and more details of the investigation. Cf. Note of September 26, 2002, of the Assistant Prosecutor of Guatemala City Agency No. 32 (file of annexes to the answering brief, annexes 3-3b, f. 13,228).

<sup>326</sup> Cf. Note of an agent of the Mixco Agency to the Deputy Executive Secretary of the Public Prosecution Service, *supra*. It should also be noted that Article 312 established that the “request concerning lack of competence does not exempt the Public Prosecution Service from the duty of conducting urgent investigation procedures.” Cf. Congress of the Republic of Guatemala. Code of Criminal Procedure. Decree 51-92 and its amendments, *supra*. The State referred to the Code of Criminal Procedure of Guatemala, Decree 51-92, and also to the Organic Law of the Public Prosecution Service, Decree 40-94, and to the Law of the Judiciary, Decree 2-89.

there was no substantive investigative action between July 21, 2003, and May 19, 2004, between September 2004 and June 2005, between February 2007 and July 2009, and between that month and December 2010. Also, the Court has not received any information on investigation activities during 2013. In this case, it is clear that, since investigating is an obligation *ex officio* that must be complied with by the State authorities, the inactivity during the said periods is a result of their conduct. Consequently, the Court considers that it is not necessary to analyze the above-mentioned criteria, because it is clear that the time that elapsed can be attributed to the State's conduct, and surpasses excessively the duration that could be considered reasonable for the State to investigate the events of this case. Therefore, the more than 12 years that the investigation has lasted exceeds what is reasonable,<sup>327</sup> especially considering that, at the present time, the case is still at the preparatory or investigation stage.<sup>328</sup> This absence of investigation during such a long period of time constitutes a flagrant denial of justice and a violation of the victims' right of access to justice.

220. This is revealed because, owing to the time that has passed – more than 12 years – the Mixco Court of First Instance asked the Public Prosecution Service for information on the status of the investigation so as to hold a hearing to end the investigation in order to bring charges or request that the case go to trial.<sup>329</sup> In response to this, on October 21, 2009, the Public Prosecution Service stated that it had “asked [the Court] to leave the case at the stage [of the investigation] in which it was,” because it was being processed before the Inter-American Court, and both the Presidential Human Rights Commission (COPREDEH) and the Center for Justice and International Law (CEJIL) were involved, and that, at that time, “[it was] one of the leading cases of unpunished femicide in Guatemala.” As can be observed, the reasons indicated by the Public Prosecution Service are unrelated to issues of an investigative nature. In response to another request from the said judge, in 2012, the Public Prosecution Service requested that the proceedings be kept open because “the investigation was ongoing” (*supra* footnote 207). The body of evidence reveals that, to date, the investigation has not identified any of those responsible and no investigative strategy is being followed based on the evidence and indications that have been obtained and that would allow the case to be resolved. Although this Court has established that the duty to investigate is an obligation of means and not of results,<sup>330</sup> this does not mean that the investigation can be undertaken as “a mere formality preordained to be ineffective.”<sup>331</sup> In this regard, the Court has established that “every action of the State during the investigative procedures, as well as the investigation as a whole, must have a specific objective, the establishment of the truth and investigation, pursuit, capture, prosecution and punishment, as appropriate, of those responsible for the facts.”<sup>332</sup>

<sup>327</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 156. In this case, the Court determined that Article 8(1) of the American Convention establishes, as one of the elements of due process, that the courts must decide cases submitted to them within a *reasonable time*.

<sup>328</sup> Although the State argued that it had carried out numerous different investigation procedures, it is also aware that the investigation should be conducted within specific time limits. In this regard, it affirmed that, “[o]wing to the time that had elapsed, and since the laws of Guatemala establish guidelines and time frames within which an investigation may and should remain open, the Mixco Prosecutor asked for the collaboration with this case of full-time investigators in order to make progress, within the State's possibilities, in the identification of the perpetrator of María Isabel's death.” Request issued by the Deputy District Prosecutor of Mixco Agency No. 5, *supra*.

<sup>329</sup> Article 324 of the Code of Criminal Procedure establishes “[w]hen the Public Prosecution Service considers that the investigation has provided firm grounds to try the accused, it shall submit a written request to the judge for a decision to go to trial. Charges shall be brought on opening the trial stage.” Cf. Congress of the Republic of Guatemala. Code of Criminal Procedure. Decree 51-92 and its amendments, *supra*.

<sup>330</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of Liakat Ali Alibu, supra*, para. 39.

<sup>331</sup> Cf. *Case of Velásquez Rodríguez. Merits, supra*, para. 177, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 271, para. 98.

<sup>332</sup> *Case of Cantoral Huamani and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, para. 131, and *Case of the Río Negro Massacres, supra*, para. 192.

221. The Court has also noted that Rosa Elvira Franco has had access to the investigation and has played an active role in it by making statements, filing briefs, presenting information, and consulting officials in charge of the case, among other actions. However, the State has argued that Mrs. Franco's intervention has obstructed the investigation by providing contradictory or inconsistent information that, in its opinion, has not been useful. In this regard, the Court considers that this argument by the State is inadmissible to justify an undue delay in the proceedings because, in the domestic jurisdiction, it is for the competent organs to direct the investigation and to channel it in keeping with the strategies or lines of investigation that they have identified in order to clarify the facts and, in any case, the investigation must be advanced, *ex officio*, without the victims or their next of kin having to assume this initiative,<sup>333</sup> which corresponds to the State.

222. From the foregoing, the Court concludes that the period of more than 12 years that domestic justice has taken merely at the stage of investigating the events is greatly in excess of a period that can be considered reasonable for the State to conduct the corresponding investigative procedures, and constitutes a flagrant denial of justice. Consequently, this case is in a situation of impunity in which those responsible for María Isabel's murder have not been identified or punished, and the members of her family have been unable to know the truth about the events. The State's obligation to investigate must be fulfilled diligently to avoid impunity and the repetition of this type of incident (*supra* para. 183).

223. Added to the above, the Court underlines that gender-based violence against women is a historical, social and cultural problem that is deeply-rooted in Guatemalan society. This is because, during and after the armed conflict, women suffered specific forms of gender-based violence, while the perpetrators remained in total impunity due to the inability of the courts of justice to investigate, prosecute and punish those responsible, as appropriate (*supra* paras. 68, 69, 81,83 and 84). Even though Guatemala was one of the first States to ratify the Convention of Belém do Pará, owing to these historical reasons, violence against women has remained invisible, a situation that is reflected in the failure to investigate murders from a gender perspective, because the death of women is investigated as simple homicide, keeping such acts in impunity. In addition, there are no official statistics on gender-based offenses before 2008 that allow the situation of women to be made visible, so that the State authorities are made aware of the problem and adopt the necessary public policies to combat this type of act.

224. Furthermore, regarding the alleged failure to sanction the public officials responsible for the irregularities in the processing of the investigation, in some of the previous sections, the Court has already considered the said irregularities or negligence in the investigations, so that this allegation has been examined, and it unnecessary to rule in this regard,

### **C. Conclusion**

225. Based on the above, the Court finds that, despite the evidence that María Isabel's murder could have been committed for reasons of gender, the investigation was not conducted with a gender perspective; it has also been proved that there was a lack of due diligence and that it included actions of a discriminatory nature. The investigation has greatly exceeded a reasonable time and the initial investigative stage is still underway. In addition, as the State has acknowledged, the lack of diligence in the case was linked to the inexistence of norms and protocols for investigating this type of incident. Consequently, the Court concludes that the domestic investigation has not ensured the access to justice of the next of kin of María Isabel Veliz Franco, and this constitutes a violation of the rights to judicial guarantees and to judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, and the right to equality before the law established in Article 24 of

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<sup>333</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, para. 368, and *Case of Osorio Rivera and family members*, *supra*, para. 228.

the Convention, in relation to the general obligations contained in Articles 1(1) and 2 of the American Convention, and in Articles 7(b) and 7(c) of the Convention of Belém do Pará, to the detriment of Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco, José Roberto Franco, and of the grandparents who are now deceased, Cruz Elvira Sandoval Polanco and Roberto Franco Pérez.

226. The Court considers that the arguments relating to the violation of Article 19 of the Convention were already examined in the preceding chapter. Moreover, the Court does not find that there were special measures that the State should have adopted in the investigation following the discovery of the body based on the victim's condition as a child. Therefore, the Court will not rule in this regard in this section. Also, in relation to the alleged violation of the obligation to ensure the rights of María Isabel Veliz Franco owing to the absence of investigation, the pertinent elements relating to the State's conduct up until the moment the body was discovered have already been examined (*supra* para. 157).

## X

### RIGHT TO PERSONAL INTEGRITY OF THE FAMILY MEMBERS, IN RELATION TO THE OBLIGATIONS TO RESPECT AND ENSURE RIGHTS

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

227. The Commission indicated in its Merits Report that the State had violated Article 5(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco, José Roberto Franco Sandoval, Cruz Elvira Sandoval Polanco and Roberto Franco Pérez, because: "in this case, the irregularities and delays on the part of the [...] State in the prevention and in the investigation into the disappearance of María Isabel Veliz Franco and her subsequent murder [had] caused her next of kin profound suffering and anguish, and despite the seriousness of the crimes, nine years ha[d] passed since the body of the murder victim [had been] found and yet those responsible ha[d] not been punished." It also observed "the little importance State officials attached to the concerns and suffering of the mother of María Isabel Veliz Franco, [...] when she tried to move the investigation forward."

228. The representative agreed with the Commission's observations and indicated that her mother, grandparents and brothers "lived with María Isabel at the time of her death and had close ties to her, so that they suffered anguish and uncertainty owing to the inaction of the authorities once the disappearance had been reported." It added that "[...] throughout the investigation process, it was said that María Isabel was someone who "had connections with *maras*," "had numerous boyfriends," and she was even referred to as "*la loca*" (the crazy one). Furthermore, her mother was described as being negligent [...];" these characterizations "increased the profound suffering that the members of María Isabel's family were already enduring."

229. It also argued that "[i]n her efforts to obtain justice for her daughter, Rosa Elvira has been exposed to numerous threats and harassment that have caused anguish and pain, not only to her, but also to María Isabel's brothers and grandparents, given the possibility that her personal integrity or even her life could be harmed [...]." Lastly, the representative mentioned that "[t]he facts of this case leave no doubt about the suffering that the child María Isabel suffered. These facts also had a profound effect on her mother, brothers, grandmother and grandfather who, in addition to experiencing the anguish of her disappearance and the suffering for the loss of a loved one, had to face the denigration of María Isabel and attacks on her memory."

230. The State argued that "the content of the investigation files proves that it did not violate the rights of the victim or of her mother," and affirmed that "it regrets, and sympathizes with [María Isabel's family] for the suffering that her tragic death has caused them; however, the suffering caused by the events is a consequence of those events and is not caused by the State." It added that "in the respective public institutions, the State

provides psychological care and the petitioners could have used this if they had considered that some type of treatment was necessary to protect their mental and moral integrity; however, there is no record that they requested this support at any time.”

231. Regarding the treatment accorded to María Isabel and her mother throughout the investigation process, the State argued that “State officials had never treated Rosa Elvira Franco Sandoval without humanity and respect.” During the public hearing before the Court, the State affirmed that “there is no evidence to prove acts of public disparagement, persecution or discrimination towards [the] next of kin [of María Isabel].”

232. Lastly, with regard to the threats and harassment of the members of María Isabel’s family, the State indicated that it “had abided by the order to provide special protection to the life and integrity of the next of kin of [María Isabel] by means of the precautionary measures [of the Inter-American Commission].”

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

233. In numerous cases, the Court has considered that the next of kin of victims of human rights violations may, in turn, be victims.<sup>334</sup> In this regard, the Court has understood that the right to mental and moral integrity of some of the family members of victims has been violated owing to the additional suffering that they have endured as a result of the specific circumstances of the violations perpetrated against their loved ones, and owing to the subsequent acts and omission of the State authorities in relation to the events.<sup>335</sup>

234. In the case *sub judice*, the Court considers it appropriate to indicate that it has established the international responsibility of the State for lack of prevention in relation to the deprivation of life and personal integrity, as well as for the lack of judicial guarantees and judicial protection in relation to the lack of due diligence in the investigations. In particular, it has been proved that the State was aware of the danger to the child following the report and failed to adopt measures to prevent this and to avoid its implementation; moreover, the State authorities did not take prompt and diligent measures to investigate the murder of María Isabel Veliz Franco within a reasonable time. Consequently, the Court will examine the arguments concerning the effects on the personal integrity of the members of María Isabel’s family caused by the lack of diligence in preventing the incident and by the biased investigations, as well as by the harassment and the threats received.

235. In the statement made by Rosa Elvira Franco Sandoval during the public hearing before this Court, she stated that:

I came in contact with the callousness of those who work in the system of justice – of injustice – of Guatemala [...]; they treated me badly, they treated my daughter badly [...]; there were many attacks, persecution against me from the very start, against my two sons [...]; I have suffered so much [...]; at the start I did not want to live any longer, and if it were not for the fact that I have two sons, I would have no interest in living [...]; I am ill because of this, because there is no justice in Guatemala.

236. Meanwhile, in his affidavit, Leonel Enrique Veliz Franco stated that:

In the beginning, my mother’s fight worried us [...] because it was dangerous [...]. There were family problems because they told [my mother] that she should leave it [...]. My life changed forever after [María Isabel’s murder]; it affected me emotionally, psychologically and financially. The fact that my sister’s murder has not been clarified to date leads to feelings of impotence and frustration because we cannot obtain justice. It affected my nerves; my hands and legs tremble and I have a tic in my eye; I am a different person; my temperament changed, [...] I consider myself to be violent; [...] I frequently have problems breathing and health problems. My mother is a walking pharmacy; this has

<sup>334</sup> *Case of the “Street Children” (Villagrán Morales et al.)*. Merits, *supra*, para. 174, and *Case of Osorio Rivera and family members*, *supra*, para. 228.

<sup>335</sup> *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Fernández Ortega et al.*, *supra*, para. 143.



affected me; she has medicines for everything, because she is ill. [The search to obtain justice] has affected the family finances, because by mother stopped doing things.<sup>336</sup>

237. And, in his affidavit, José Roberto Franco stated as follows:

I remember that I was very afraid that someone would hurt me. [...] It affected me greatly because I am afraid that they may do something to those that I love most. [...] my mother [has been greatly affected with] profound depression that has even led her to want to take her own life. [...] God saved her from this [and] also [from] many illnesses. [...] I have felt fearful that someone may want to do something against us, because my mother has tried to clarify the death of my sister.<sup>337</sup>

238. Furthermore, in his expert opinion, Rodolfo Kepfer Rodríguez analyzed the problems suffered by Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco and José Roberto Franco and, in this regard, stated:

The life of Mrs. Franco [Sandoval] was subject to frustration and indignation, owing to the lack of response to her need to obtain justice. [...] The offhandedness, negligence and passivity demonstrated by the State authorities in the face of [Mrs. Franco's] persistent, unflinching and decided attitude in search of justice were crucial in the development of attitudes and feelings that, over time, would adversely affect Mrs. Franco's health. [...] The specific effects on Mrs. Franco and her sons, Leonel and José Roberto, have evolved over the years: the first two years were especially troubling for the younger son because they changed the whole life project of an 11-year old child, causing him problems at school, shyness, and a period of social inhibition of around one year. Meanwhile, the elder brother, Leonel, was forced to develop confrontational abilities to take on the demands of his adolescence, thus developing an energetic and forceful character, which was reinforced by his involvement in religion.<sup>338</sup>

239. Based on the foregoing testimony and the expert opinion, and on the facts of the case, the Court considers that the lack of prevention in this case, together with the failure of the State authorities to act diligently in the investigation of María Isabel's murder, and the impunity in which the facts and the investigation remain, caused suffering to Rosa Elvira Franco Sandoval. In addition, it has been proved that, during the investigation, Mrs. Franco Sandoval was treated disdainfully and disrespectfully by State agents, both with regard to herself and to her daughter, María Isabel, which resulted in an added violation of her personal integrity.

240. Regarding Leonel Enrique Veliz Franco, José Roberto Franco, Cruz Elvira Sandoval Polanco de Franco and Roberto Franco Pérez, the Court finds that there is insufficient evidence to prove that their personal integrity was affected owing to non-compliance with the obligation of prevention, the lack of due diligence, and the delay in the investigations that are underway in the domestic jurisdiction.

241. As regards the allegation that the State is responsible for the violation of Article 5 of the Convention owing to the harassment and threats against Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco and José Roberto Franco, following the death of her daughter and their sister (*supra* para. 26), the Court will not refer to this because, as already indicated (*supra* para. 27), these incidents exceed the factual framework of the Merits Report in this case.

242. Consequently, the Court finds that the State is responsible for the violation of the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Rosa Elvira Franco Sandoval.

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<sup>336</sup> Testimony of Leonel Enrique Veliz Franco, *supra*.

<sup>337</sup> Testimony of José Roberto Franco provided by affidavit dated April 16, 2013 (file of preliminary objections, merits, reparations and costs, fs. 823 to 828).

<sup>338</sup> Testimony provided by Rodolfo Kepfer Rodríguez by affidavit dated April 26, 2013 (file of preliminary objections, merits, reparations and costs, fs. 838 to 854).

**XI**  
**REPARATIONS**  
**(Application of Article 63(1) of the American Convention)**

243. Pursuant to the provisions of Article 63(1) of the American Convention,<sup>339</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to redress this adequately, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>340</sup> In the instant case, the Court has considered the need to grant different measures of reparation in order to ensure the violated right and to redress the harm fully.

244. It should also be indicated that the Court has established that reparations should have a causal nexus to the facts of the case, the violations declared, the harm proved, and the measures requested to repair the respective harm. Accordingly, the Court must observe this concurrence in order to rule appropriately and in accordance with the law.<sup>341</sup>

245. Based on the considerations on the merits and on the violations of the American Convention declared in Chapters VIII, IX and X, the Court will proceed to examine the claims presented by the Commission and the representative, as well as the arguments of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, in order to establish measures aimed at redressing the harm caused to the victims.<sup>342</sup>

**A. Injured party**

246. The Court reiterates that, under Article 63(1) of the Convention, the injured party is considered to be the persons declared a victim of the violation of any right recognized in the Convention. Therefore, the Court considers that the following are the “injured party”: María Isabel Veliz Franco, Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco, José Roberto Franco, Cruz Elvira Sandoval Polanco and Roberto Franco Pérez and, in their capacity as victims of the violations that have been declared in Chapters VIII, IX and X, as applicable, they will be considered beneficiaries of the reparations ordered by the Court.

**B. Obligation to investigate the facts and identify and punish, as appropriate, those responsible**

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

247. The Inter-American Commission asked that the State be ordered to “[c]omplete a timely, immediate, serious and impartial investigation to solve the murder of María Isabel Veliz Franco and to identify, prosecute and punish, as appropriate, those responsible.”

248. Meanwhile, the representative, like the Commission, asked that the State be ordered to investigate the events that occurred to the child, María Isabel Veliz Franco. To this end, it indicated that “the State should remove all obstacles *de jure* or *de facto* that prevent the

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<sup>339</sup> Article 63(1) of the Convention stipulates that: “[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

<sup>340</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Liakat Ali Alibux, supra*, para. 137.

<sup>341</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Liakat Ali Alibux, supra*, para. 139.

<sup>342</sup> Cf. *Case of Velásquez Rodríguez. Reparations and costs, supra*, paras. 25 to 27, and *Case of Liakat Ali Alibux, supra*, para. 138.

proper investigation of the events and judicial proceedings," and also that the investigation should include "a perspective of gender and the human rights of women," so that the State should "establish specific lines of investigation with regard to the acts of violence committed against the victim." Lastly, it asked that "[t]he results of the investigations be publicized widely, so that Guatemalan society is informed of them."

249. The State "reiterate[d] that it had carried out a thorough investigation to clarify María Isabel's murder and that, unfortunately, it had not been able to identify the presumed perpetrator or perpetrators." Nevertheless, it stated that:

It would keep the investigation open, while it considers that it is legally possible to obtain a positive result, and if this happens, it will prosecute and punish those responsible, if and only if, it is possible to establish the participation of one of the suspects in the tragic death of the child.

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

250. The Court considers that the State is obliged to combat impunity by all available means, because impunity encourages the chronic repetition of the violation of human rights.<sup>343</sup> The absence of a complete and effective investigation into the events constitutes a source of additional suffering and anguish for the victims, who have the right to know the truth of what happened.<sup>344</sup>

251. Consequently, the Court establishes that the State must conduct the investigation properly and, when appropriate, initiate the corresponding criminal proceedings and, if pertinent, any others that are required to identify, prosecute and punish, as appropriate, those responsible for the abuse and deprivation of the life of the child María Isabel Veliz Franco, in keeping with the guidelines in this Judgment, in order to avoid the repetition of acts that are the same or similar to those of this case. This investigation should be conducted with a gender-perspective, follow up on specific lines of investigation related to sexual violence, provide the victim's family members with information on progress in the investigation in accordance with domestic law, and ensure that they can participate effectively in the criminal proceedings. In addition, the investigation should be conducted by officials trained in similar cases and in attending to victims of gender-based violence and discrimination. Lastly, it should be ensured that those in charge of the investigation and of the criminal proceedings, as well as any other persons involved as witnesses, expert witnesses or members of the victims family, have satisfactory guarantees for their safety.

## **C. Measures of satisfaction**

252. International case law and, in particular that of the Court, has established repeatedly that the judgment constitutes *per se* a form of reparation.<sup>345</sup> Nevertheless, based on the circumstances of the case and the harm to the victims arising from the violations of the American Convention that have been declared, the Court finds it pertinent to examine the arguments of the Commission and of the parties concerning the award of measures of satisfaction.

### **C.1) Arguments of the Commission and of the parties**

253. The Inter-American Commission asked, in general, that the State "make full reparation to the next of kin of María Isabel Veliz Franco for the human rights violations." However, it did not submit any explicit request as regards the measures of satisfaction.

<sup>343</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.)*. Merits, *supra*, para. 173, and *Case of Liakat Ali Alibux*, *supra*, para. 42.

<sup>344</sup> Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 186, para. 146, and *Case of Osorio Rivera and family members*, *supra*, para. 288.

<sup>345</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Liakat Ali Alibux*, *supra*, para. 147.

254. The representative asked the Court to order the following measures of satisfaction: (a) publication of the chapters on “context and proven facts, as well as the operative paragraphs of the Judgment” handed down by the Court in “the official gazette and in a national newspaper with widespread circulation”; (b) organization of a public act to acknowledge international responsibility and to apologize to the members of María Isabel Veliz Franco’s family; (c) “construction of a monument in memory of the women victims of femicide, including María Isabel Veliz Franco”; (d) establishment of a scholarship fund for young survivors of violence in honor of María Isabel Veliz Franco,<sup>346</sup> and (e) award of a study grant to Leonel Enrique Veliz Franco and José Roberto Franco.<sup>347</sup>

255. For its part, in relation to the measures of satisfaction requested by the representative, the State opposed the following: (a) organization of a public act to acknowledge international responsibility and to apologize; (b) construction of a monument in memory of the women victims of femicide, including María Isabel; (c) establishment of a scholarship fund for young survivors of violence in honor of María Isabel Veliz Franco<sup>348</sup> and (d) award of a study grant to María Isabel’s brothers.<sup>349</sup>

## **C.2) Considerations of the Court**

### C.2.1. Publication of the Judgment

256. The Court orders that, within six months of notification of this Judgment, the State publish: (a) the official summary of this Judgment prepared by the Court, once, in the official gazette of Guatemala; (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this Judgment in its entirety, to be available for one year on an official website of the Judiciary, as well as on official websites of the Public Prosecution Service and the National Civil Police.

### C.2.2. Public apology

257. The Court considers that the State should make a public apology in relation to the facts of this case that occurred to María Isabel Veliz Franco and their subsequent investigation. During this act the State should refer to the human rights violations declared in this Judgment. The apology should be made in a public ceremony and be widely divulged. The State must ensure the participation of Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco and José Roberto Franco, if they so wish, and invite the organizations that have

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<sup>346</sup> The representative asked that, “in order to preserve the memory of María Isabel, who had often expressed her desire to pursue higher education, [... the Court] order the State to establish a fund in her memory to award scholarships of at least five years, so that women survivors of violence may pursue a career in the field they choose in a public higher education establishment.” Lastly, they indicated that “the participation of Mrs. Franco [Sandoval] and her representatives in the implementation of this measure of reparation should be ensured.”

<sup>347</sup> The representative indicated that, “on different occasions, the Inter-American Court has considered, as a measure of satisfaction to redress the violation and its consequences, the award of study grants to victims or their next of kin when, as a result of the human rights violations, they have had to face hardship and suffering in order to complete their primary and secondary education or pursue university studies.” It understood that, in the case of María Isabel’s brothers, “their educational opportunities were affected not only because of the loss of their sister, but also due to the effects of the search for justice and truth undertaken by their mother.” Accordingly, it asked that the State be ordered to award Leonel Enrique Veliz Franco and José Roberto Franco “grants so that they could pursue advanced studies in the field, career or profession that they wished to study.”

<sup>348</sup> In this regard, the State indicated that “among its institutional resources, it has different scholarship programs for young people. However, establishing a new fund entails expenditure that the Government is not in a position to cover.”

<sup>349</sup> The State indicated that it “has institutions that have been created to provide scholarships to underprivileged youths who need help to pay for their studies.” It also noted that the reparation requested “does not indicate the type of studies to which it refers. The State therefore urges María Isabel’s brothers to apply to the said scholarship programs, and if they meet the respective requirements, they can benefit from them.” It also indicated that “[i]n this case, no evidence of any kind has been presented leading to the conclusion that María Isabel’s brothers have suffered constraints to their education as a result of what happened to their sister.”

represented María Isabel's family before the national and international organs to the event. The organization and other details of this public ceremony should be consulted previously and adequately with Rosa Elvira Franco. If there is any disagreement between her and the State, the Court will decide this. The State has one year from notification of this Judgment to comply with this obligation.

258. With regard to the State authorities who should attend or participate in this ceremony, as it has on other occasions, the Court indicates that they should be senior State officials. It is for the State to define who is designated for this task.

### C.2.3. Other measures requested

259. The Court considers that the measures of satisfaction granted are sufficient and, therefore, does not find the other requests made by the representative admissible. Regarding the request that a study grant be awarded to María Isabel Veliz Franco's brothers, the Court considers that the compensation ordered is sufficient and adequate to redress the violations suffered by the victims and does not find it necessary to order such a measure. In addition, the Court takes note of the State's observations concerning the available scholarship programs.

## **D. Guarantees of non-repetition**

260. In cases such as this one, guarantees of non-repetition acquire greater relevance as a measure of reparation to ensure that similar events are not repeated and to help prevent them.<sup>350</sup> In this regard, the Court recalls that the State must prevent the recurrence of human rights violations such as those described in this case and take all pertinent legal, administrative and other measures to this end.<sup>351</sup>

261. Both the Inter-American Commission and the representative asked the Court to order the State to implement different guarantees of non-repetition. However, the representative did not request several measures claimed by the Commission, but asked for others that the Commission had not claimed. Consequently, the Court will proceed to examine, first, the measures requested only by the Inter-American Commission; then the measures requested by both the representative and the Commission and, lastly, those that have been requested only by the representative.

### ***D.1) Request to enhance the institutional capacity to combat impunity in cases of violence against women and to ensure that such cases are adequately prevented, investigated, punished and redressed***

#### D.1.1. Arguments of the Commission and the State

262. The Commission considered that the Court should order the State to adopt a "comprehensive and coordinated policy, supported by sufficient public resources to ensure that the specific cases of violence against women are adequately prevented, investigated, punished and redressed." In addition, it asked that "the institutional capacity to combat impunity in cases of violence against women [be enhanced], through effective criminal investigations conducted from a gender perspective and that have constant judicial oversight, thereby ensuring proper punishment and redress."

263. The State indicated that it "already has programs aimed at enhancing the institutional capacity to combat impunity in case of violence against women, [whose] focus is to prevent, punish and eventually eradicate this." It also indicated that "in compliance

<sup>350</sup> Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 241, para. 92, and *Case of Luna López, supra*, para. 234.

<sup>351</sup> Cf. *Case of Velásquez Rodríguez. Reparations and costs, supra*, para. 166, and *Case of the Pacheco Tineo Family, supra*, para. 265.

with the obligation to respect and ensure human rights [...] it has taken the [following] measures": (a) adoption of decrees such as the Law against Femicide [...] and the Law against Sexual Violence, Exploitation and People Trafficking"; (b) creation of the Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), the Presidential Secretariat for Women (SEPREM), the Secretariat against Sexual Violence, Exploitation and People Trafficking (SVET), the Presidential Commission to tackle Femicide in Guatemala (COPAF), the Ombudsman for Indigenous Women of the Presidency of the Republic, the Task Force against Femicide under the Bureau for Women's Affairs of the Ministry of the Interior (GEM), the Program for the Prevention and Eradication of Family Violence (PROPEVI), the Judiciary's Unit for Women's Affairs and Gender Analysis (based on Decision 69/2012 of April 30, 2012, of the Presidents of the Judiciary and of the Supreme Court of Justice of the Republic of Guatemala, entitled Secretariat for Women's Affairs and Gender Analysis of the Judiciary), "courts and tribunals with competence in cases of femicide and all forms of violence against women, the Committee for Women's Affairs of the Legislature, the Special Prosecutor's Office for Women's Affairs, special prosecution offices for "the crimes of femicide," and the Department of Sexual Offenses, People Trafficking, Minors, Children, Adolescents and Missing Persons (DESEXTRANA); (c) formulation of the following public policies: National Policy for the Promotion and Comprehensive Advancement of Women (PNPDIM), Equity and Opportunities Plan (PEO), and National Plan for the Prevention and Eradication of Family Violence and Violence against Women (PLANNOVI), and (d) actions of the Attorney General in "coordination with the early warning system of the Alba-Kenneth Law, [which] seeks to protect children and adolescents from kidnapping, trafficking and exploitation for any purpose or of any kind to the greatest extent possible."

#### D.1.2. Considerations of the Court

264. The Court appreciates the efforts made by the State to establish laws, other legal instruments, public institutions, and policies aimed at combating gender-based violence, as well as its efforts to adapt its criminal investigation system.<sup>352</sup> This progress provides

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<sup>352</sup> It should be noted that the body of evidence and non-contested affirmations reveal that the State has created the Presidential Commission to tackle Femicide, "coordinate by the Presidential Secretariat for Women's Affairs and composed of representatives of human rights and security agencies, and of the Executive, Legislature and Judiciary, as well as of the Public Prosecution Service." The Commission was officially created on March 8, 2006 (file of annexes to the motions and arguments brief, annex 97, f. 10,810 to 10,824). On October 6 that year, according to the Inter-American Commission, the Supreme Court of Justice created the Judiciary's Unit for Women's Affairs and Gender Analysis, actually the Secretariat for Women's Affairs and Gender Analysis of the Judiciary (Merits Report, *supra*), an entity whose creation was also described by the State. Also, as indicated by the Inter-American Commission, on November 23, 2007, the Congress of the Republic in plenary session adopted Resolution 15-2007 in which it condemned femicide in Guatemala (Merits Report, *supra*). In 2008, the Law against Femicide and Other Forms of Violence against Women was enacted (*supra* footnote 68). In addition to introducing offenses subject to public prosecution, this law established a series of State obligations such as training public officials on gender violence and the creation of a national information system on violence against women. The law also established the creation of "centers to provide comprehensive support to women survivors of violence," and that "CONAPREVI shall be responsible for creating them" (Law against Femicide, *supra*, articles 18, 20 and 16, respectively; file of annexes to the motions and arguments brief, annex 93, fs. 10,776 to 10,786.). In the judicial sphere, according to information provided by Guatemala (*supra* para. 263), and also the Commission (Merits Report, *supra*), the State has a Unit for Women's Affairs and Gender Analysis. Furthermore, information presented by the State indicates that, at the end of 2012, it had other agencies involved in the problem of violence against women, such as the Task Force against Femicide, attached to the Ministry of the Interior, or the GEM (*supra* para. 263). In addition, as already mentioned, Guatemala indicated the existence of the PLANNOVI and the PEO (*supra* para. 263), adopted by Government Agreement No. 302-2009, of November 11, 2009 (file of annexes to the answering brief, annex 26, fs. 14,272 to 14,471). The State indicated that one of the elements of the PNPDIM and the PEO is "the 'eradication of violence against women' and, as a specific objective, 'to prevent, punish and eradicate the different manifestations of violence: physical, economic, social, psychological, and sexual violence and discrimination.'" It also mentioned the enactment, by Decree No. 9-2009, of the Law against Sexual Violence, Exploitation and People Trafficking, creating a Secretariat in this regard, the SVET (*supra* para. 263). Furthermore, it indicated that, the working committees of the "Legislature" include the Committee for Women's Affairs (*supra* para. 263) and, according to the State, its "functions [include ...] recommending the approval of norms and procedures to the different State entities in matters that fall within its terms of reference." Moreover, as regards criminal investigations in general, according to the representative and as revealed by the body of evidence, the

structural indicators as regards the adoption of measures that, in principle, are aimed at confronting violence and discrimination against women, or whose application contributes to this.

265. In this context, as regards the indication of the different measures adopted by the State, with the exception of what is indicated below (*infra* paras. 267 to 269), the Court does not have sufficient and recent information to be able to assess the possible insufficiency of the said laws, institutions and policies. In particular, the Court is unable to rule on the existence of a comprehensive policy to overcome the situation of violence against women, discrimination and impunity, without information on the possible structural deficiencies of these policies, the potential problems in their implementation and, where applicable, their results on the effective enjoyment of rights by the victims of such violence.

266. In general, and with the exception of the following considerations, this lack of information on the different measures adopted by the State prevents the Court from ruling on the need for different or supplementary norms, actions or public policies in order to ensure the non-repetition of the facts of this case.

267. The Court observes that the State has indicated that INACIF entered into operation at the end of 2007 (*supra* para. 171). The work of this institute does not relate only to cases of violence against women or girls, but does include such cases. In this regard, the State indicated that the tests that were omitted in the investigation into the facts of the case "could only be conducted after [INACIF] had been created" (*supra* para. 171). Also, article 21 of the Law against Femicide ordered that "[t]he Ministry of Finance [...] allocate resources in the State's Budget of Income and Expenditure to [...]: strengthen [...] INACIF." Hence, it can be inferred, based on the State's assertions and the text of the said law, that the satisfactory functioning of this entity is essential for ensuring that cases of assaults on women can be properly investigated. Nevertheless, information from 2012 has been verified indicating the need for INACIF to receive increased resources, and this was also indicated by INACIF authorities in 2010.<sup>353</sup> This information has not been contested and the Court has not been provided with information to show that this situation has changed. In addition, expert witness María Eugenia Solís was of a similar opinion and indicated also that INACIF "has a weakness, because it is not present throughout the country."

268. Based on the above, the Court finds it pertinent to order the State, within a reasonable time, to draw up a plan with a specific timetable to reinforce INACIF, which includes the allocation of adequate resources to allow it to expand its activities throughout national territory and to fulfill its mandate.

269. The evidence also reveals that article 15 of the Law against Femicide, approved in 2008, established the "creation of the specialized jurisdictional organs." Furthermore, its article 14 established that "the Public Prosecution Service shall create the Prosecutor's Office for Offenses against the Life and Physical Integrity of Women, specialized in the investigation of the offenses established by [the said] law, with the budgetary, physical, material, scientific and human resources that allow it to meet its objectives." The State has advised that, "by decision 1-2010, the Supreme Court of Justice of Guatemala approved the

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State has adopted some measures to improve their effectiveness: on February 1, 2006, the Public Prosecution Service issued "General Instructions" establishing guidelines for criminal investigations (file of annexes to the motions and arguments brief, annex 100, fs. 10,833 to 10,852).

<sup>353</sup> Cf. *El Observador Judicial*. No. 87. Year 12. March-April 2010. Guatemalan National Institute of Forensic Science. *Estado de Situación 2012*, p. 15 (file of annexes to the motions and arguments brief, annex 73, fs. 9667 to 9701). This indicates that "it can be concluded that the budget allocated and in effect must be increased by 38.6% for the allocated budget to correspond to the executed budget and to recover the budget level at 2006 prices, which should be an institutional management objective over the next periods", and *El Periódico*, Guatemala, Thursday, March 11, 2010, "*I[INACIF] suspende el 80% de servicios*" [INACIF suspends 80% of its services] and *Noticiasguate.com - Noticias de Guatemala*, April 19, 2010, "*El I[INACIF] podría desaparecer*" [INACIF could disappear], newspaper articles cited by the representative, available, respectively, at <http://www.elperiodico.com.gt/es/20100311/pais/141753/> and <http://noticiasguate.com/el-inacif-podria-desaparecer/>.

creation of the specialized jurisdictional organs in some of the country's departments, but the information provided to the Court does not reveal what it has done with regard to the remaining departments.<sup>354</sup> In addition, the information presented to the Court concerning the lack of an adequate budget to establish the Prosecutor's Office for Offenses against the Life and Physical Integrity of Women, which was noted by a decision of the Prosecutor General's Office of July 3, 2008, has not been contested.<sup>355</sup> The Court has not been informed that this situation has changed. Furthermore, it is pertinent to indicate that article 21 of the 2008 Law against Femicide established that "[t]he Ministry of Finance shall allocate the resources in the State's Budget of Income and Expenditure for[, *inter alia*, the c]reation of the Prosecutor's Office for Offenses against the Life and Physical Integrity of Women, [and the c]reation of specialized jurisdictional organs to hear offenses against the life and physical integrity of women." In addition, articles 22 and 23 of the law establish a time frame of 12 months for the "establishment" of "[t]he specialized jurisdictional organs referred to in article 15 [...] throughout the Republic," and "[t]he prosecutor's office referred to in article 14." Also, in its first report on criminal courts and tribunals for crimes of femicide and other forms of violence against women," issued in 2012, the Judiciary recognized that "[f]ollowing the entry into force of the Law against Femicide, [...] the State's capacity to respond has not been proportionate as regards the investigation, punishment and redress of the harm." CONAPREVI has expressed a similar opinion.<sup>356</sup>

270. Based on the foregoing, and taking into account the provisions of the Law against Femicide, the Court finds it pertinent to order the State, within a reasonable time, to implement the full functioning of the "specialized jurisdictional organs [...] throughout the Republic," as well as of the special prosecutor's office indicated in this law.

***D.2) Adoption of integrated public policies and institutional programs aimed at eliminating discriminatory stereotypes regarding the role of women and promoting the eradication of discriminatory socio-cultural patterns that prevent their full access to justice***

***D.2.1. Arguments of the Commission and of the parties***

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<sup>354</sup> In 2010, the Supreme Court of Justice approved the creation of "courts and tribunals for femicide and other forms of violence against women," in the departments of Guatemala, Chiquimula and Quetzaltenango. Subsequently, in 2012, it approved the creation of another two specialized courts and tribunals in the departments of Huehuetenango and Alta Verapaz. Cf. Judiciary. Guatemala. "*Primer Informe. Juzgados y Tribunales Penales de Delitos de Femicidio y otras Formas de Violencia contra la Mujer*", *supra*. There is no record that specialized jurisdictional organs have been created in the other 17 departments of Guatemala.

<sup>355</sup> The State indicated, without mentioning the dates when they initiated their functions, the "creation of special prosecutor's offices of the Public Prosecution Service." In this regard, it indicated the existence of the "Office of the Prosecutor for Women," responsible for the "criminal prosecution" in cases of "family violence and [...] violence against women," and "specialized prosecutors" in Guatemala City, in the municipalities of Villa Nueva and Mixco, and in the Departments of Chiquimula, Quetzaltenango, Coatepeque and Huehuetenango that "exclusively hear crimes of femicide." Information presented by the representative specifies that, at September 4, 2012, the date of the motions and arguments brief, "the Office of the Prosecutor of Crimes against the Life and Physical Integrity of Women, contemplated in the Law against Femicide, had not yet been created, because [the Public Prosecution Service] does not have the budgetary capacity to do this." However, at that date, the Office of the Prosecutor for Women had been established in six municipalities (Mixco, Villa Nueva, Quetzaltenango, Chiquimula, Coatepeque and Huehuetenango). A decision of the Prosecutor General's Office of July 3, 2008, established the competence of the prosecutor's offices that existed at that date "to hear" "crimes of femicide, as well as attempted femicide [...] until the necessary budget is available for the establishment of the specialized agencies referred to in article 14 of the Law against Femicide and other Forms of Violence against Women." Decision No. 70-2008, of July 3, 2008, issued by the Prosecutor General and Head of the Public Prosecution Service (file of annexes to the motions and arguments brief, annex 98, fs. 10,826 and 10,827).

<sup>356</sup> In a document dated March 22, 2012, provided by the State, this State entity indicated that "[t]he system of justice has collapsed owing to the number of judicial proceedings requested in the context of crimes of violence against women." Report of CONAPREVI to the Presidential Human Rights Commission (COPREDEH), in response to a request of the Inter-American Commission in the case of Claudina Isabel Velásquez Paiz, *supra*, p. 2.



271. The Commission indicated that such public policies and institutional programs should include “training programs for public officials from all sectors of the State, including the education sector, the branches of the administration of justice and the police, and comprehensive prevention policies.”

272. In this regard, the representative indicated that the State should “adopt a series of measures in order to promote the elimination of discriminatory socio-cultural patterns and stereotypes and to ensure full access to justice for women victims of violence.” Among such measures, it indicated: (a) the “creation of a protocol for immediate action in cases of the disappearance of girl children and adolescents, and women”; (b) the “adoption of standardized protocols for joint action to respond to and investigate cases of violence against women, from the perspective of the human rights of women”; (c) the “creation of an analysis and support unit for investigations of cases of the violent death of women”; (d) the “implementation of education and training programs for public officials,” as a “permanent training program on standards of due diligence in the investigation from the perspective of the human rights of women,” and a “program of permanent training on standards for the prevention, punishment and eradication of violence against women”; (e) “ensuring the operation of the institutions responsible for public policies aimed at preventing and eliminating violence against women and responding to cases of violence,” and (f) “guaranteeing a reliable and accessible system for the data collection and the production of statistics.”

273. The State reiterated that “it has not been proved that this case is a gender-based illegal act [and] that it had taken measures leading to changes in the way in which cases of violence against women are handled compared to when the events of the case occurred.” It also indicated that the measures it had taken “have been implemented [...] to ensure the most prompt and effective response of the State to acts of violence against women.”

#### D.2.2. Considerations of the Court

274. Regarding the request for a protocol for immediate action in cases of the disappearance of girl children and adolescents, and women, the Court takes note of what the State has indicated concerning the “early warning system” enacted by the Law on the Alba-Kenneth Alert in order to locate missing children (*supra* para. 263).<sup>357</sup> Consequently, and since the facts of the case are related to the disappearance of a girl child, the Court does not find it in order to require the State to adopt a specific protocol.

275. With regard to the implementation of education and training programs for State officials, the Court establishes that the State must, within a reasonable time, implement programs and courses for public officials who are members of the Judiciary, the Public Prosecution Service, and the National Civil Police, and who are involved in the investigation of the murder of women, on standards with regard to prevention, and the eventual punishment and eradication of the murder of women, and provide them with training on the proper application of the relevant laws and regulations.

276. As for guaranteeing a reliable and accessible system for the data collection and the production of statistics, the Court takes into account that article 20 of the Law against Femicide stipulates that the National Institute of Statistics is obliged to generate indicators and statistical information, and to set up a national information system on violence against women. In its final arguments, the State provided the address of the website on which the

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<sup>357</sup> Cf. Law on the Alba-Kenneth Alert System. Decree No. 28-2010 (file of annexes to the answering brief, annex 12, fs. 14,097 to 14,102). The State also has other laws relating to childhood, including a “Law on the Comprehensive Protection of Children and Adolescents” (Decree No. 27-2003) which was “issued” on July 4, 2003. The State also provided the Court with a copy of articles 5, 20 and 51 of the Constitution of the Republic of Guatemala, entitled, respectively, “Freedom of action”, “Minors,” and “Protection of minors and the elderly” (file of annexes to the answering brief, annexes 22 and 23, respectively, fs. 14,189 to 14,259 and 14,261).

National Information System may be consulted: <http://www.ine.gob.gt/np/snvcn/index>,<sup>358</sup> and the Court has verified that the site contains data and information concerning violence against women in Guatemala. Consequently, the Court finds that it is not necessary to order the creation of a system for data collection and the production of statistics.

277. With regard to the other measures of reparation that have been requested, the Court considers that the measures granted are sufficient; accordingly it does not find it necessary to order the adoption of other measures. In relation to the Commission's request that the State be ordered "[t]o introduce reforms in the State's education programs, starting with the early, formative years, so as to promote respect for women as equals, and observance of their rights to non-violence and non-discrimination" and to "take measures and launch campaigns designed to make the general public aware of the duty to respect and ensure the human rights of children," it has not been demonstrated to the Court that the obligation to respect and ensure the human rights of women and children cannot be guaranteed by the continuation of the existing programs and the diffusion of measures that, as indicated by the State, are already included among its activities. Moreover, the Court does not find it pertinent to order such measures for the reasons stated previously.

## **E. Appropriate medical and psychological care and treatment**

### ***E.1) Arguments of the representative and of the State***

278. The representative asked that the State be ordered "to provide immediately and free of charge, adequate and effective medical and psychological treatment to the next of kin of María Isabel Veliz Franco: her mother, Rosa Elvira Franco Sandoval, and her brothers, Leonel Enrique Veliz Franco and José Roberto Franco." It specified that:

This treatment should be provided on the basis of a comprehensive diagnosis of the medical and psychological conditions of each of them by specialized professionals who have sufficient training and experience to treat both the problems of physical health that they suffer from and the psychological traumas resulting from the gender-based violence, the absence of a response from the State, and the impunity.

And that this should be "provided for as long as necessary and include the provision of any medicines that are eventually required."

279. The State indicated that:

If they had asked for it, [the State] would have provided Rosa Elvira Franco and her sons [...], with the State's services of psychology and attention to victims within its public institutions, as part of or as a complement to the precautionary measures that they were accorded on the instructions of the Commission. However, at no time have the next of kin indicated that they wish to receive psychological support for any member of the family unit.

### ***E.2) Considerations of the Court***

280. The Court notes the State's argument about the possibility of requesting the relevant services provided by the State, and appreciates what Guatemala has indicated as regards its willingness to provide the necessary care. Nevertheless, the measures of reparation that the Court can order are based directly on the harm resulting from the human rights violations declared in this case. Therefore, as it has in other cases,<sup>359</sup> the Court orders the State to provide adequate and effective medical or psychological care free of charge and immediately, through the State's specialized health care institutions to Rosa Elvira Franco Sandoval, owing to the effects on her personal integrity declared by this Court in the case

<sup>358</sup> The Court has verified that, when the State presented its final written arguments (*supra* para. 13), this electronic page was in operation and contained the indicated information. The Court has not been able to verify that this electronic page is functioning at the time this Judgment is delivered.

<sup>359</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of J., supra*, para. 344.

*sub judice*, if she so wishes. The State must ensure that the professionals of the specialized health care institutions assigned to treat victims make a proper assessment of the victim's psychological and physical conditions and have sufficient training and experience to treat both her physical health problems and also the psychological traumas resulting from the lack of State response, the impunity, and the treatment received during the investigation (*supra* para. 239). The care must be provided for as long as necessary and include the provision of any medicines eventually required free of charge.

## **F. Compensation for pecuniary and non-pecuniary damage**

### **F.1) Introduction**

281. The Court takes into consideration that, in general, the Commission recommended that the State "provide adequate redress for the human rights violations declared in [its Merits] report from both the pecuniary and the non-pecuniary perspective" without providing specific arguments. The representative requested compensation based on the arguments described below. The State rejected these requests with arguments that are also described below. In this case, the Court finds it pertinent to refer jointly to the determination of the compensation for pecuniary and the non-pecuniary damage.

### **F.2) Arguments of the parties**

282. The representative indicated that the death of María Isabel Veliz Franco "led to unexpected expenditures; first, the need to give her a decent burial. The corresponding funeral expenses were paid entirely by her family." However, it indicated that Rosa Elvira Franco "does not have all the receipts for the expenses which were incurred more than 10 years ago" and, consequently, asked the Court to "determine the amount for this item based on equity criteria."

283. It also stated that, "from the moment of María Isabel's death [...], and throughout the more than 10 years that have passed since then, her mother has taken numerous steps to obtain justice and to establish the truth about what happened, and she has dedicated many hours to this." In this regard, it indicated that, during the time she invested in such steps, "Mrs. [...] Franco [Sandoval] has not kept the receipts for the" expenses and, therefore, asked that the Court "determine, based on the equity principle, the amount that should be delivered to Mrs. [...] Franco [Sandoval]."

284. The representative also indicated that "the profound pain and anguish that Rosa Elvira Franco felt and continues to feel as a result [of the events], has led to serious health problems such as depression, hypertension, hyperthyroidism, and a hernia." Consequently, it asked that the Court "determine, based on the equity principle, the amount that the State should award Mrs. [...] Franco [Sandoval] in this regard."

285. With regard to loss of earnings, it indicated that María Isabel Veliz Franco was 15 years old when she was murdered and that, in "2001, life expectancy for women in Guatemala was 72 years, so that she could have lived a further 57 years approximately." It also indicated that she "had expressed her wish to pursue higher education studies" and that, since "there is no possibility of calculating the salary that she would have earned [...] on completing her studies," it asked that, based on the precedents "established in the judgment in [the case of] *González et al. v. Mexico* [... the Court] establish, in equity, the sum of US\$145,000.00" (one hundred and forty-five thousand United States dollars).

286. The representative also referred to the non-pecuniary harm. For non-pecuniary damages to the detriment of María Isabel Veliz Franco, she asked that the State pay the sum of US\$40,000.00 (forty thousand United States dollars). This was for "the failure to ensure the rights to life, personal integrity and personal liberty, [...] as well as the State's failure to comply with its obligation to provide her with special protection owing to the fact

that she was a child." It indicated that this sum "should be delivered to the members of her family in accordance with the inheritance laws in force in Guatemala."

287. Regarding the members of María Isabel Veliz Franco's family, it indicated that, "in this case, the intense suffering is evident" because "they experienced profound anguish and pain owing to [the] disappearance, the abuse she suffered and the murder" of María Isabel. In addition, it indicated that María Isabel's mother and brothers continue "suffering owing to the effects on their mental and moral integrity of the negligence of the public officials who took part in the investigations, and the accusations and insults they expressed against María Isabel, as well as the impunity in which the events of this case remain. It stated that "María Isabel's murder had a profound impact on her mother's life project because the burden of the search for justice and the advance of the investigations fell, above all, on her." It also indicated that a psychological appraisal had been provided to prove the suffering of María Isabel's grandparents, and of her brothers. Consequently, the representative asked that "based on the equity principle and pursuant to the case law" of the Court, a sum be established for the non-pecuniary harm suffered by the mother, brothers and grandparents of María Isabel Veliz Franco. It asked that the amounts awarded in favor of the grandparents "be delivered to their legitimate heirs in keeping with the laws of Guatemala."

288. The State, for its part, referring to the funeral expenses, underlined that there was a contradiction in the representative's request as regards "Mrs. [...] Franco [Sandoval] does not have all the receipts" because, "among the documents attached to the [motions and arguments brief], the attachment identified as Annex 127 [*sic*] includes vouchers for the funeral expenses, which were verified by State agents." In this regard, the State pointed out the difference between the "certification issued as a proof for the funeral service of María Isabel" and "the cash receipt" presented by the representative. The former indicates a total of "GTQ 2,500.00 (two thousand five hundred quetzals)," while the latter indicates that "GTQ 10,500.00 (ten thousand five hundred quetzals) were paid for sandwiches and the embalming of María Isabel Veliz Franco." The State indicated that, on noting the inconsistency, it "approached the funeral home that had issued the said certification and the cash receipt that appears in the case file, to verify the authenticity of the said documents and the legitimacy of their content." It found that "Rosa Elvira Franco had committed an offense under domestic law" because "the value of the cash receipt, according to the representatives of the funeral home [...] is GTQ 1,050.00 (one thousand and fifty quetzals)." The State also asserted:

Although the embalming and additional sandwiches were paid for, the cost of embalming a body today is GTQ 2,000.00 (two thousand quetzals), and the cost of this service has not decreased over recent years, but rather has increased, and that, in 2001, it cost GTQ 850.00 (eight hundred and fifty quetzals).

Lastly, it indicated that "there is a note on the lower left hand corner of the cash receipt presented by the victim's mother reading for the 'Case of María Isabel Veliz Franco *et al.*' [so that] it is clear that this text was added" and that this is an "example of the bad faith with which the victim's mother and, if applicable, her representative, have acted in order to obtain financial benefits from the tragic death of the child."

289. It also indicated, with regard to the alleged expenses in order to obtain justice, that it "had absolutely no confidence in the truth of what the representative has said; however, [it] recalls [...] that none of the expenses incurred by Mrs. Franco to date were necessary in order to obtain justice."

290. The State also indicated that "the petitioners and their [...] representative [...] have] ask[ed] for reimbursement of medical and psychological expenses, but in the section in which they claim the reimbursement of medical expenses incurred, there is no mention of any kind that they have received any type of psychological treatment."

291. As regards the alleged loss of earnings, the State indicated that:

It is possible to calculate the salary that María Isabel would have earned on completing her studies. To this end, the State can provide information, if the Court requires this, on average salaries of individuals with academic diplomas in activities related to commerce, since María Isabel worked as a salesperson in a store and it can be assumed that this was a sphere of interest.

Lastly, it considered that it was:

Exaggerated that [the representative] establishes, in equity, for the supposed loss of earnings a sum of US\$145,000.00 [(one hundred and forty-five thousand United States dollars)], because, over 10 years, this sum would represent US\$14,500.00 [fourteen thousand five hundred United States dollars] a year, which would be around US\$1,200.00 [one thousand two hundred United States dollars] a month.

292. Based on the foregoing and taking into account that “the minor was not yet a professional, it would be difficult for the State to recognize legitimately that, in some way, she would have earned, if she had continued her studies, almost three times the minimum wage established in the country nowadays, from the time she left college until she died of natural causes.”

293. Regarding the compensation for non-pecuniary damage in favor of María Isabel, the State indicated that it “had conducted a genuine and diligent investigation [...] to establish what happened; [however,] it has not been possible to identify and punish those responsible.” It also indicated that it “took all the appropriate measures to help determine her whereabouts, because it forwarded the report to the relevant office for the search for minors and, when the body appeared, it issued a communication to determine whether the characteristics of the body that had been found corresponded to those of any female whose disappearance had been reported.”

294. The State also affirmed that “no type of monetary reparation is owed for non-pecuniary damage to any of the supposed victims in this case (either María Isabel or her next of kin), because the State has not failed to comply with any of the conditions to which the criteria of the Court refer to establish that non-pecuniary harm is evident.” It also indicated that “the State authorities had conducted a genuine and diligent investigation to determine what had happened”; however, “the results of the investigation had not made it possible to identify and punish those responsible; also, insofar as possible and owing to the very short time between the moment it was informed of the danger to the minor and she appeared dead, it took the appropriate steps to try and establish her whereabouts.” Lastly, it indicated that “11 years have passed since the death of the child and, during all this time, the next of kin have never requested psychological help or indicated to the State that there have been obstacles to their emotional recovery.”

### ***F.3) Considerations of the Court***

295. 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 to the facts of the case.”<sup>360</sup> Similarly, it has developed the concept of non-pecuniary damage in its case law and has established that this “may include both the suffering and afflictions caused by the violation, and also the impairment of values that are very significant to the individual, as well as any change of a non-pecuniary nature in the living conditions of the victims.”<sup>361</sup> Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated, in order to make full reparation to the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value, determined by the Court in reasonable application of

<sup>360</sup> *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Liakat Ali Alibux, supra*, para. 153.

<sup>361</sup> *Cf. Case of the “Street Children” (Villagrán Morales et al.). Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 224, and *Case of Liakat Ali Alibux, supra*, para. 156.

judicial discretion and based on equity.<sup>362</sup> Furthermore, the Court reiterates the compensatory character of the payment of damages, the nature and amount of which depend on the harm caused, so that they may not signify either the enrichment or the impoverishment of the victims of their heirs.<sup>363</sup>

296. From the information provided on the funeral expenses, the Court takes note of the contradiction of the representative, and also of the State's observations that, on the one hand, vouchers were provided for the funeral expenses incurred by the victim's family and, on the other hand, the Court was asked to establish the respective amount based on the equity principle because there were no receipts. Moreover, the State presented a certification issued by the funeral home hired for María Isabel's funeral, and questioned the vouchers presented by the representative because it considered that the amount had supposedly been altered. Despite this, the Court presumes, as it has in previous cases,<sup>364</sup> that the family incurred different expenses as a result of María Isabel's death. Likewise, it takes into consideration the representative's arguments on the expenses that Mrs. Franco incurred to obtain justice in order to establish the corresponding compensatory amount (*supra* para. 283).

297. However, the Court rejects the representative's request with regard to the medical expenses incurred because the evidence that has been provided to the Court does not reveal a causal nexus between the specific ailments that Mrs. Franco has suffered from and the violations declared in this Judgment. Nevertheless, the Court places on record that reparation is ordered by the provision of the respective treatment with regard to the harm related to the declaration of the violation of Mrs. Franco Sandoval's personal integrity, (*supra* para. 280)

298. Regarding María Isabel's alleged loss of earnings, the Court notes that the representative asked that compensation for this concept be established based on the relevant provision in the judgment in the case of *González et al. v. Mexico*. In this regard, in that case, the Court concluded that "the offer made by the State to compensate the loss of earnings [...] was satisfactory" and took it into account to establish the compensation in favor of the victims for this concept.<sup>365</sup> In the instant case, the representative did not present any evidence related to the possible future earnings of the victim or even information on her wages in her temporary job, or about her life expectancy.

299. However, in the case of non-pecuniary damage, this Court has affirmed that non-pecuniary damage is evident, because it is inherent in human nature that any person who suffers a violation of his or her human rights experiences suffering.<sup>366</sup> With regard to María Isabel Veliz Franco, in this case the Court has established the international responsibility of the State for the deficiencies in the prevention of the acts that violated the entitlements protected by the rights of the child to life and personal integrity. It has also been established that different shortcomings in the investigation of these acts affected her family's access to justice and, in the case of her mother, also affected the latter's personal integrity (*supra* paras. 225 and 242). In this regard, the non-pecuniary damage suffered by María Isabel's grandparents will be taken into account to determine the corresponding compensation.

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<sup>362</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 53, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2013. Series C No. 268, para. 301.

<sup>363</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.)*. Reparations and costs, *supra*, para. 79, and *Case of the Constitutional Tribunal (Camba Campos et al.)*, *supra*, para. 302.

<sup>364</sup> Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 207, and *Case of Luna López*, *supra*, para. 50.

<sup>365</sup> Cf. *Case of González et al. ("Cotton Field")*, *supra*, para. 577.

<sup>366</sup> Cf. *Case of Reverón Trujillo*, *supra*, para. 176, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra*, para. 344.

300. Based on the above, the Court establishes, in equity, the sum of US\$220,000.00 (two hundred and twenty thousand United States dollars) for pecuniary and non-pecuniary damage. This sum must be distributed as follows: for Rosa Elvira Franco, the sum of US\$120,000.00 (one hundred and twenty thousand United States dollars), and for Leonel Enrique Veliz Franco and José Roberto Franco, the sum of US\$50,000.00 (fifty thousand United States dollars) each.

## **G. Costs and expenses**

### **G.1) Arguments of the representative and of the State**

301. The representative indicated that two organizations, CEJIL and REDNOVI, have represented the presumed victim and her next of kin. It indicated that "CEJIL acted as their representative [...] as of 2005" and that, in exercise of this representation, incurred expenses that included "travel, accommodation, communications, photocopies, stationery, and the mailing of documents." Consequently, it asked that, in equity, the Court establish a sum of US\$8,251.63 (eight thousand two hundred and fifty-one United States dollars and sixty-three cents), and that this amount be reimbursed by the State directly to CEJIL.

302. For its part, the representative alleged that REDNOVI:

Has been following up on the case since 2003 [and] since then has taken numerous steps to support María Isabel's family during the proceedings before the Commission, such as the periodic verification of the judicial file, procedures, obtaining photocopies of documents, participation in meetings with authorities, and expenses for the preparation of statements and the certification of documents.

In addition, "expenditure has been incurred for travel [...] to Washington D.C. [...] and] San José." The representative also indicated that "it does not have receipts for the expenditure incurred" and, therefore, asked the Court to "establish, in equity, a sum of US\$10,000.00 (ten thousand United States dollars)." It asked that "the amount relating to expenses incurred by REDNOVI be reimbursed directly by the State to the *Asociación Nuevos Horizontes*, a member organization of REDNOVI."

303. Lastly, it asked that:

An additional sum to the expenses described previously be paid for future expenses [including] those related to compliance with the judgment; expenses that will be required by the proceedings of monitoring compliance with the judgment; travel expenses to ensure compliance with the judgment and, if applicable, expenses in Guatemala in order to verify compliance with the judgment.

304. The State indicated that:

In view of the situation verified in this case in relation to the alteration of documents that contain supposed expenses incurred for funeral services, the State would greatly appreciate it if [the Court] would not condemning the State of Guatemala for the supposed expenses and costs of its opposing party in these proceedings.

In particular, with regard to the amount requested for CEJIL, the State indicated that "it did not accept payment of any of the expenses described because its participation in these proceedings was voluntary [since] the petitioners were already represented by REDNOVI." Lastly, regarding the expenses incurred by REDNOVI, the State indicated that "it would not be held responsible for expenses that have not been authenticated."

### **G.2) Considerations of the Court**

305. The Court reiterates that, according to its case law,<sup>367</sup> costs and expenses are included in the concept of reparation, because the activity deployed by the victims in order to obtain justice, at both the national and international level, entails disbursements that

<sup>367</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Liakat Ali Alibux, supra*, para. 418.

must be compensated when the international responsibility of the State has been declared in a Judgment.

306. The Court also reiterates that it is not sufficient merely to provide probative documentation; rather the parties are required to submit arguments that relate the evidence to the fact that it is considered to represent and that, with regard to alleged financial disbursements, the items and their justification are clearly established.<sup>368</sup>

307. In the instant case, the evidence provided by the representative and the corresponding arguments do not justify fully the amounts requested. In addition, the Court notes that, in the motions and arguments brief, CEJIL requested the payment of the costs of the proceedings, but, in a communication of February 8, 2013, indicated that “as of that day, it [would] not continue providing legal representation to Rosa Elvira Franco Sandoval and her family”; nevertheless, it did not submit a request for costs and expenses for itself. Consequently, the Court will not rule in this regard. Taking this into account, the Court establishes, in equity, the sum of US\$10,000.00 (ten thousand United States dollars), which must be delivered to REDNOVI, based on the expenses for the processing of the proceedings before the inter-American human rights system. This amount must be delivered to the representative. At the stage of monitoring compliance with this Judgment, the Court may establish the reimbursement by the State to the victims or their representatives of subsequent reasonable and duly authenticated expenses.<sup>369</sup>

#### **H. Reimbursement of expenses to the Victims’ Legal Assistance Fund**

308. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the inter-American human rights system, “in order 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.”<sup>370</sup> In the instant case, the orders of the President of January 8 and April 10, 2013 (*supra* paras. 9 and 11), authorized access to the Legal Assistance Fund to cover reasonable and necessary expenses, which, in this case, consisted in: (i) the necessary travel and accommodation expenses for Rosa Elvira Franco Sandoval and María Eugenia Solís to attend the public hearing, and (ii) the expenses of the preparation and delivery of the affidavits of the victims, Leonel Enrique Veliz Franco and José Roberto Franco.

309. Later, in a note of the Secretariat dated August 28, 2013, the State was given the procedural opportunity to present observations on the report of the disbursements made in application of the Victims’ Legal Assistance Fund. In its brief with observations, and previously in its answering brief, the State indicated that: (a) “it cannot accept that [the Court] convict it in this case [...] because it does not consider itself responsible for any of the presumed violations; (b) because the main purpose of having recourse to the Court [...] is not for the supposed victims to be able to enrich themselves at the expense of the State”; (c) and because the representative altered “the accounting documents related to the expense incurred for funeral services” and that “the principles of truth and good faith, and procedural economy have been infringed,” it was opposed to reimbursing any sum of money to the supposed victim and to her representative, and (d) it did not consider it fair to have to reimburse sums of money to the Victims’ Legal Assistance Fund because [according to the State,] as they were going to be covered by the Fund, there was an unnecessary and unjustified increase in the expenses.”

<sup>368</sup> Cf. *Case of Chaparro Álvarez and Lapo Iñiguez*, *supra*, para. 277, and *Case of J.*, *supra*, para. 421.

<sup>369</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 291 and *Case of Liakat Ali Alibux*, *supra*, para. 165.

<sup>370</sup> AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, “*Creation of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2(b), operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, “*Rules of Procedure for the Legal Assistance Fund of the Inter-American Human Rights System*,” article 1(1).



310. According to the information that appears in the report on the disbursements made in this case, these amounted to US\$2,117.99 (two thousand one hundred and seventeen United States dollars and ninety-nine cents). In application of article 5 of the Rules for the Operation of the Fund, it is for the Court to evaluate the admissibility of ordering the defendant State to reimburse the Legal Assistance Fund for any disbursements made.

311. In this regard, the Court reiterates the considerations in the order of its President of January 8, 2013, in which it was indicated that the request to access the Assistance Fund was made at the appropriate time in the motions and arguments brief and that the representative had indicated precisely the assistance that the presumed victim required from the Fund (*supra* para. 9). In addition, as indicated in the said order, the Court reiterates that the purpose of access to the Assistance Fund was to cover reasonable and necessary expenses related to the production of evidence before the Court, specifically for the presentation of a maximum of four statements, either by affidavit or at the public hearing.

312. The State opposes reimbursing the Victims' Fund because "there was an unnecessary increase in the cost" in relation to the affidavits provided because, according to the State this would be covered by the Fund. The Court notes that the State has not questioned the authenticity or truth of the expense vouchers, but has asserted that the affidavits could have cost less.

313. The representative, in its observations on the final arguments of the State, indicated that "at the time the quote was obtained, the activities of CONAPREVI had been halted for approximately one year" and that it "did not know why the lawyer had established a different amount to the quote provided by the lawyer Irini Villavicencio (on behalf of CONAPREVI), a situation that is not the responsibility of the representative."

314. In this regard, the Court notes that there is a difference of Q 800.00 (eight hundred quetzals) between the voucher for the cost of the affidavits presented by the representative, and the vouchers presented by the State. However, this circumstance does not affect the expense that was effectively incurred; thus, it does not find it pertinent to examine further this point or the other disbursements relating to the travel and accommodation expenses to ensure appearances before the Court. Regarding the other arguments of the State concerning the amounts claimed for funeral expenses, this has already been decided in this Judgment and, in any case, this item was not paid by the Victim's Fund. Furthermore, regarding Guatemala's opposition to being condemned to pay because it does not consider itself responsible for any violation, this is a matter related to the merits of the case that has already been decided.

315. Based on the violations declared in this Judgment, the Court orders the State to reimburse the said Fund the sum of US\$2,117.99 (two thousand one hundred and seventeen United States dollars and ninety-nine cents) for the expenses incurred. This amount must be reimbursed to the Inter-American Court within ninety days of notification of this Judgment.

#### **I. Method of complying with the payments ordered**

316. The State must pay the compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses established in this Judgment directly to the persons indicated herein, within one year of notification of this Judgment in accordance with the following paragraphs.

317. If the beneficiaries should die before the respective compensation is delivered to them, it must be delivered directly to their heirs pursuant to the applicable domestic laws.

318. The State must comply with its monetary obligations by payment in quetzals or the equivalent in United States dollars, using the exchange rate in force on the New York

(United States of America) stock market the day before the payment. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs it is not possible to pay the said amounts within the indicated time frame, the State shall deposit the said amounts in their favor in an account or certificate of deposit in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable financial conditions allowed by banking practice and law. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

319. The amounts allocated in this Judgment as compensation and reimbursement of costs and expenses must be delivered to the persons indicated in full, as established in this Judgment, without any reductions due to eventual taxes or charges.

320. If the State should fall in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Guatemala.

321. In accordance with its consistent practice, the Court reserves the authority inherent in its powers and also derived from Article 65 of the American Convention, to monitor full compliance with this Judgment. The case will be concluded when the State has complied fully with the provisions of this Judgment.

322. Within one year of notification of this Judgment, the State must provide the Court with a report on the measures taken to comply with it.

## **XII OPERATIVE PARAGRAPHS**

323. Therefore,

### **THE COURT**

#### **DECIDES,**

unanimously,

1. To reject the preliminary objection filed by the State concerning the lack of material competence of the Inter-American Court of Human Rights to examine Article 7 of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, in the terms of paragraphs 36 to 38 of this Judgment.

2. To reject the preliminary objection filed by the State concerning the failure to exhaust domestic remedies, in the terms of paragraphs 42 to 45 of this Judgment.

#### **DECLARES,**

unanimously, that:

1. The State has violated its obligation to ensure the free and full exercise of the rights to life and to personal integrity recognized in Articles 4(1) and 5(1) of the American Convention on Human Rights, in relation to the rights of the child recognized in Article 19 of the Convention, and to the general obligation to ensure rights without discrimination, established in Article 1(1) of this instrument, as well as the obligations established in Article 7(b)) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of María Isabel Veliz Franco, in the terms of paragraphs 132 to 158 of this Judgment.

2. The State has violated the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, and the right to equal protection recognized in Article 24 of the Convention, in relation to the general obligations contained in Articles 1(1) and 2 thereof, and to Articles 7(b)) and 7(c)) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women, to the detriment of Rosa Elvira Franco Sandoval, Leonel Enrique Veliz Franco, José Roberto Franco, Cruz Elvira Sandoval Polanco and Roberto Pérez, in the terms of paragraphs 178 to 225 of this Judgment.

3. The State has violated the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Rosa Elvira Franco Sandoval, in the terms of paragraphs 233 to 242 of this Judgment.

4. It is not incumbent on the Court to rule on the alleged violation of the right to personal liberty recognized in Article 7 of the American Convention on Human Rights, in the terms of paragraph 145 of this Judgment.

5. It is not incumbent on the Court to rule on the alleged violation of the rights of the child, established in Article 19 of the American Convention on Human Rights, in relation to the conduct of the investigation following the discovery of the body of María Isabel Veliz Franco, in the terms of paragraph 226 of this Judgment.

#### **AND ESTABLISHES**

unanimously, that:

6. This Judgment constitutes *per se* a form of reparation.

7. The State must conduct the investigation effectively and, as appropriate, open the corresponding criminal proceedings and, if pertinent, any others that are required to identify, prosecute and punish, as appropriate, those responsible for the abuse and deprivation of the life of the child María Isabel Veliz Franco, in the terms of paragraph 251 of this Judgment.

8. The State must, within six months of notification of this Judgment, publish the official summary of this Judgment once in the official gazette of Guatemala and in a national newspaper with widespread circulation. The State must also, within the same time frame, publish this Judgment in its entirety on official websites of the Guatemalan Judiciary, Public Prosecution Service, and National Civil Police for one year. All this in the terms of paragraph 256 of this Judgment.

9. The State must, within one year of notification of this Judgment, make a public apology, in the terms of paragraphs 257 and 258 of this Judgment.

10. The State must, within a reasonable time, draw up a plan to reinforce the INACIF with a specific timetable, which includes the allocation of adequate resources to allow it to expand its activities throughout national territory and to fulfill its functions, in the terms of paragraph 268 of this Judgment.

11. The State must, within a reasonable time, bring into operation the “specialized jurisdictional organs” and the special prosecutor’s office, in the terms of paragraph 270 of this Judgment.

12. The State must, within a reasonable time, implement programs and courses for public officials who are members of the Judiciary, the Public Prosecution Service and the National Civil Police and who are involved in the investigation of the murder of women on standards with regard to prevention, and the eventual punishment and eradication of the murder of

women, and provide them with training on the proper application of the relevant laws and regulations, in the terms of paragraph 275 of this Judgment.

13. The State must provide immediate, adequate and effective medical and psychological treatment, free of charge, through the State's specialized health care institutions to Rosa Elvira Franco Sandoval, if she so wishes, in the terms of paragraph 280 of this Judgment.

14. The State must, within one year of notification of this Judgment, pay the amount established in paragraph 300 of this Judgment as compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, in the terms of paragraph 307, and also reimburse the Victims' Legal Assistance Fund the amount established in paragraph 315 of this Judgment.

15. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply with it.

16. The Court will monitor full compliance with this Judgment in exercise of its functions and in compliance with its obligations under the American Convention on Human Rights, and will close this case when the State has complied fully with its provisions.

Done, at San José, Costa Rica, on May 19, 2014, in the Spanish language.

Humberto Antonio Sierra Porto  
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García-Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Humberto Antonio Sierra Porto  
President

Pablo Saavedra Alessandri  
Secretary