

REPORT No. 170/11
CASE 12,578
MARÍA ISABEL VÉLIZ FRANCO *ET AL.*
MERITS
GUATEMALA
November 3, 2011

I. SUMMARY

1. On January 26, 2004, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or the "IACHR") received a petition that Rosa Elvira Franco Sandoval de Véliz, mother of the alleged victim, the Center for Justice and International Law (CEJIL) and the *Red de No Violencia Contra Mujeres en Guatemala* [Network to Combat Violence against Women in Guatemala] (hereinafter, jointly, "the petitioners") lodged against the State of Guatemala (hereinafter "the State" or "the Guatemalan State"). The petitioners claim that the State is responsible for omissions, failings and irregularities in the investigation into the death of María Isabel Véliz Franco, age 15, who disappeared on December 17, 2001 in Guatemala City and was found dead the next day.

2. On October 21, 2006, the Commission approved admissibility report No. 92/06¹ wherein it concluded that it is competent to take the complaint and, based on the arguments of fact and of law and without prejudging the merits of the case, decided to declare the complaint admissible with respect to the alleged violation of articles 4, 8(1), 11, 19, 24 and 25 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of María Isabel Véliz Franco, and the obligation recognized in Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará). The IACHR also concluded that the petition was admissible with respect to articles 5(1), 8(1), 11 and 25 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Rosa Elvira Franco Sandoval de Véliz.

3. The petitioners maintain that the Guatemalan State has demonstrated negligence with respect to the investigation into the death of María Isabel Véliz Franco which has prevented identification of those responsible for the crime and their prosecution and punishment, despite the fact that more than nine years have passed since the events occurred. They contend, therefore, that these failings in the investigation have allowed the crimes to go unpunished.

4. The Guatemalan State acknowledges responsibility to the IACHR for a failure to act with due diligence with respect to some procedures in the investigation into the case, but said that these were the result of the State's structural problems.² It further maintains that while certain measures were not taken, others were. It asserts that the failure of the investigation to produce positive results has not been for lack of willingness on its part. The investigation is still ongoing and the case file remains active in order to identify the person or persons responsible.

5. In the present report, after examining the parties' positions and the facts of the case, the IACHR, acting pursuant to Article 50 of the American Convention, concludes that the Guatemalan State violated the rights upheld in articles 4, 5 and 19 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of María Isabel Véliz Franco; it also violated

¹ Admissibility Report No. 92/06, Petition 95/04, María Isabel Véliz Franco (Guatemala), October 21, 2006.

² IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

its obligation under Article 7 of the Convention of Belém do Pará, in relation to Article 24 of the American Convention, with respect to the general obligation to respect and ensure rights, set forth in Article 1(1). In this report, the IACHR concludes that the State violated the right recognized in Article 5(1) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Rosa Elvira Franco Sandoval de Véliz (mother), Leonel Enrique Véliz Franco (brother), José Roberto Franco (brother), Cruz Elvira Sandoval Polanco de Franco (grandmother, deceased³) and Roberto Franco Pérez (grandfather, deceased⁴), and articles 8(1) and 25 of the American Convention, in relation to Article 24 thereof and in relation to the obligation established in Article 1(1). The IACHR further concludes that it does not have sufficient information to establish violations of the right to have one's honor and dignity protected, recognized in Article 11, in relation to María Isabel Véliz Franco and Rosa Elvira Franco Sandoval.

II. PROCESSING WITH THE IACHR

6. On October 21, 2006, the IACHR issued admissibility report No. 92/06.⁵ The Commission forwarded the report to the petitioners and to the State by a communication dated November 1, 2006. It gave both parties two months in which to submit any additional observations they might have regarding the merits. It also made itself available to the parties pursuant to Article 48(1)(f) of the American Convention, for purposes of arriving at a friendly settlement of the matter. The State's reply was received on May 14, 2007; the petitioners' reply was received on January 14, 2007.

7. The IACHR also received information from the petitioners on the following dates: December 13, 2006, April 25, 2007, June 19, 2007, September 7, 2007, October 26, 2007, December 24, 2007, May 31, 2008, August 20, 2008, January 2, 2009, April 24, 2009, June 4, 2009, November 10, 2009, September 10, 2010, February 15, 2011 and September 23, 2011. Those communications were duly forwarded to the State.

8. The IACHR received observations from the State on the following dates: July 25, 2007, September 14, 2007, November 14, 2007, December 26, 2007, February 21, 2008, April 21, 2008, July 25, 2008, October 9 and 20, 2008, July 28, 2009, August 24, 2009, February 12, 2010, and July 6, 2010. Those communications were duly forwarded to the petitioners.

9. On March 20, 2009, during its 134th regular session, the IACHR held a public hearing, which was attended by Claudia Paz, whom the petitioners had offered as an expert; the Guatemalan State was also represented.

Precautionary measures

10. On November 16, 2005, the Commission granted precautionary measures for Rosa Elvira Franco Sandoval, Leonel Enrique Véliz Franco, José Roberto Franco Sandoval and Cruz Elvira Sandoval Polanco. Those precautionary measures are still in effect. In the request seeking precautionary measures, Rosa Elvira Franco Sandoval alleged that the members of her family were being constantly harassed, persecuted and threatened by unknown persons carrying weapons.

³ According to the petitioners, Mrs. Cruz Elvira Sandoval Polanco de Franco died in April 2011.

⁴ According to the petitioners, Mr. Roberto Franco Pérez died in 2004.

⁵ See paragraph 2.

III. POSITIONS OF THE PARTIES

A. The petitioners

11. The petitioners report that student María Isabel Véliz Franco, age 15, disappeared on December 17, 2001. They allege that on that very same date, her mother, Rosa Elvira Franco Sandoval de Véliz, reported her disappearance to the *Policía Nacional Civil* [National Civil Police] (hereinafter the "PNC"). Her body was found the following day.

12. The petitioners maintain that from the moment the complaint was filed, the Guatemalan authorities have, by action or omission, committed serious violations of due process, resulting in an ineffective investigation. They also contend that from the beginning of the investigation, the state agents in charge of the investigation have, rather than investigating the facts, focused instead on discrediting the victim and her mother.

13. The petitioners allege that on December 18, 2001, the PNC received a call from an anonymous informant who said that on the night of December 17, 2001, he saw a female get out of a Mazda, take a black sack out of the truck of the car, and drop it in a vacant lot in the city of San Cristóbal II, Zone 8 of the Municipality of Mixco. The petitioners state that the informant then followed them and watched as they pulled the car into a property located in the same town, on 6th Street 5-24, Colonia Nueva Monserrat, zone 7 of Mixco.

14. The black sack turned out to be the lifeless body of María Isabel Véliz Franco. The petitioners state that the authorities classified her death as a homicide. Her mother, Rosa Elvira Franco, found her body in the morgue; her face was swollen from being beaten; she had a large wound under the heart, and her fingernails had been bent back; her clothes were bloodstained. She also noticed something yellow on the front and back of her trousers.

15. According to the petitioners, the first inspection at the scene of the events was on December 19, 2001 and was not thorough. They state that it was not until December 15, 2002, almost one year after María Isabel Véliz Franco's death, that an exhaustive visual inspection was done at the crime scene. They assert that by the time the inspection was done, the crime scene had been altered and the lot had even been burned.

16. The petitioners contend that the forensic tests that might have shed light on what happened were not done on the alleged victim's body. The petitioners maintain that the case record shows that the forensic physician did not perform the vaginal swab test because the prosecutor's office had not requested it. The petitioners state further that the State claimed that an examination to determine whether the alleged victim had been raped was not done because there were no signs of violence and because, according to the deputy prosecutor, the alleged victim's clothes were not in disarray. The petitioners allege that this is false because the photographs that are part of the case file show that the zipper on the victim's trousers was open and her underwear torn.

17. The petitioners further contend that the evidence found was not fully analyzed and that there were a number of omissions, chief among them following: a failure to check the hairs found on the body and the blood discovered at the crime scene; a failure to do oral and anal swab tests; a failure to analyze nail scrapings from the alleged victim's body; a failure to do an exhaustive analysis of two towels found at the crime scene; a failure to conduct the necessary tests and examinations to determine whether María Isabel had been raped; a failure to take photographs of the entire body; and a failure to study the bite marks on the victim's upper extremities. They also allege that the clothing that María Isabel was wearing at the time of her death was not collected and the proper chain of custody not maintained when the body was moved. Instead, the authorities asked the mother to turn them over when she was at the funeral home.

18. The petitioners allege that because the Public Prosecutor's Office did not heed her request, Mrs. Franco, on her own initiative and at her own expense, obtained from the cell phone company information on the outgoing calls from her daughter's cell phone and sent them to the authorities on January 30, 2002, again asking that they investigate the cell phone calls. The petitioners contend that on June 20, 2005, which was three years later, a report was sent to the Public Prosecutor's Office containing an analysis of the incoming and outgoing calls on the victim's cell phone; it was noted that in the moments just prior to her disappearance, there was communication between the victim and possible suspects.

19. As for the information supplied by the anonymous informant, the petitioners contend that when the investigators first went to the address he gave them, all they did was "outside surveillance of house;" on that occasion "the authorities took no action to enter the property; had they done so, they might have caught those responsible for the crime."

20. The petitioners further maintain that it was not until July 8, 2003 that there was a search of the property where the vehicle that, according to the anonymous informant, allegedly had been used to move the body of the alleged victim was supposed to be found. Moreover, the petitioners report that said search was made at the wrong address, since the address given by the anonymous informant was *6ta Calle 5-24 Colonia Monserrat en la zona 7* [6th Street 5-24 Colonia Monserrat in Zone 7] and the search was carried out at *6 Calle 5-24 de la zona 3* [6th Street 5-24 of Zone 3] in Guatemala City. Consequently, the search turned up nothing. Furthermore, although the search report states that a woman was found at the property, it does not indicate whether interviews were conducted that were useful to the investigation.

21. The petitioners contend that the State has not taken the necessary measures to locate one of the main suspects, even though he has been named as a principal suspect. They contend that all the authorities did was to ask the suspect's employer not to fire him from the *Confederación Deportiva Autónoma de Guatemala* [Autonomous Sporting Confederation of Guatemala] until the person responsible for the alleged victim's death was identified. The petitioners contend that on February 28, 2002, a possible witness provided information to the Bureau of Criminal Investigations of the Public Prosecutor's Office. That information included a description of the man who was with the victim on the day of her disappearance.

22. The petitioners also contend that the investigation into the case was needlessly delayed for nine months because of a competing jurisdiction dispute that began on March 11, 2002 and ended with a ruling from the Supreme Court on November 21, 2002, which declared that the court with jurisdiction in the matter was the First Criminal Court of First Instance of the Municipality of Mixco, which is why the case was referred to the jurisdiction of Mixco on December 11, 2002.

23. The petitioners also maintain that the investigative corps has endeavored to discredit the victim and her family; the case file shows that the authorities were more interested in investigating details about María Isabel Véliz Franco's reputation than about investigating the events that led to her death. According to the information supplied by the petitioners, the Public Prosecutor's Office issued a report on February 20, 2002, containing the "findings of the preliminaries of the investigation of María Isabel Véliz Franco," in which pejorative comments against her are made. For example, it comments that the girl's nickname was "*La Loca*" [the crazy one]. The petitioners maintain that the report concludes that the alleged victim was promiscuous, involved with gangs, frequented discotheques, had many boyfriends, dressed provocatively and took drugs. It also wrote that María Isabel dressed in a provocative manner, that her style of dress and clothing did not match her economic means and that "... admirers or clients have given her various gifts (which her mother knew), which leads one to suspect that, given María Isabel's personality, both she and her mother were interested in obtaining some advantage from admirers..."

The report also states that the victim's mother was negligent in supervising her daughter. The petitioners also observe that the authorities have told Mrs. Rosa Elvira Franco Sandoval de Véliz that her daughter was a "tart." In short, the insults and humiliation, the petitioners allege, were done directly by the authorities who investigated the case; in the statements that María Isabel's friends made, such comments were made at the prompting of the authorities.

24. The petitioners add that the killing of women in Guatemala and the impunity that attends it are not isolated incidents; instead they are an accurate and telling reflection of a pattern of gender violence. They state that gender discrimination has been an obstacle in the investigation of this case and that the facts recounted must be examined in the context of that pattern. To make their point, they observe that according to the Office of the Human Rights Ombudsperson, between 2001 and 2005 over 2,200 women and girls were murdered in Guatemala, and that figure is on the rise. They also point out that according to the Office of the Human Rights Ombudsperson, as of January 2005 only 9% of these cases had been investigated. Citing a report done by Amnesty International, the petitioners allege that as of June 2006, the more than 600 cases of femicide reported in 2006 had resulted in only two convictions. They mention the fact that Amnesty International maintained that from the attitude of the state agents toward these cases, one is left with the impression that a woman's murder is unimportant and not worth a deep and thorough investigation. This is largely due to prejudices and rigid stereotypes about gender roles that factor into the thinking of state agents when they conduct the investigations. Hence, gender discrimination is itself an obstacle in the investigative process.

25. As for the way in which these murders of women are committed, the petitioners point out that many of them are exceptionally brutal; many female victims have been raped, mutilated and dismembered. The petitioners observe that although these crimes are happening within a society in which violence is a structural problem, femicide in Guatemala is unique in some respects, as it is a phenomenon occurring within a patriarchal social organization, in which the murderers choose their victims for gender-related reasons.

26. The petitioners maintain that since approval of the admissibility report, the State has confined itself to submitting "vague and imprecise reports" that contain no specific information regarding lines or leads in the investigation; no explanations are given as to why evidence was not taken that was vital to solving the crime, or why the State was negligent in conducting the forensic examination of the body. They also maintain that the State confines itself to two specific aspects of the petitioners' observations, without indicating what other procedures and measures it will take to get at the truth about what happened. They also contend that the State has shown nothing to indicate that there was ever any real method to its investigation, since it has said nothing about whether the investigation was pursuing a theory about what happened or whether its theory changed. The petitioners also allege that the change in the prosecutors assigned to the case, a fact acknowledged by the State, encumbered the State's ability to pursue a coherent line of investigation and, in the end, delayed the investigation.

27. The petitioners have informed the Commission that in addition to María Isabel Véliz Franco, the following persons also had their rights violated and are therefore victims in this case: Mrs. Rosa Elvira Franco Sandoval (mother), Leonel Enrique Véliz Franco (brother), José Roberto Franco (brother), Cruz Elvira Sandoval Polanco de Franco (grandmother, died in April 2011), and Roberto Franco Pérez (grandfather, died in 2004).

B. The State

28. The State acknowledged to the IACHR that it was at fault for the failure to pursue the investigation into the death of María Isabel Véliz Franco with the necessary due diligence, specifically its failure to have certain forensic tests done on the body, the delay in the investigation

caused by the conflict of jurisdiction, and for not having taken an effective precautionary measure to ensure the presence of Osbel Airoso as a suspect in the murder.⁶

29. Nevertheless, the State denies a number of the petitioners' claims. It makes particular mention of their claim that there was no follow-up of the telephone call made by an anonymous informant in which he provided information about the murder. It gives its assurances that a search was conducted at the address given by the anonymous informant and there was no mistake made about the address where the search was conducted, since 6th Street 5-24 in Colonia Nueva Monserrat is located in zone 3 of the neighboring municipality of Mixco and not in zone 7 of Guatemala City, as was mistakenly reported. In this connection, the State asserts that based on the information contained in the January 15, 2002 report, surveillance began of the residence located on 6th Street 5-24, Colonia Nueva Monserrat, Zone 3 of Mixco, and no vehicle matching the description given was seen. The State points out that on December 20, 2001, the Mixco Property Registration and Survey Department was asked to provide a report on the owner of that property; on January 8, 2002, investigators went back to the property to get more information about the owner.

30. The State also claims that surveillance at the indicated address began as soon as the anonymous call was received; PNC agents entered the residence, spoke with the persons living there and requested information from the Office of the Superintendent of Tax Administration (SAT) concerning vehicles registered in the name of the person who was the owner of the property in question. There was a diskette and a list of vehicle license plates; however, based on the information supplied by the SAT, it was determined that on the date of the crime no vehicle was registered that fit the description given by the anonymous informant. The State also observes that the system for identifying the source of calls received on the 110 line of the National Civil Police was not in place until November 3, 2005; hence, "in 2001, concrete data on the origin of calls could not be obtained since the caller I.D. system was not yet installed."

31. The State also contends that there was no unwarranted delay in conducting the visual inspection at the vacant lot where the alleged victim's body was found. It states that three visual inspections of the site were done, the first of which was on December 18, 2001, the day following the anonymous call reporting the location of the body. The other visual inspections at the crime scene were done on December 19, 2002 and June 18, 2003, "since the investigation has been assigned to a number of different prosecutors, each of which has felt compelled to get a first-hand look at the site where the victim's body was found."⁷ The State also alleges that a PNC helicopter overflew the scene, "which was very helpful with the respective documentation."

32. The State contends that in this case, as in many others happening in Guatemala, while the investigations do not turn up positive results because of a lack of physical and scientific evidence, the Public Prosecutor's Office has coordinated with the PNC's Criminal Investigation Service and with the Bureau of Criminal Investigations to obtain as much information as possible to find the guilty parties. It also pointed out that a witness in the case had allegedly been located (the State does not say when), but they were in talks with him to get him to join the Witness Protection Program. According to the State, the failure to produce positive results has not been for lack of determination. It maintains that a probing investigation of the case has been conducted through the Public Prosecutor's Office, to find the party responsible for the "crimes of the kidnapping and murder" of María Isabel Véliz Franco.

⁶ The State's communication of August 12, 2009; IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

⁷ The State's note of November 9, 2007.

33. The State contends that although certain forensic tests were not done on the alleged victim's body to determine the condition and characteristics of her murder, the following forensic work was done: an autopsy study, ultraviolet light tests and the acid phosphatase test, which discovered the presence of blood and hairs but no semen. As for the hairs, the State observes that comparison tests cannot be made because no suspect has been identified.

34. On the subject of the calls made from the alleged victim's cell phone, the State alleges that it ordered the list of those calls from the telecommunications company back in March 2002. The State maintains that the case file contains (i) a systematized report with the incidents of incoming and outgoing calls, and how long the calls lasted, and (ii) a list supplied by the telecommunications company showing the calls received and made on the cell phone since December 15, 2001. As for the slow pace in locating the persons who called the victim's cell phone, the State maintains that "this measure depends on the information obtained about the residence where these people are located and often is complicated by a change of address; so, the change of address has to be investigated, which can cause some delay."⁸

35. As for the identification and location of the original suspect in the murder, the State contends that he made a statement to the Public Prosecutor's Office on April 15, 2002. The State alleges that at that time, it had a witness "behind a window," who said that "the person was dark-skinned and had tattoos, and that the suspect was definitely not that person."⁹ The original suspect was called in on repeated occasions thereafter, and never appeared to make a statement. The State further contends that one witness provided a quick photo of the person who went to meet María Isabel at the "Taxi" boutique on the day of her disappearance and whose features did not match the physical features of the original suspect.

36. As for the alleged character assassination of Rosa Elvira Franco and the alleged victim, the State denies those claims. The State contends "that such a claim is irresponsible, since the investigators interviewed persons who were acquaintances of the deceased girl; they were the ones who described how the victim conducted herself; this was never an opinion invented by the authorities of this institution."¹⁰ As for the supposed insults to Rosa Elvira Franco, the State is asking for more particulars in order to be able to conduct an investigation into the matter.

IV. ESTABLISHED FACTS

37. The Commission will now sum up the facts that have been established in the instant case.

38. At 4:00 p.m. on December 17, 2001, Rosa Elvira Franco Sandoval came to the Public Prosecutor's Office to report the disappearance of her daughter, María Isabel Véliz Franco, age 15.¹¹ In that statement she said that on December 16, 2001, her daughter left the house at 8:00 a.m. headed for her job at the "Almacén Taxi". She was to have been home by 8:00 p.m. that day, but never returned. Rosa Elvira Franco Sandoval stated that on December 17, she went to her daughter's workplace to look for her. A friend of her daughter's told her that on December 16,

⁸ The State's note of November 9, 2007.

⁹ The State's communication of July 23, 2007.

¹⁰ The State's communication of September 12, 2007.

¹¹ Annex 1. Complaint that Rosa Elvira Franco Sandoval filed with the Public Prosecutor's Office on December 17, 2001. Attachment to the State's communication of September 25, 2008.

2001, at around 7:00 p.m., a rough-looking fellow asked for her and then waited for her; presumably the two left together.¹²

39. The Commission observes that the court file supplied by both parties contains no record of efforts to find the victim between the time the complaint was filed at 4:00 p.m. on December 17, 2001, and the time when her body was found at 2:00 p.m. on December 18, 2001.

40. On December 18, 2001, police officers arrived at the place indicated by the 16th precinct's central dispatch service to check out a report of a corpse.¹³ At 2:15 p.m., there in a vacant lot located on 21st Avenue, facing number 4-48, Zone 8 of Mixco, San Cristóbal II, the body of María Isabel Véliz Franco was discovered. She was identified as "XX" because she had no identification papers on her person. The police report indicated that at 2:45 p.m., together with the representative from the Public Prosecutor's Office, a record of the body's discovery was made. The following are excerpts from the report:

[...] the victim's face was covered with a green towel and a black towel; there was a brown plastic tie around her neck; the head was covered in a black-plastic 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 victim's side, the legs were extended, and the victim was lying face down [...] PERSONAL FEATURES: dark skin, oval face, broad forehead, eyes closed, thick eyebrows, snub nose, large mouth, thick lips, brown curly hair, height 1.6 meters, regular complexion, approximately 18 years old; CLOTHING: blue canvas trousers, short-sleeved black cotton blouse brand Bobil Shirr; white underpants with purple figures; white socks, black leather shoes, beige bra. ITEMS FOUND: two semi-plated rings, two plated rings, one leather bracelet with purple and orange beads, one 25-centavo coin, one yellow chain. VICTIM PRESENTS 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 deputy prosecutor [...]. At 3:20 p.m. the homicide unit arrived on the scene, commanded [...] and [illegible] of Visual Inspections for [illegible] fingerprinting [...]¹⁴

41. The report of the Deputy Prosecutor who appeared at the scene of the events stated the following:

The body is that of a female who could not be identified because she did not have on her person any identification document [...] the body shows signs of strangulation with a black plastic cord around the neck; in the upper portion of the cranium is a wound; the body also has a cut to the upper part of the ear, possibly caused by a knife; large amounts of food are in the mouth and nose; the body has bite marks in the upper extremities; the face was covered with one green towel and one black one [...] POSITION OF THE BODY: the body is lying flat, with the head facing west, the legs east; the left and right arms are lying alongside the body, the legs are extended, and the body is lying face down [...]¹⁵

¹² Annex 1. Complaint that Rosa Elvira Franco Sandoval filed with the Public Prosecutor's Office on December 17, 2001. Attachment to the State's communication of September 25, 2008.

¹³ Annex 2. Memorandum 1,131-2001 dated December 18, 2001, Report from Police Officer Jorge Martín Ortiz, Chief of Substation 1651, addressed to the Deputy Prosecutor in the Public Prosecutor's Office for the Municipality of Mixco. Attachment to the State's communication of September 25, 2008.

¹⁴ Annex 2. Memorandum 1,131-2001 dated December 18, 2001, Report from Police Officer Jorge Martín Ortiz, Chief of Substation 1651, addressed to the Deputy Prosecutor in the Public Prosecutor's Office for the Municipality of Mixco. Attachment to the State's communication of September 25, 2008.

¹⁵ Annex 3. Report from Iliana Elizabeth Girón Delgado, Deputy Prosecutor I, Mixco Municipal Prosecutor's Office, December 18, 2001. Attachment to the State's communication of September 25, 2008.

42. The document transmitting the body to the forensic physician stated that “the deceased has bite marks on the upper extremities, a wound to the occipital region of the cranium and another on the ear, illegible –presumably with a knife. It shows signs of strangulation using a cord.”¹⁶

43. As the case file shows, the authorities themselves determined that the crime scene was processed and contaminated at the time of its inspection:

At the time the scene was inspected, which had already been contaminated, 25 centimeters southwest of the deceased’s head was a black nylon bag with figures of a white kangaroo. As the Deputy Prosecutor stated, the bag had been on the deceased’s face. Alongside the head of the deceased were two towels: one green and a small black one; beneath the inferior extremities was a large, transparent plastic bag.¹⁷

44. The case file contains a report prepared by the PNC on the 110 call system, which shows that at 10:30 p.m. on December 18, 2001, a call was received from an anonymous informant who claimed to be a messenger and that at night on December 17, 2001, on 6th 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:

The informant said he was a messenger and that last night he was in the city of San Cristóbal de Mixco and noticed a beige Mazda 232; he only managed to copy the first two digits on the plate, which were 78. A female got out of the car. She was dressed in black. She took a black bag out of the trunk, and quickly threw it into the bushes. The way they left so fast was suspicious, so the informant followed them. He saw they drove the vehicle in question up to a house located at the address in question. But today, on *Notisiete* at 11:00 p.m., he saw that the bag they threw into the bushes was not trash; it was the body of a woman. That’s why he decided to call this section to report what he saw.¹⁸

45. Rosa Elvira Franco, mother of María Isabel Véliz Franco, identified the body. When she saw the news on television about the discovery, she went to the morgue to find out whether the body that had been found was her daughter’s.¹⁹

46. Concerning the investigation into the death and the circumstances surrounding it, the Autopsy Report dated February 13, 2002, found the cause of death to be: “Epidural hematoma resulting from a fourth-degree trauma to the cranium.”²⁰

47. The Commission’s file on this case contains an April 30, 2002 report by investigator Lucas Gerardo Jiménez Ruano, in which he writes that “unfortunately when the crime scene was processed at the time the body was removed, someone failed to ask that the autopsy include testing for drug use in order to determine whether she [the alleged victim] was drugged before she

¹⁶ Annex 4. Notice transferring the body of María Isabel Véliz Franco to the Forensic Physician for the autopsy, dated December 18, 2001, supplied by the petitioners in a communication dated April 25, 2007.

¹⁷ Annex 5. Visual inspection of the body, issued by Edwin Orlando Jiménez Castillo, dated December 18, 2001. Attachment to the State’s communication of September 25, 2008.

¹⁸ Annex 6. Confidential Information, 110 system, National Civil Police Report dated December 18, 2001. Attachment to the State’s communication of September 25, 2008.

¹⁹ Annex 7. Statement from aggrieved party Rosa Elvira Franco Sandoval, dated January 14, 2002. Attachment to the State’s communication of September 25, 2008.

²⁰ Annex 8. Autopsy Report No. 2865/2001, dated February 13, 2002, issued by the Judicial Branch’s Forensic Medical Services, addressed to Iliana Elizabeth Giron Delgado, Deputy Prosecutor. Attachment to the State’s communication of September 25, 2008.

was killed and tests to establish whether she had been raped.”²¹ Here, the IACHR observes that the victim’s body was not examined to determine whether she had been raped.

48. The Commission’s file on this case contains a February 27, 2006 communication from the Office of the Prosecutor to Forensic Physician Pedro Barreno, in which it asks the reasons why the Deputy Prosecutor did not request that the following tests be done on the victim: “the vaginal and anal swab test, the test for nail scrapings; the question is, if for some reason the Deputy Prosecutor forgot to request these tests, would you run such tests automatically?”²² In response to the question, the Forensic Medical Service answered that those tests are not done automatically.²³

49. The clothing the victim was wearing and the towels found at the scene of the crime were handed over to the victim’s mother. Later, the authorities asked to have them back for testing²⁴ and they were packed up at “Mancilla Funeral Home S.A.”. This evidence was sent to the Laboratory at the Scientific Technical Department of the Public Prosecutor’s Office for analysis:²⁵

Item of evidence No. N/N: Blue canvas trousers with two rear pockets and three front pockets; one of the three front pockets is small [...] The trousers have what may be vomit stains and what may be blood stains.

Item of evidence No. N/N: A blouse [...] The lower portion of the blouse is ripped and the blouse has stains on the front from what may turn out to be semen, possible blood stains, and some hairs.

Item of evidence No. N/N: A green towel [...] The towel has stains of what appears to be blood, possibly vomit stains and other hairs.

Item of evidence No. N/N: A dark blue towel [...] The towel is heavily stained with what may turn out to be blood, and some hairs.

Item of evidence No. N/N: White underpants [...] The lower part of the underpants is ripped, stained with what may be blood, and some hairs.

Item of evidence No. N/N: A beige bra [...] The bra contains stains, possibly from blood, and various hairs.

Item of evidence No. N/N: A pair of long white socks, with stains possibly from blood, stains possibly from vomit, and some hairs.

[...]

50. The items were tested for blood and semen, and the hairs were examined. The tests turned out negative for the presence of semen, but blood was found on several articles of

²¹ Annex 9. Report of Lucas Gerardo Jiménez Ruano, Technician in Criminal Investigations I, dated April 30, 2002, sent to Prosecutor Cándido Francisco Asencio Bremer. Attachment to the State’s communication of September 25, 2008.

²² Annex 10. Communication dated February 27, 2006, MP008/200216242, sent to Pedro Barreno, Forensic Physician in the Judicial Branch, Department of Guatemala, signed by Attorney Sonia Maribel Salguero Herrera, Deputy Prosecutor I of the Public Prosecutor’s Office. Attachment to the petitioners’ communication of April 25, 2007.

²³ Annex 11. Communication dated March 9, 2006, I- #. Amp. Nec. 2865-2001.Of.2º, addressed to Attorney Sonia Maribel Salguero Herrera, Deputy Prosecutor I, Mixco Municipal Prosecutor’s Office, Ref. MP008/2002/16242, signed by Dr. Rigoberto Pedro Barreno, Forensic Physician, Department of Guatemala. Attachment to the petitioners’ communication of April 25, 2007.

²⁴ Annex 12. Memorandum No. 2727-01/SIC dated December 19, 2001, from Santos Estuardo García Donis, Deputy Prosecutor in the Public Prosecutor’s Office, to the Office of Criminal Investigations, Public Prosecutor’s Office. Attachment to the State’s communication of September 25, 2008.

²⁵ Annex 13. Report 3321-2001 dated December 29, 2001, issued by Marleny Magdaly Lopez, Technician in Criminal Investigations, addressed to Santos Estuardo García, Deputy Prosecutor in Unit 32 of the Public Prosecutor’s Office. Document supplied by the petitioners in a communication dated April 25, 2007. Attachment to the State’s communication of September 25, 2008.

clothing.²⁶ The analysis of the blood found in item of evidence 1 (canvas trousers), 5 (white underpants) and 6 (beige bra) was type "B" blood, while the blood found on item of evidence 3 (green towel) was type "A".²⁷ The victim's blood type was AB.²⁸ The IACHR observes that it has nothing in the record of the case to show that the hairs found on the victim's body were analyzed.

51. Among the investigative measures taken as a result of the body's discovery, the police investigation report indicates that on January 18, 2002, investigators went to the house that the anonymous informant reported as being the house where the vehicle from which the alleged victim's body had been removed was parked. Investigators observed no vehicle that fit the description given by the anonymous informant.²⁹

52. The case file shows that on July 8, 2003, a search was done of the property at 6th Street 5-24, Colonia Nueva Monserrat, Zone 3 of the Municipality of Mixco. That search did not find the beige Mazda 323, with a license plate beginning with the numbers 78 or any other evidence associated with the death of María Isabel Véliz Franco.³⁰

53. On May 17, 2002, the prosecutor from Prosecution Unit 32 of the Metropolitan Guatemala City Prosecutor's Office declined to take the case based on the fact that on March 11, 2002, the Eighth Criminal Court of First Instance had declined jurisdiction in the case, arguing that the crime was committed in the municipality of Mixco. The case files were sent to Mixco's First Criminal Court of First Instance for Drug Trafficking and Related Offenses.³¹

54. On June 3, 2002, the case was assigned to Edgar Romero Arana in Prosecution Unit 5 of the Mixco Municipal Prosecutor's Office.³² The case file contains a memorandum dated September 16, 2002, from the Deputy Prosecutor in Mixco Prosecution Unit 5, Edgar Romeo Arana, to the Deputy Executive Secretary of the Public Prosecutor's Office in which he states that the investigation was not continued because his office received instructions from above not to pursue the investigation because it was not theirs and that when the judge decided the jurisdiction issue, the case would be sent to Mixco Prosecution Unit 32. He said that he was rebuked for having interacted with the victim's mother when she came to exchange information on the case.³³

²⁶ Annex 14. Report BIOL-01-1512 dated January 7, 2002, issued by the Bureau of Criminal Investigations. Attachment to the petitioners' communication of April 25, 2007.

²⁷ Annex 14. Report BIOL-01-1512 dated January 4, 2002, issued by the Bureau of Criminal Investigations. Attachment to the State's communication of June 25, 2007.

²⁸ Annex 15. Expert Report BIOL-01-1510 dated January 4, 2002, issued by the Bureau of Criminal Investigations. Attachment to the State's communication of June 25, 2007.

²⁹ Annex 16. Undated police investigation report, signed by investigator Julián Pérez Pérez and Police Officer III Hugo Leonel Motta Gómez. Attachment to the State's communication of June 25, 2007.

³⁰ Annex 17. Memorandum MP008/2002/16242 dated July 8, 2003, from Iliana Elizabeth Giron Delgado, Deputy Prosecutor I. Attachment to the State's communication of June 25, 2007.

³¹ Annex 18. Memorandum C-3100-2002 Of. 2do. Issued by the Eighth Criminal Court of First Instance, dated March 11, 2002. Attachment to the State's communication of June 25, 2007.

³² Annex 19. Memorandum dated September 16, 2002, from Edgar Romero Arana, Deputy Prosecutor in Unit 5 of the Public Prosecutor's Office, addressed to Rubén Eliu Higueros Girón, Deputy Executive Secretary of the Public Prosecutor's Office. Document supplied by the petitioners on April 25, 2007.

³³ Annex 19. Memorandum dated September 16, 2002, from Edgar Romero Arana, Deputy Prosecutor in Unit 5 of the Public Prosecutor's Office, addressed to Rubén Eliu Higueros Girón, Deputy Executive Secretary of the Public Prosecutor's Office. Document supplied by the petitioners on April 25, 2007.

55. The First Criminal Court of First Instance officially declined jurisdiction on September 2, 2002³⁴ and referred the case file to the Guatemala City Eighth Court of First Instance, which brought the question of the competing jurisdictions to the Supreme Court on September 25, 2002.³⁵ On November 21, 2002, the Supreme Court ruled that the First Criminal Court of First Instance was the forum with jurisdiction over the case.³⁶

56. Various irregularities in the conduct of the investigation into this case were documented by the Office of the Human Rights Ombudsperson of Guatemala which, in exercise of its functions, launched an investigation into the case as a result of the complaint filed by Mrs. Rosa Elvira Franco concerning violation of due process by the Prosecutor's Office. Specifically, Mrs. Franco argued that the investigation process had not moved forward and was at a standstill:³⁷

Having examined the complaint, the measures taken and the reports received, it was established that the Public Prosecutor's Office did not adhere to the principle of objectivity in its exercise of its authority in respect of government investigation and prosecution of crime, within the time periods that the law prescribes. This points up the State's inability to ensure to the inhabitants of Guatemala their rights to life, to personal liberty, to justice, to security, to peace and to fulfillment, as required under the Constitution, inasmuch as the general population lives without any security; no authority is capable of establishing the material and intellectual authorship of the criminal acts that happen every day.³⁸

57. As for the incoming and outgoing calls on María Isabel Véliz Franco's cell phone, the case file contains a request for a list of those calls. The request came from the Judicial Branch and was sent to *Telecomunicaciones de Guatemala* on April 1, 2002.³⁹ The telephone company produced that information on May 9, 2002.⁴⁰ On September 4, 2002, that information was forwarded to the investigator on the case for analysis.⁴¹ The case file contains a number of requests resulting from the analysis of the calls. The Criminal Investigations Technician sent the report to the Deputy Prosecutor on June 8, 2005.⁴²

³⁴ Annex 20. Case No. 105-2002/Of. 6°. Issued by the First Criminal Court of First Instance, September 2, 2002. Document supplied by the State on June 25, 2007.

³⁵ Annex 21. Memorandum C-3100-2002 Of 2°. Issued by the Eighth Criminal Court of First Instance, dated March 11, 2002. Attachment to the State's communication of June 25, 2007.

³⁶ Annex 22. Jurisdiction Question No. 93-2002, Ruling issued by the Supreme Court on November 21, 2002. Document supplied by the State on June 25, 2007.

³⁷ Annex 23. Report of the Human Rights Ombudsperson, dated November 2, 2004. Ref. Exp. Ord. Gua. 41-2003/DI

³⁸ Annex 23. Report of the Human Rights Ombudsperson, dated November 2, 2004. Ref. Exp. Ord. Gua. 41-2003/DI.

³⁹ Annex 24. Request from Judge Jose Arturo Rodas, dated April 1, 2002, asking *Telecomunicaciones de Guatemala* for a list of calls. Document supplied by the petitioners on April 25, 2007.

⁴⁰ Annex 25. Letter from the Telgua Company to Unit No. 2 of the Metropolitan District Prosecutor's Office concerning the April 1, 2002 request for a list of calls. Document supplied by the petitioners on April 25, 2007.

⁴¹ Annex 26. Memorandum dated September 4, 2002, from Santos Estuardo García to Lucas Gerardo Jiménez, Investigator. Document supplied by the petitioners on April 25, 2007.

⁴² Annex 27. Memorandum DICRI 1678-2005 dated June 8, 2005, from Jaime David Subuyuj Zuleta, Criminal Investigations Technician, to Rubén Gabriel Rivera Herrera, Deputy Prosecutor. Document supplied by the State on June 25, 2007..

The context: violence against women and girls.

58. In the last 12 years, the IACHR and a host of other international agencies, nongovernmental organizations and national agencies, have voiced concern over the State's lack of due diligence in preventing, investigating and punishing acts of violence against women and the escalation of that violence in Guatemala.⁴³

59. In its Fifth Report on the Situation of Human Rights in Guatemala, the IACHR said that violence against women was a severe problem in Guatemala.⁴⁴ In that report, the IACHR mentioned the increase in the number of complaints received of rape and intrafamily violence in 1999, by comparison to previous years.⁴⁵ It also made reference to reports indicating that gender-based violence was among the main causes of death and disability among women between the ages of 15 and 44.⁴⁶

60. In that report, the IACHR also wrote that Guatemala's response to intrafamily violence revealed a number of specific areas in which additional measures needed to be taken to effectively protect the victims' basic rights.⁴⁷ One of the reasons the Commission cited to explain why the response to gender violence in Guatemala was not what it should be, was that clear information revealing just how widespread the problem was in the country was lacking.⁴⁸ In 2003, the IACHR again observed that the difficulties in obtaining precise figures notwithstanding, it was clear that there had been an increase in the number of women murdered in which the crime was not properly investigated and the perpetrator punished.⁴⁹ According to the figures that the National

⁴³ IACHR, Press Release No. 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004; Committee on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GUA/CO/6, June 2, 2006, Original: English, 35th session, May 15 to June 2, 2006, paragraph 23, available online at <http://www.un.org/womenwatch/daw/cedaw/35sess.htm>; Report "Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, Report of the United Nations Special Rapporteur on violence against women, Yakin Ertürk on the Mission to Guatemala, February 8 to 14, 2004; Guatemala's Human Rights Ombudsperson, Compendium titled "*Muertes Violentas de Mujeres 2003 to 2005*" [Violent Deaths Among Women, 2003 to 2005], p. 92, available online [in Spanish] at http://www.pdh.org.gt/files/inf_especiales/muerte_mujeres03-05.pdf; Amnesty International, "Guatemala: No protection, no justice: killings of women (an update)", AI AMR 34/019/2006, 2006; Amnesty International, "Guatemala: No protection, no justice: killings of women", AI AMR 34/017/2005, June 2005. International Federation of Human Rights (*Federación Internacional de Derechos Humanos, FIDH*), International Investigative Mission Report: Femicide in Mexico and Guatemala (*Informe: Misión Internacional de Investigación: El Femicidio en México y Guatemala*), no. 446/3 April 2006.

⁴⁴ IACHR, Fifth Report on the Situation of Human Rights in Guatemala, April 6, 2001, OEA/Ser.L/V/II.111, Doc. 21 rev., paragraph 41.

⁴⁵ Figures from the Public Prosecutor's office indicate that 1400 complaints of intrafamily violence had been received in 1999, and almost 600 of rape. In 1998, the figures were just over 600 in the case of intrafamily violence and slightly over 400 in the case of rape.

⁴⁶ IACHR, Fifth Report on the Situation of Human Rights in Guatemala, April 6, 2001, OEA/Ser.L/V/II.111, Doc. 21 rev., paragraph 41.

⁴⁷ In that report, the IACHR documented the fact that the organization MINUGUA conducted an in-depth study of the State's response to intrafamily violence and rape in 1999. When it examined how the State personnel assigned to receiving complaints of intrafamily violence responded, MINUGUA identified a tendency among many, particularly the police, to blame the victim. One agent was quoted as saying that frequently "the main cause of intrafamily violence is the woman's behavior."

⁴⁸ IACHR, Fifth Report on the Situation of Human Rights in Guatemala, April 6, 2001, OEA/Ser.L/V/II.111, Doc. 21 rev., paragraph 47. In the Report the Commission underscored the fact that the director of the "Domestic Violence" Program of the United Nations' Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) estimated that half of all Guatemalan women suffer some form of violence, mainly physical. One representative from the Network to Combat Violence against Women in Guatemala - a nongovernmental organization- estimated that a woman is subjected to violence every 46 minutes.

⁴⁹ IACHR, 2003 Report on the Situation of Human Rights in Guatemala, paragraph 296.

Police of Guatemala supplied to the Commission,⁵⁰ in 2001, 303 women were reported murdered; in 2002 the figure was 317; in 2003 the figure had climbed to 383; in 2004 it rose to 509 and, in 2005, 552 murders of women were reported.⁵¹

61. In 2004, the IACHR's Rapporteurship on the Rights of Women made a working visit to Guatemala and observed that several sources had indicated that the degree of violence and cruelty inflicted on the bodies of many female victims had intensified. The Rapporteurship reported having received consistent reports of cases where women were murdered "to set an example," in which the "abuse reflected by the state of the victim's body and the areas in which the corpses were left, is designed to send a message of terror and intimidation."⁵² The Rapporteur observed that many of these cases of violence against women are never punished, a fact acknowledged by civil society organizations and by State authorities.⁵³

62. A number of international and national organizations have spoken out about the seriousness of the problem of violence against women in Guatemala and the general impunity that the perpetrators of these acts enjoy.⁵⁴ The UN Committee on the Elimination of All Forms of Discrimination against Women wrote that:

The Committee is deeply concerned about the continuing and increasing cases of disappearances, rape, torture and murders of women, the engrained culture of impunity for such crimes, and the gender-based nature of the crimes committed, which constitute grave and systematic violations of women's human rights. It is concerned about the insufficient efforts to conduct thorough investigations, the absence of protection measures for witnesses,

⁵⁰ The IACHR compiled information on the murder rate in Guatemala in which the victim is female through a working visit conducted from September 12 through 18, 2004, and a follow-up visit by the IACHR Rapporteur for the Rights of Women, Víctor Abramovich, from July 14 through 17, 2006, as part of the activities conducted in Guatemala during the Commission's 125th special session.

⁵¹ According to those figures, the number of women murdered between January and June 2006 was 303. National Police of Guatemala. Power Point presentation on Femicide, 2005-2006, June 2006.

⁵² IACHR, Press Release No. 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004, available online at <http://www.cidh.oas.org/Comunicados/English/2004/20.04.htm>. Concerning the differences in the murder rates among women as opposed to men, Guatemala's Human Rights Ombudsperson said that in almost 80% of the cases in which men are killed, the instrument used is one that does not necessarily involve direct physical contact between the victim and the perpetrator, as for example in the case of a firearm. However, this indirect contact only happens in 69% of the cases in which women are murdered; the remaining 31% are killed with bladed instruments, blunt objects and/or by strangulation. The Human Rights Ombudsperson concluded that by using these forms of violence, the perpetrator would seem to want to make a statement about his physical superiority over the female victim. Human Rights Ombudsperson, Guatemala, Power Point presentation, Guatemala, March 2006, available [in Spanish] online at: http://www.pdh.org.gt/files/inf_especiales/presentacion_muertemujeres03-05.pdf.

⁵³ IACHR, Press Release No. 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004, paragraph 17.

⁵⁴ IACHR, Press Release No. 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004; Committee on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GUA/CO/6, June 2, 2006, Original: English, 35th session, May 15 to June 2, 2006, paragraph 23, available online at <http://www.un.org/womenwatch/daw/cedaw/35sess.htm>; Report "Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, Report of the United Nations Special Rapporteur on violence against women, Yakin Ertürk on the Mission to Guatemala, February 8 to 14, 2004; Guatemala's Human Rights Ombudsperson, Compendium titled "*Muertes Violentas de Mujeres*", 2003 a 2005 p. 92. http://www.pdh.org.gt/files/inf_especiales/muerte_mujeres03-05.pdf; Amnesty International, "Guatemala: No protection, no justice: killings of women (an update)", AI AMR 34/019/2006, 2006; Amnesty International, "Guatemala: No protection, no justice: killings of women", AI AMR 34/017/2005, June 2005. International Federation of Human Rights (*Federación Internacional de Derechos Humanos, FIDH*), International Investigative Mission Report: Femicide in Mexico and Guatemala (*Informe: Misión Internacional de Investigación: El Femicidio en México y Guatemala*), No. 446/3 April 2006.

victims and victims' families and the lack of information and data regarding the cases, the causes of violence and the profiles of the victims.⁵⁵

63. With the alarming increase in the number of women murdered, after a visit to Guatemala the Office of the United Nations High Commissioner for Human Rights said that 'while expectations have been raised, they have rarely been matched by results. Insecurity and inequality are still rampant. This history of missed opportunities has created disenchantment in a people anxious for change.'⁵⁶

64. The nongovernmental organization Amnesty International pointed out that it had received reports of cases in which "police authorities had failed in their duty to take urgent action to prevent injury to women and girls believed to be at immediate risk."⁵⁷ Amnesty International wrote the following in this regard:

the state's failure to respond appropriately and effectively to emergency calls or reports of missing women engages its responsibility for their subsequent murders. The state must improve the ability of officers to respond to such calls, and those officers who fail to discharge their duties effectively must be held to account.⁵⁸

65. As for the measures undertaken by the State to address the problem of violence against women, a Law to Prevent, Punish and Eradicate Intrafamily Violence (Decree 97-96) was enacted in 1996; in 2000 and 2001, the legal framework was further expanded with the addition of the regulations for enforcement of the law and the creation of the Organ to Coordinate Prevention, Punishment and Eradication of Domestic Violence and Violence against Women (CONAPREVI), which is charged with coordinating the institutions active in this area.⁵⁹ The Presidential Secretariat of Women (SEPREM) was created by Government Agreement 200-2000. A National Policy for Guatemalan Women's Advancement and Development was also established, as was their Equal Opportunity Plan (2001-2006).⁶⁰ In 2005, the Commission to Address the Problem of Femicide was created. It is made up of representatives from the Attorney General's Office, the Public Prosecutor's Office, and the Office of the Human Rights Ombudsperson.⁶¹ On March 8, 2006, the

⁵⁵ Committee on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GUA/CO/6, June 2, 2006, Original: English, 35th session, May 15 to June 2, 2006, paragraph 23, available online at <http://www.un.org/womenwatch/daw/cedaw/35sess.htm> .

⁵⁶ Office of the United Nations High Commissioner for Human Rights. Press release on the official visit to Guatemala, May 27, 2006. Available [in Spanish] at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/C7F2A41A172BC438C125717D0056605A?opendocument>. [Translation ours].

⁵⁷ Amnesty International, "Guatemala: No protection, no justice: killings of women (an update)", AI AMR 34/019/2006, 2006.

⁵⁸ Amnesty International, "Guatemala: No protection, no justice: killings of women (an update)", AI AMR 34/019/2006, 2006.

⁵⁹ IACHR, Report on the Situation of Human Rights in Guatemala, 2003, paragraph 297. CONAPREVI was created on November 24, 2000 and installed on January 5, 2001. Its current mandate is based on the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against women – Convention of Belém do Pará, Article 13 of the Law to Prevent, Punish and Eradicate Intrafamily Violence and Article 17 of the Law against Femicide and Other Forms of Violence against Women.

⁶⁰ Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Seventh periodic report of States parties. Guatemala. January 7, 2008. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/204/71/PDF/N0820471.pdf?OpenElement> .

⁶¹ "The Commission includes representatives from the three branches of government, the Office of the Procurator-General, the Office of the Public Prosecutor and the Office of the Human Rights Procurator. The President of the Republic has appointed SEPREM to coordinate this effort. On 8 March 2006, the heads of the three government branches issued a joint statement recognizing the need to take a coordinated approach to the problem of femicide." Committee on the Elimination of Discrimination against Women. Continúa...

“Specific Commission to Address Femicide in Guatemala” was officially introduced.⁶² On October 6, 2006, the Supreme Court created the Women’s and Gender Analysis Unit.⁶³ On November 23, 2007, the Congress of the Republic adopted Resolution 15-2007, in which it condemned femicide in Guatemala.⁶⁴ Then, in 2008, the Law against Femicide and Other Forms of Violence against Women was approved.

66. The consensus here is that although that are a number of institutions working together to advance the cause of women, they have superimposed mandates and therefore weak state coordination and little in the way of funds to carry out their programs.⁶⁵

Partial acknowledgement of responsibility

67. The State acknowledged responsibility for the lack of due diligence in the investigation conducted into the death of María Isabel Véliz Franco, by virtue of its failure to conduct certain forensic tests on the body; the delay in the investigation caused by the dispute over jurisdiction in the case, and by its failure not to take an effective precautionary measure to ensure the presence of Osbel Airoso as a suspect in the murder.⁶⁶

68. In the hearing that the Commission held on the case, the State acknowledged “in principle” its blame for “various shortcomings and weaknesses throughout the investigation process,” but said that these were structural problems of the State.⁶⁷ It asserted that at the time the events occurred, there were no guidelines for the case’s investigation or criminal prosecution. The Public Prosecutor’s Office established those guidelines in 2006.⁶⁸

69. According to the State, failure to conduct the series of tests that were not done before the body was removed from the scene of the crime would be punishable today, as guidelines do now exist. It added that at the time, the tests and the autopsy were not done according to international standards, but that there are now guidelines in place for setting the course and theory of an investigation in practice. The State gives its assurances that all potential suspects named by

...continuation

of All Forms of Discrimination against Women, Pre-Session Working Group, Thirty-fifth session, 15 May-2 June 2006. Responses to the list of issues and questions for consideration of the sixth periodic report. Guatemala. CEDAW/C/GUA/Q/6/Add.1, p. 11.

⁶² Committee on the Elimination of Discrimination against Women. Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Seventh periodic report of States parties. Guatemala. January 7, 2008, paragraph 169.

⁶³ The purpose of this unit is to provide an institutional response to situations of social, economic, legal, political and cultural exclusion that women endure in efforts to get access to justice in Guatemala and to respond to the crisis of violence that the population is experiencing, with particular emphasis on violence against women. Paragraph 184.

⁶⁴ Congress of the Republic of Guatemala. News Bulletin, “Congress Condemns Acts of Violence against Women,” November 23, 2007, available [in Spanish] at http://www.congreso.gob.gt/gt/ver_noticia.asp?id=4472.

⁶⁵ See, Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights. Report of the High Commissioner for Human Rights on the situation of Human Rights in Guatemala, E/CN.4/2006/10/Add.1, February 1, 2006, paragraph 22; Gender Perspective: Violence against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum, Mission to Guatemala. E/CN.4/2005/72/Add.3, February 10, 2005.

⁶⁶ The State’s communication of August 12, 2009, Ref. P.1008-09-RDVC/LZ/eh

⁶⁷ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

⁶⁸ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

the petitioners have been investigated; in one case, a witness does not want to identify the persons that would presumably be involved.⁶⁹

70. As for the character assassination of the victim, it gave assurances that it was not the State that spread those comments and, from what they say, those comments do not appear in its reports. In other words, any deficiencies the case file may seem to have, like character assassination, are not a position of the State and have never been used by it as an argument.⁷⁰

71. The State acknowledged that there were measures that were either not done or not done on time, but nonetheless maintains that it was in constant contact with Mrs. Franco, which helped it build its plan of investigation.⁷¹

72. The IACHR will now proceed to determine whether the authorities acted with due diligence in investigating what happened to María Isabel Véliz Franco.

V. ANALYSIS OF LAW

A. Right to life (Article 4), in relation to Article 1(1) of the American Convention

73. Article 4(1) of the American Convention provides that “[e]very person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life.” The Inter-American Court has held that the right to life plays a fundamental role in the American Convention, as it is the condition *sine qua non* for the exercise of all other rights. The observance of Article 4, in relation to Article 1(1) of the American Convention, presupposes not only that no person may be deprived of his life arbitrarily (negative obligation), but also requires the States to adopt all appropriate measures to protect and preserve the right to life (positive obligation), pursuant to the obligation to ensure to all persons subject to its jurisdiction the full and free exercise of their rights.⁷²

74. The inter-American human rights system has affirmed the States’ obligation to act with due diligence in response to human rights violations.⁷³ This duty involves four obligations: the obligation to prevent, the obligation to investigate, the obligation to punish and the obligation to make reparations for human rights violations.⁷⁴ The Court has written the following in this regard:

This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.⁷⁵

⁶⁹ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

⁷⁰ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

⁷¹ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

⁷² I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 245.

⁷³ See I/A Court H.R., *Case Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 172.

⁷⁴ See I/A Court H.R., *Case Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 172.

⁷⁵ I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, paragraph 166.

75. The IACHR has held 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. This legal obligation pertains to the entire state institution,⁷⁶ and includes as well any obligations the State has to prevent and respond to actions of non-state actors and private parties.⁷⁷

76. Thus, the inter-American human rights system has asserted that the State's obligation to act with due diligence in cases of human rights violations also applies, under certain circumstances, to the actions of non-state actors, third parties or private parties. The Court has emphasized that:

[s]aid international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have *erga omnes* obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.⁷⁸

77. The Court has also written that:

a State cannot be responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature *erga omnes* of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the 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, omission or deed of an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered.⁷⁹

78. In order to determine whether the acts of third parties can be deemed violations for which the State bears international responsibility, the Court has cited the jurisprudence of the European Court, which suggests that a state can be held internationally responsible for violations committed by third parties when it is shown that the State knew of a real and immediate risk and failed to take reasonable measures to prevent it. The Inter-American Court cited the jurisprudence of the European Court, which is that:

⁷⁶ See, IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paragraph 128.

IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez et al.* (Mexico), March 9, 2007, paragraphs 247-255; I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 245.

⁷⁷ See, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez et al.* (Mexico), March 9, 2007, paragraphs 247-255.

⁷⁸ I/A Court H.R., *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134, paragraph 111.

⁷⁹ I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, paragraph 123.

Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see the *Osman* judgment [...], pp. 3159-60, § 116).⁸⁰

79. In the case of *María Da Penha v. Brazil*, the IACHR found that the State violated its obligation to act with due diligence to prevent, punish and eradicate the violence perpetrated against the victim, by not prosecuting, convicting and punishing the perpetrator for five years, despite the complaints lodged. The IACHR concluded that the violation was part of a “a general pattern of negligence and lack of effective action by the State” and hence constituted not only a failure to fulfill the obligation with respect to prosecution and conviction, but also the obligation to prevent these degrading practices.⁸¹

80. The Inter-American Court has written that in cases of violence against women, an obligation of strict due diligence arises with regard to reports of missing women, with respect to search operations during the first hours and days.⁸² This obligation of means is a more rigorous one and thus demands an immediate and effective response on the part of authorities when complaints of disappearances are filed, to adequately prevent the violence against women.⁸³ This includes an exhaustive search. It also requires that the officials in charge of receiving the missing persons reports have the capacity and the sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.⁸⁴ Above all, it is essential that police authorities, prosecutors and judicial officials take prompt action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may have been retained.⁸⁵ Adequate procedures should be in place for reporting disappearances, which should result in an immediate effective investigation. The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about her fate.⁸⁶

⁸⁰ European Court of Human Rights, *Kiliç v. Turkey*, Judgment of March 28, 2000, Application No. 22492/93, paragraphs 62 - 63; *Osman v. the United Kingdom*, Judgment of October 28, 1998, *Reports of Judgments and Decisions 1998-VIII*, paragraphs 115 - 116; I/A Court H.R., *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006. Series C No. 140, paragraph 124.

⁸¹ IACHR, Merits Report No. 54/01, *Maria Da Penha Fernandes (Brazil)*, April 16, 2001.

⁸² I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 283.

⁸³ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 285.

⁸⁴ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 285.

⁸⁵ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 283.

⁸⁶ I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 283.

81. The IACHR has also established that in cases involving violence against children, the State's duty to protect the right to life is particularly strict.⁸⁷ This stems, on the one hand, from the broadly-recognized international obligation to provide special protection to children, due to their physical and emotional development.⁸⁸ On the other, it is linked to the international recognition that the due diligence duty of States to protect and prevent violence has special connotations in the case of women, due to the discrimination they have historically faced as a group.⁸⁹ In other words, the State had an enhanced duty to protect the rights of María Isabel Véliz Franco because of her condition as a minor, and an obligation to adopt special measures of protection, prevention and guarantee.⁹⁰

82. The Court, for its part, held that the State must pay special attention to the needs and rights of victims who are girls who, as women, belong to a vulnerable group. It therefore concluded that the State has the obligation to adopt all positive measures necessary to ensure the rights of disappeared girls.⁹¹ Specifically, the State has the obligation to ensure that missing girls are found as soon as possible, once the next of kin 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 and, once their bodies are found, to conduct the investigations, and prosecute and punish those responsible effectively and promptly.⁹²

83. The United Nations Special Rapporteur on violence against women has written that based on the precedents forthcoming from the inter-American, European and universal human rights systems, and "on the basis of the practice and *opinio juris* [...], it can be concluded that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence."⁹³

84. The Inter-American Court has written that States should adopt comprehensive measures to comply with due diligence in cases of violence against women.⁹⁴ In particular, they should 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

⁸⁷ IACHR, Report No. 80/11, *Case 12.626, Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paragraph 129. See, IACHR, Report No.28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez et al. (Mexico)*, March 9, 2007, paragraphs 247-255; I/A Court H.R. *Case González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 245.

⁸⁸ IACHR, Report No. 80/11, *Case 12.626, Jessica Lenahan (Gonzales) et al. (United States)*, July 21, 2011, paragraph 129.

⁸⁹ IACHR, Report No. 80/11, *Case 12.626, Jessica Lenahan (Gonzales) et al. (United States)*, July 21, 2011, paragraph 129.

⁹⁰ IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez et al. (Mexico)*, March 9, 2007, paragraphs 247-255; I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 403.

⁹¹ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraphs 408- 409.

⁹² I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 410.

⁹³ Integration of the Human Rights of Women and the Gender Perspective: Violence against Women. The Due Diligence Standard as a Tool for the Elimination of Violence against Women. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. E/CN.4/2006/61, 2006, paragraph 29.

⁹⁴ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 258.

complaints.⁹⁵ The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can respond effectively in cases of violence against women.⁹⁶ The IACHR has written that the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. This should take into account that, in cases of violence against women, the States also have, in addition to the generic obligations established in the American Convention, an enhanced obligation since the Convention of Belém do Pará entered into force.

85. Moreover, the Court has established that the obligation of prevention encompasses all those measures of a legal, political, administrative and cultural nature that ensure protection of human rights, and that any possible violation of these rights is considered and treated as an unlawful act, which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences. It is also clear that the obligation to prevent is one of means or conduct, and failure to comply with it is not proved merely because the right has been violated.⁹⁷

86. Using these precedents as a frame of reference, the Commission will now consider whether the facts described compromise the State's international responsibility by virtue of its failure to prevent and respond. The petitioners contend that the Guatemalan State has failed to comply with its duty to guarantee the human rights recognized with respect to this right "by failing to conduct a serious, thorough and effective investigation aimed at identifying and punishing the persons responsible for [the victim's] death."⁹⁸ The State, for its part, contends that while it acknowledges blame for the fact that certain tests were not done or were not done promptly, the Public Prosecutor's Office has "investigated by every means within its reach and will continue to do so."⁹⁹

87. Nothing in the court record indicates that once the report that the girl was missing was filed, the State acted promptly and set in motion effective and immediate measures to find the girl alive; for example, no statement was taken from her mother that might have shed light on investigative leads to follow; no one went to the place where she 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. There is no record of any search being set in motion between the time the girl was reported missing and the time the alleged victim's body was found.

88. As the Inter-American Court wrote, States should not merely abstain from violating rights, but must adopt positive measures to be determined based on the specific needs of protection of the subject of law, either because of his or her personal situation or because of the specific circumstances in which he or she finds himself.¹⁰⁰ In the instant case, given the fact that the State was aware that María Isabel Véliz Franco was in peril from the moment she was reported missing, its duty was to take immediate steps to search for her.

⁹⁵ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 258.

⁹⁶ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 258.

⁹⁷ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 252.

⁹⁸ The petitioners' communication of January 14, 2007, paragraph 67.

⁹⁹ The State's note No. P-1207-07.FLR/KM/YL, dated September 12, 2007.

¹⁰⁰ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 243.

89. As explained in the section on established facts, in view of the situation in Guatemala, by 2001 the State was well aware of the escalation in violence against girls and women in that country and, therefore, that the alleged victim was facing the very real and imminent danger of possible sexual assault or possibly murder.

90. The Commission would point out that in the period between 2000 and 2005 the number of violent deaths reported within the general population rose; however, the increase was considerably more in the case of women. The figures supplied by the National Civil Police showed that whereas the incidence of violent death among men was 36%, it rose to 56.8% among women.¹⁰¹

91. The IACHR Rapporteur also wrote that while the State has taken measures to address violence against women, they are still not sufficient to deal with this problem.¹⁰² In its report titled *Access to Justice for Women Victims of Violence in the Americas*, the IACHR reported that research in Guatemala found that only 0.33% of the complaints of sexual crimes actually went to trial, which is extremely low.¹⁰³ As for the investigation of the cases, the IACHR observed that the authorities in charge of investigations into incidents of violence against women were neither competent nor impartial, which considerably foreshortened any possibility that these cases would ever be prosecuted and the guilty parties punished.¹⁰⁴ For his part, Guatemala's Human Rights Ombudsperson made reference to the failure to apply due diligence, as there are no "policies to prevent, investigate, punish or do justice in the face of the disturbing increase in femicide."¹⁰⁵

92. Given this situation, the IACHR concludes that the Guatemalan State has failed to show that reasonable measures were taken to find the girl María Isabel Véliz Franco, who was reported missing. This failure to comply with the duty to ensure is particularly serious because of the atmosphere of violence against women and girls –of which the State was well aware- and which made them particularly vulnerable, which in the case of a minor automatically necessitated special measures of protection, pursuant to Article 19 of the American Convention (which will be discussed at greater later in this report), and the enhanced obligations that the Convention of Belém do Pará imposes upon the State in cases of violence against women.

93. The IACHR also finds that the State did not show that it adopted the norms or implemented the measures required under the Convention of Belém do Pará, to enable the

¹⁰¹ International Federation of Human Rights (*Federación Internacional de Derechos Humanos, FIDH*), International Investigative Mission Report: Femicide in Mexico and Guatemala (Informe: Misión Internacional de Investigación: El Femicidio en México y Guatemala), no. 446/3 April 2006, p. 26. As of 2005, the number of murders of women was up 63.41% over the 2002 figures, according to the figures supplied by Guatemala's Ombudsperson for Human Rights. See, Ombudsperson for Human Rights, Guatemala, C.A., Power Point presentation, Guatemala, March 2006, available [in Spanish] online at: http://www.pdh.org.gt/files/inf_especiales/presentacion_muertemujeres03-05.pdf

¹⁰² IACHR, IACHR, Press Release No. 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004, available at <http://www.cidh.oas.org/Comunicados/English/2004/20.04.htm>

¹⁰³ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 18.

¹⁰⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 130.

¹⁰⁵ Guatemala's Human Rights Ombudsperson, Compendium "Muertes Violentas de Mujeres", 2003 a 2005 [Violent Deaths among Women, 2003 to 2005], p. 92. Available [in Spanish] at http://www.pdh.org.gt/files/inf_especiales/muerte_mujeres03-05.pdf

authorities to offer an immediate and effective response to complaints of missing persons and properly prevent violence against women at the time of these events.¹⁰⁶

94. Based on the foregoing considerations, the Commission concludes that in the instant case, the State failed in its duty to prevent and its duty to ensure a search for María Isabel Véliz Franco, in violation of Article 4(1) of the American Convention, in relation to Article 1(1) thereof.

B. Right to judicial guarantees and to effective judicial protection (articles 8(1) and 25) in relation to Article 1(1) of the American Convention.

95. The obligation of the States to act with due diligence includes enabling access to suitable and effective remedies when human rights are violated.¹⁰⁷ The Inter-American Court has written that any person whose human rights have been violated has a right to obtain, from the competent organs of the State, a clarification of the events that violated his or her human rights and the corresponding responsibilities, established by means of the investigation and prosecution provided for in articles 8 and 25 of the Convention.¹⁰⁸ The Inter-American Court has also observed that access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin to have everything possible done to know the truth of what happened and the responsible parties punished.¹⁰⁹

96. Article 25 of the American Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted.

97. Article 8(1) of the American Convention reads as follows:

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.

98. Protection of these rights is reinforced by the general obligation to respect and ensure, undertaken in Article 1(1) of the American Convention. Here, the Inter-American Court has written that:

¹⁰⁶ See, in general, I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 285.

¹⁰⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

¹⁰⁸ I/A Court H.R., *Case of Barrios Altos*, Judgment of March 14, 2001, Series C No. 75, paragraph 48.

¹⁰⁹ See I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006. Series C No. 160, paragraph 382, citing *Case of Vargas Areco*; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 289; and *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006. Series C No. 140, paragraph 171.

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. As this Court has ruled, Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention. [...] That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal for the determination of his rights, whatever their nature."¹¹⁰

99. The main objectives of the regional human rights system and the principle of efficacy require that those guarantees be implemented in practice. Therefore, when the States fail to guarantee the exercise of any of these rights within their jurisdiction, both by law and in practice, they have, under Article 2 of the American Convention, an obligation to adopt domestic legislative or other measures to give effect to those rights. Hence, the duty of the States to provide judicial remedies is not limited to their recognition in the constitution or the law; instead, they must be suitable to rectify the human rights violations denounced. The Inter-American Court has held that:

[t]he absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the constitution or the law or that it be formally recognized, but rather it must be truly effecting in establishing whether there has been a violation of human rights and in providing redress.¹¹¹

100. Inter-American case law has underscored the importance of conducting an immediate, exhaustive, serious and impartial investigation of human rights violations. The Court has written that the investigation must be undertaken

in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.¹¹²

101. The IACHR has written that the Convention of Belém do Pará establishes that the due diligence obligation has a special connotation in cases of violence against women.¹¹³ As was shown in the preceding section, the IACHR has established that one of the most important principles here is that the obligation of States in cases of violence against women includes the

¹¹⁰ I/A Court H.R., *Case of Loayza Tamayo. Reparations*. Judgment of November 27, 1998. Series C No. 42, paragraph 169; I/A Court H.R., *Case of Velásquez Rodríguez. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1. paragraph 91; I/A Court H.R., *Case of Fairén Garbi and Solís Corrales. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 2, paragraph 90; I/A Court H.R., *Case of Godínez Cruz. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3. paragraph 93.

¹¹¹ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 235, citing I/A Court H.R., *Case of Cesti Hurtado*. Judgment of September 29, 1999. Series C No. 56, paragraph 121; I/A Court H.R. *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, paragraph 185; I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 24.

¹¹² I/A Court H.R., *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, paragraph 188; I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 226.

¹¹³ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 32.

duties to investigate, prosecute and punish the responsible parties; but it also includes the “obligation to prevent these degrading practices.”¹¹⁴ It has also observed that judicial ineffectiveness creates a climate of impunity that is conducive to domestic violence, as “society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.”¹¹⁵ The Inter-American Court, for its part, has pointed out that the obligation to investigate effectively has a wider scope when dealing with the case of a woman.¹¹⁶ Moreover, for an investigation to be effective, the States must conduct it from a gender perspective.¹¹⁷

102. The Inter-American Court has also written that the duty to investigate is one of means, not of results.¹¹⁸ It has also held that in order to comply with the obligation to investigate and punish, the State must remove all the *de facto* and *de jure* obstacles and mechanisms that maintain impunity, grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceeding.¹¹⁹

103. The IACHR has written that “in order to establish in a convincing and credible manner that [a] result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation”¹²⁰ and must explore all the investigative leads possible that might identify the authors of the crime, so that they can be prosecuted and punished. The Court has established that the obligation to investigate a death means that the effort to determine the truth with all diligence must be evident as of the very first procedures.¹²¹ The State may be liable for a failure to order, practice or evaluate evidence that may have been essential for a proper clarification of the facts.¹²²

104. The Inter-American Court has defined the guiding principles to be observed in an investigation into a violent death. The State authorities who conduct an investigation of this type must try, at the very least, *inter alia*: (i) to identify the victim; (ii) to recover and preserve the probative material related to the death in order to assist in any potential criminal investigation of those responsible; (iii) to identify possible witnesses and obtain their statements in relation to the death under investigation; (iv) to determine the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, and (v) to distinguish between natural death, accidental death, suicide and homicide.¹²³ In addition, the scene of the crime must be

¹¹⁴ IACHR, Merits Report, No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56.

¹¹⁵ IACHR, Merits Report, No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56.

¹¹⁶ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 293.

¹¹⁷ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 455.

¹¹⁸ I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, paragraph 93.

¹¹⁹ I/A Court H.R., *Case Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, paragraph 134

¹²⁰ IACHR, Merits Report No. 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, paragraph 412.

¹²¹ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 300; I/A Court H.R. *Case of the Miguel Castro Prison*. Judgment of November 25, 2006. Series C No. 160, paragraph 383.

¹²² I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 230.

¹²³ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 300; IACHR, Report No. 10/95, *Manuel Stalin*
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searched exhaustively, and autopsies and tests of the human remains must be performed rigorously by competent professionals using the most appropriate procedures.¹²⁴ In the case of homicides, specific evidence must be preserved if rape is suspected.¹²⁵

105. The Inter-American Court has also written that the international standards indicate that, regarding the crime scene, the investigators must, at the very least: photograph the scene and any other physical evidence, and the body as it was found and after it has been moved; gather and conserve the samples of blood, hair, fibers, threads and other clues; examine the area to look for footprints or any other trace that could be used as evidence, and prepare a detailed report with any observations regarding the scene, the measures taken by the investigators, and the assigned storage for all the evidence collected.¹²⁶ The obligations established by the Minnesota Protocol provide that, when investigating a crime scene, the area around the body must be closed off, and entry into it prohibited, except for the investigator and his team.¹²⁷

106. Based on the information gleaned from the judicial record, the IACHR observes a series of irregularities in the investigation into the disappearance and subsequent death of María Isabel Véliz Franco, salient among them the failure to take immediate steps when she was reported missing [see previous section]; and later, when her body was discovered, errors in the preservation of the crime scene and in the handling and analysis of the evidence collected.

107. As was shown in the section on “established facts”, according to the police report¹²⁸ the body of María Isabel Véliz Franco was discovered on December 18, 2001. What the case file does not reveal is why the authorities went to the place where her body was found: specifically, how did the police dispatch at the 16th precinct learn that a body had been discovered.

108. As the section on “established facts” indicates, there were a number of irregularities committed in the authorities’ investigation of this case. In effect, the visual inspection report states that the crime scene “had already been contaminated” by the authorities themselves.¹²⁹ From the report one can conclude that the inspection was not conducted with the necessary rigor, as important details are

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Bolaños (Ecuador), September 12, 1995, paragraphs 32 - 34; Report No. 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, paragraphs 413 to 424; Report No. 48/97, *Ejido Morelia* (Mexico), April 13, 1996, paragraphs 109 - 112. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 47.

¹²⁴ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, paragraph 300; I/A Court H.R. *Case of Juan Humberto Sánchez v. Honduras.* Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, paragraph 127; I/A Court H.R. *Case of Escué Zapata v. Colombia.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, paragraph 106; I/A Court H.R., *Case of Kawas Fernández v. Honduras.* Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, paragraph 102.

¹²⁵ The victim’s oral, vaginal and rectal fluids must be preserved, as must foreign and pubic hairs. United Nations, *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, U.N. Doc. E/ST/CSDHA/12 (1991), paragraphs 29-30.

¹²⁶ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 301. The Court makes reference to the **United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991).**

¹²⁷ I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 301.

¹²⁸ Report of Police Officer Jorge Martín Ortiz, Chief of Substation 1651, addressed to the Deputy Prosecutor, Mixco Municipality Public Prosecutor’s Office, provided by the petitioners in a communication dated April 25, 2007.

¹²⁹ Report from the Visual Inspections Section of the PNC, dated December 18, 2001, issued by Edwin Oslando Jiménez Castillo.

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 disposition of the evidence collected. The Commission is struck by the fact that the police report documented that a black nylon bag was found near the victim's head, "which, according to the Deputy Prosecutor on the scene, "had been lying across the face of the deceased."¹³⁰ However, that information did not appear in the report filed by the Deputy Prosecutor.¹³¹

109. The IACHR also observes that the first report prepared by the police stated that the alleged victim was lying face down, and that her face was covered with one green towel and another that was black.¹³² However, the photographs taken at the time of the visual inspection and which are part of the case file, show that the body of María Isabel was lying face up. The case file contains no photograph taken at the time the body was discovered, and nothing appears in the record to indicate who moved the body.

110. The IACHR notes that although the cause of death was established, the autopsy report does not indicate the manner, place and time of death.¹³³ The State acknowledged as much and pointed out, in the presence of the IACHR, that the tests and autopsy were not done according to international standards. It also said that some measures were either not taken or not taken promptly.¹³⁴

111. Indeed, once they established that this was a murder case, the authorities should have preserved specific pieces of evidence in the event rape was suspected, as dictated by the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,¹³⁵ particularly inasmuch as the body had what appeared to be bite marks and the underpants the victim was wearing were torn and bloodstained. The police reports also make reference to the fact that the alleged victim "showed signs of having been tortured."¹³⁶ However, despite all this and as shown in the section on "established facts", the authorities themselves determined during the course of the investigation that "unfortunately when the crime scene was processed at the time the body was removed, someone failed to ask that the autopsy include testing for [...] to establish whether [the victim] had been raped."

112. As for the evidence collected, the IACHR observes that the clothing that María Isabel Véliz Franco was wearing and the towels found at the crime scene had been returned to her mother and were in her possession, before the necessary expert tests could be done, which meant that they would have been contaminated. This is an example of negligence in preserving evidence and

¹³⁰ Annex 28. Report from the Visual Inspections Section of the PNC, dated December 18, 2001, issued by Edwin Oslando Jiménez Castillo.

¹³¹ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

¹³² Record made by Deputy Prosecutor I, Iliana Elizabeth Girón Delgado, Mixco Municipal Prosecutor's Office, Unit 5, December 18, 2001, at 2:45 p.m.

¹³³ Annex 8. Autopsy Report No, 2865/2001, dated February 13, 2002, issued by Forensic Physician Rigoberto Pedro Barreno Pech.

¹³⁴ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

¹³⁵ The victim's oral, vaginal and rectal fluids must be saved, as must all foreign and pubic hairs. **United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991)**, U.N. Doc. E/ST/CSDHA/12 (1991), paragraphs 29-30.

¹³⁶ Report of Prosecutor Cándido Francisco Asencio Bremer to the Judge of First Instance for Drug Trafficking Crimes and Crimes against the Environment, dated March 3, 2002.

problems in the chain of custody. Police authorities went to the funeral home to ask that the mother return these items of evidence, which she did.¹³⁷

113. As shown in the section on “established facts”, hairs found on the articles of clothing and towels were analyzed and tested for the presence of blood and semen. Results were obtained, but there is nothing in the IACHR’s record of this case to indicate that those hairs were compared. According to the State, those comparisons will be made once a suspect in the case is named.¹³⁸

114. Amnesty International has observed that in their investigations into murders of women in Guatemala, the authorities do not accurately document or consider all the elements of the crime, which reduces the chances of an investigation being thorough and impartial. Amnesty International has described the case of María Isabel Véliz Franco as emblematic of these problems and omissions in the investigations conducted into murders of women in that country. It wrote that “serious deficiencies in the protection of the crime scene, collection and preservation of evidence and failure to determine signs of sexual assault during autopsies means that crimes of sexual violence are frequently missed or ignored.”¹³⁹ It also observed that:

The failure to systematically collect and preserve evidence crucial to a proper investigation into María Isabel Véliz Franco’s death illustrates the serious deficiencies which persist in the forensic examination services that have been frequently reported to Amnesty International during the course of its research into the killings of women in Guatemala. The forensic services’ failure to carry out a fluids analysis and preserve samples of specimens such as seminal fluid, blood, skin or hair seriously reduced the possibility of identifying and prosecuting those responsible.¹⁴⁰

115. Expert Claudia Paz mentioned a number of these irregularities in the hearing that the Commission held on this case.¹⁴¹ In her expert report she also indicated that the case file does not suggest that that investigation had any theory it was pursuing; instead, she said, the investigation could best be characterized as erratic and reactive. She also made reference to the unwarranted delays in the investigation, such as the conflict of jurisdiction, the delays in taking a number of investigative measures, such as tracking down and listing the calls made to and from the alleged victim’s cell phone.¹⁴²

116. In the visit that the Rapporteur on the Rights of Women made to Guatemala in 2004, officers of the court told her that in many instances, cases do not get beyond the investigation phase because of a lack of evidence; in those cases that do go to trial, the lack of physical or scientific evidence to corroborate the testimony jeopardizes the proceedings’ reliability.

¹³⁷ Report 3321-2001-E.E.C.-G6, dated December 29, 2001, sent by Marleny Madgady López to the Public Prosecutor’s Office.

¹³⁸ The State’s communication of April 16, 2009.

¹³⁹ Amnesty International, *Guatemala, No Protection, No Justice: Killings of Women in Guatemala*, AI AMR 34/017/2005, June 9, 2005, pp. 8 and 9.

¹⁴⁰ Amnesty International, *Guatemala, No Protection, No Justice: Killings of Women in Guatemala*, AI AMR 34/017/2005, June 9, 2005, p. 14. Amnesty International referred to the case of the disappearance and murder of María Isabel Véliz Franco in December 2001 as emblematic of hundreds of others reported in Guatemala in recent years and mirroring a pattern of (i) omissions, irregularities and delays on the part of state authorities in the investigation, both in the early stages and in the criminal proceedings; (ii) the treatment that the next of kin of the murdered women receive, and (iii) the suffering caused to the next of kin by the criminal proceedings in which the victim tends to be blamed for her own death.

¹⁴¹ Hearing Minutes No 5. Case 12.578 – María Isabel Véliz Franco, held on March 20, 2009.

¹⁴² Hearing Minutes No 5. Case 12.578 – María Isabel Véliz Franco, held on March 20, 2009.

The Rapporteur was also told that the vast majority of the cases reported do not get beyond the investigative phase. By way of example, the IACHR observed that of the murder cases processed by the Office of the Public Prosecutor for Women, by September 2004 only one had gone to trial.

117. The IACHR observed the same pattern in its 2003 report, where it wrote that the information it had received indicated that in violent crimes, including rape, several essentials were missing: technical expertise, determination in compiling evidence, and follow-through to prosecution and punishment on the part of the authorities, prosecutors' failings and mistakes, which make the work of judges that much more difficult, cause delays in the administration of justice, and can even result in crimes going unpunished.¹⁴³

118. In addition, during her visit to Guatemala, the Rapporteur heard evidence showing how discriminatory stereotypes operate in practice during the investigation of cases,¹⁴⁴ which is an important feature of the context of violence and impunity described in the proven facts section. According to the Rapporteur, these attitudes range from a lack of sensitivity to the situation of the person concerned, to openly hostile and discriminatory attitudes that devalue the person¹⁴⁵ and which, in the opinion of the Commission, may affect the investigation of cases. The IACHR has established that delays occur in investigations in which female victims of violence are reported missing and the authorities commit two categories of violations: 1) They do not move quickly to search for the victims; and 2) they discredit and blame the victims for their actions and, thus, point to them as not deserving of state action to find and protect them¹⁴⁶—for example, in the case at hand. This type of state action is especially serious in the case of minors.¹⁴⁷ This matter will be discussed in greater detail in the next section regarding Article 7 of [the Convention of] *Belém do Pará* and Article 24 of the American Convention.

119. As previously pointed out, the State acknowledged, in the Commission's presence, its responsibility for the lack of due diligence in the investigation into the death of María Isabel Véliz 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 Osbel Airoso as a suspect in the murder.

120. Even so, the State contends that it did follow up on the call made by an anonymous informant who provided information on the murder. A search was conducted at the address given by the anonymous informant and no mistake was made with respect to the address where the search was conducted, since 6th Street 5-24 in Nueva Montserrat is located in zone 7 of the Municipality of Mixco and is no longer part of zone 7 of the capital city to which it is adjacent. It also asserts that there was no delay in conducting the first visual inspection of the vacant lot where

¹⁴³ IACHR, *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118, December 29, 2003, paragraph 302. In 2003, the IACHR reported that of the 8,989 complaints that the Office of the Public Prosecutor for Women had received by late 2001, only three resulted in convictions.

¹⁴⁴ IACHR, Press Release No. 20/04, IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination.

¹⁴⁵ IACHR, Press Release No. 20/04, IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination.

¹⁴⁶ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 135.

¹⁴⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 135.

the body of the alleged victim was found. It asserts that three visual inspections were conducted, the first of which was on December 18, 2001, the day after the anonymous phone call about the location of the body was received.

121. Here, the IACHR observes that, as shown in the section on “established facts”, on July 8, 2003 a search was in fact conducted at the address to which the vehicle from which the victim’s body had been removed, had supposedly driven. As this lead might have been an important one for solving this case, the IACHR believes that the search should have been conducted immediately rather than a year and a half after the body was discovered.

122. As for the visual inspection, the IACHR has already gone over the mistakes the State made during the first visual inspection, which caused it to miss valuable information that could never be retrieved on subsequent inspections. As for the dispute over jurisdiction, inasmuch as the State has acknowledged its responsibility in this regard, the Commission will not examine it further. Similarly, because the State acknowledged responsibility with respect to its failure to take a precautionary measure to secure the presence of a suspect, the IACHR will not examine this point either.

123. While 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 Véliz 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.¹⁴⁸

124. The IACHR has singled out the investigation as the critical phase in cases involving violence against women and has written that the “importance of due investigation cannot be overestimated, as deficiencies often prevent and/or obstruct further efforts to identify, prosecute and punish those responsible,” which is precisely what happened in the instant case.¹⁴⁹ Therefore, the Commission observes that in this case, the State failed to comply with its obligation to investigate, with the necessary diligence, the violations committed of María Isabel Véliz Franco’s human rights.

125. Impunity with respect to human rights violations has been defined as “the overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for violating the rights protected by the American Convention.” The Inter-American Court has written that the State has the obligation to use all the legal means at its disposal to combat that situation, “since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”¹⁵⁰

126. To prevent impunity, under Article 1 of the American Convention the State has an obligation to respect and ensure the rights recognized therein:

¹⁴⁸ I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 454. I/A Court H.R., *Case of Loayza Tamayo. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, paragraph 176, citing I/A Court H.R., *Case of the “White Van” (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, paragraph 173.

¹⁴⁹ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, Introduction, paragraph 38.

¹⁵⁰ I/A Court H.R., *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*, Merits. Judgment of March 8, 1997. Series C No. 37, paragraph 173.

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.¹⁵¹

127. Based on these considerations, the Commission concludes 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 Véliz Franco, to punish those responsible, and thereby avoid impunity, all in violation of articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof and to the detriment of Rosa Franco Sandoval (mother), Leonel Enrique Véliz Franco (brother), José Roberto Franco (brother), Cruz Elvira Sandoval Polanco de Franco (grandmother, deceased) and Roberto Franco Pérez (grandfather, deceased).¹⁵²

C. Right to live free of violence and discrimination (Article 7 of the Convention of Belém do Pará) and the right to equal protection (Article 24 of the American Convention), in relation to Article 1(1) of the American Convention

128. According to the petitioners, the State violated Article 7 of the Convention of Belém do Pará by its failure to act with due diligence in the investigation of the case, as part of a systemic impunity that breeds violence against women. The crisis of violence against women and the demonstrated lack of interest in addressing it, are a violation of the State's obligations under that Convention. They also maintain that the authorities in charge of the investigation sought to discredit both the victim, because of her gender, and the victim's mother. The State, for its part, maintains that the investigations were objective and that the State has never intended to bring discredit on the name of the victim or her mother. It contends that the investigation turned up certain information which the State never used to smear the reputation of or denigrate the victim or her next of kin.

129. Article 24 of the Convention provides that "[a]ll persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." The Inter-American Court has written that:

The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenious character.¹⁵³

¹⁵¹ IACHR, Merits Report No. 54/01, *María Da Penha Fernandes* (Brazil), April 16, 2001, paragraph 43, citing I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 176, and I/A Court H.R., *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, paragraph 175.

¹⁵² See jurisprudence of the Inter-American Court: I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006. Series C No. 160, paragraph 408; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of March 31, 2006. Series C No. 140, paragraph 212; I/A Court H.R., *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134, paragraph 241.

¹⁵³ I/A Court H.R., *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4.

130. As for the obligation of nondiscrimination, Article 1(1) of the American Convention reads as follows:

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.

131. The Convention of Belém do Pará,¹⁵⁴ which Guatemala ratified on January 4, 1995, provides that violence against women is “a manifestation of the historically unequal power relations between women and men.” Accordingly, it recognizes every woman’s right to be free from violence and any form of discrimination. The Convention is a reflection of the uniform concern throughout the hemisphere over the seriousness of the problem of violence against women, its relationship to the discrimination that women have historically suffered and the need to adopt comprehensive strategies to prevent, punish and eradicate violence against women. It also observes that the due diligence obligations have special connotations in the case of violence against women.

132. For its part, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides that discrimination against women is defined as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁵⁵ According to the Committee on the Elimination of All Forms of Discrimination against Women, the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.¹⁵⁶

133. The close nexus between violence and discrimination is widely recognized in international and regional instruments for the protection of women’s rights. In the case of *María Eugenia Morales de Sierra*, the IACHR expressed its concern over the serious consequences of discrimination against women and the stereotyped notions of their roles; it also made reference to how discrimination, subordination and violence are interrelated.¹⁵⁷ It also observed that the traditional attitudes that regard women as subordinate to men or lock them into stereotyped roles, serve to perpetuate widespread practices involving violence or coercion, such as family violence and abuse.¹⁵⁸ Thus, violence against women is a form of discrimination that seriously impairs women’s ability to exercise and enjoy their rights and freedoms on an equal footing with men.¹⁵⁹

¹⁵⁴ 32 OAS member states have ratified the Convention of Belém do Pará.

¹⁵⁵ United Nations, Convention on the Elimination of All Forms of Discrimination against Women. Guatemala ratified the Convention on August 12, 1982. Article 1 of the Convention.

¹⁵⁶ United Nations, CEDAW, General Recommendation 19.

¹⁵⁷ IACHR, Merits Report No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

¹⁵⁸ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, Section I, Introduction, *Obstacles women encounter when seeking redress for acts of violence: an analysis of the present situation*, paragraph 65.

¹⁵⁹ See, See, IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Section I, Introduction, *Obstacles women encounter when seeking redress for acts of violence: an analysis of the present situation*, paragraph 65.

134. Violence against women, discrimination and due diligence are also closely interrelated. The CEDAW Committee has observed that violence against women is a form of discrimination and that discrimination is not limited to acts committed by governments or on their behalf; States may also be held accountable for the acts of private persons if they fail to act with due diligence in investigating and punishing the acts of violence and making reparations to the victims.¹⁶⁰ According to the United Nations Commission on Human Rights, “all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State.”¹⁶¹

135. The Inter-American Court has written 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.¹⁶² Specifically with regard to the impunity that attends cases of violence against women in Guatemala, in 2004 the IACHR observed that “the failure to investigate, prosecute, and punish those responsible for this violence against women has contributed profoundly to an atmosphere of impunity that perpetuates the violence against women in Guatemala.”¹⁶³ The IACHR also noted that “[t]he state must urgently intensify its efforts to combat the violence and discrimination against women by measures including applying due diligence to investigating and solving crimes of violence against women, by bringing those responsible to justice and punishing them, as well as by providing access to protection measures and support systems for victims.”¹⁶⁴ It also underscored that it “is essential that the state should not only concern itself about this problem of violence against women, but also should concern itself with providing effective solutions.”¹⁶⁵

136. Article 7 of the Convention of Belém do Pará sets out a set of related obligations immediately incumbent upon the State, in order to effectively prevent, investigate, punish and redress cases of violence against women. They include the following:

- 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;

¹⁶⁰ United Nations, CEDAW, General Recommendation 19.

¹⁶¹ United Nations Commission on Human Rights Resolution 2003/45. European Court of Human Rights, *Case of Opuz v. Turkey*. Application No. 33401/02 of June 9, 2009.

¹⁶² I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 400.

¹⁶³ IACHR, Press Release 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004, paragraph 32.

¹⁶⁴ IACHR, Press Release 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004, paragraph 32.

¹⁶⁵ IACHR, Press Release 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004, paragraph 32.

- 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.

137. In the case of *María da Penha v. Brazil*, the IACHR found that among the most important principles enshrined in the Convention of Belém do Pará are the duties to investigate, prosecute and “the obligation to prevent these degrading practices.”¹⁶⁶ The IACHR also established that judicial ineffectiveness in cases involving violence against women creates a climate of impunity that invites violence and discrimination against women “since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.”¹⁶⁷ For its part, the Court has held that when crimes committed against women go unpunished, this “sends the message that violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice.”¹⁶⁸ In the case of *González et al. v. Mexico*, the Court held that that violence against women is a form of discrimination and that the State violated its obligation not to discriminate in relation to the obligation to guarantee the victim’s rights, among them her right to access to justice.¹⁶⁹

138. In the instant case, the IACHR observes that the Guatemalan State was to have acted upon its obligations under the Convention of Belém do Pará, as this was a case of violence against a woman, specifically the disappearance and subsequent death of a girl. The disappearance was reported to the authorities of the State. Even so, from the time the missing person’s report was filed, the State authorities failed to act with due diligence to investigate the disappearance and subsequent death of María Isabel Véliz Franco, in violation of its obligations under the Convention of Belém do Pará in cases of this type.

139. Furthermore, the analysis of the State’s observance of articles 4, 8(1) and 25 of the American Convention found that the irregularities committed by the Guatemalan State in the investigation of this case and the lack of due diligence when the victim was reported missing; the fact that tests were not done to determine whether the victim had been raped; the flawed handling and analysis of the evidence collected; the errors made in handling and preserving the crime scene and the collection of expert evidence; delays in taking steps such as tracing the phone calls made to and from the victim’s cell phone; and the unwarranted delay caused by the dispute over jurisdiction, are a violation of the provisions of Article 7 of the Convention of Belém do Pará. The records indicate that the authorities did not investigate the victim’s death as a case of gender violence; and despite the fact that it has ratified the Convention of Belém do Pará, it has not put into practices measures, protocols or directives on how to properly investigate violence of this kind.

¹⁶⁶ IACHR, Merits Report No. 54/01, *María Da Penha Fernandes* (Brazil), April 16, 2001, paragraph 56.

¹⁶⁷ IACHR, Merits Report No. 54/01, *María Da Penha Fernandes* (Brazil), April 16, 2001, paragraph 56.

¹⁶⁸ I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 400.

¹⁶⁹ I/A Court H.R. *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 402.

140. This lack of due diligence with respect to a case of violence against women is a form of discrimination, a failure on the State's part to comply with its obligation not to discriminate, and a violation of María Isabel Véliz Franco's right to equal protection. The European Court has held that the State's failure to protect women from violence is a violation of their right to equal protection, and need not be intentional.¹⁷⁰

141. The United Nations General Assembly has repeatedly held that States "must exercise due diligence to prevent and investigate acts of violence against women and girls and punish the perpetrators, to eliminate impunity and to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms."¹⁷¹

142. Despite the efforts that the Guatemalan State has made in recent years to address the problem of violence against women in that country, the IACHR finds that at the time the events in this case 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. In its decision in the case of *Maria da Penha Maia Fernandes* the IACHR underscored the fact that in order for the State to prove that it complied with its obligation to act with due diligence, in keeping with Article 7 of the Convention of Belém do Pará, evidence of the measures taken to eliminate society's general tolerance of violence against women will not suffice.¹⁷² The State must demonstrate that it has a real commitment to eradicating the kind of impunity that exists in the case *sub examine*.¹⁷³ Nine years after the disappearance and death of María Isabel Véliz Franco, the case is still emblematic of the problem of impunity.

143. The petitioners also contend that a number of police reports on the investigation contain comments that do not shed light on the case, but do discredit the victim and her mother. In response to those assertions, the State maintains that the statements that appear in the record that are denigrating with respect to the victim and her mother are not a position of the State; instead, they are a transcript of the statements made by witnesses. On this subject, the IACHR has written that the influence of discriminatory socio-cultural patterns can adversely affect an investigation of a case and the assessment of any evidence compiled.¹⁷⁴ The Court, for its part, has written that the creation and use of stereotypes becomes one of the causes and consequences of gender violence practiced against women.¹⁷⁵

144. In a hearing held by the IACHR, expert witness Claudia Paz observed that in the statements made by witnesses, pejorative comments appear repeatedly and are about the victim's lifestyle. The idea is to create an image that will put the blame for what happened on the victim

¹⁷⁰ See, IACHR, Report No. 80/11, Case 12.626, Jessica Lenahan (Gonzales) *et al.* (United States), July 21, 2011. European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02 of June 9, 2009, paragraph 191.

¹⁷¹ United Nations, resolution approved by the United Nations General Assembly, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/64/137, February 11, 2010, and resolution A/HRC/14/L.9/Rev.1 of July 16, 2010.

¹⁷² IACHR, Merits Report, N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, paragraph 57.

¹⁷³ IACHR, Merits Report No. 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, paragraph 57.

¹⁷⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 151.

¹⁷⁵ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 401.

and her family. She also said that these comments become lines that the investigation will pursue. The expert stated that “there are peculiarities unique to cases involving violence against women, some of which are cultural –like sexist biases and characteristics in the investigations conducted by officials, prosecutors and police in most cases involving violence against women in Guatemala.”¹⁷⁶

145. At the IACHR hearing, Rosa Elvira Franco said that the authorities were not interested in investigating the case. She remarked that “I often went to the Prosecution Unit 5; at Unit 32 they didn’t even find María’s case file; the prosecutor turned his seat around and sat with his back facing me, without ever even speaking to me, not even to say “wait a minute.”¹⁷⁷ Also in the case file is a communication from Rosa Elvira Franco in which she recounts that approximately one week before August 28, 2004, she went to inquire about the progress made in the investigation; the Deputy Prosecutor, Mrs. Ileana Elizabeth Girón Delgado, “took out my daughter’s file from the last of her cabinets, in the presence of the person who was her boss the time, Lic. Luis Morales del Cid; she told me ‘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. Lic. Morales del Cid grabbed his head, but didn’t apologize. He just stood by and watched. She began to laugh loudly [...].”¹⁷⁸

146. The IACHR considers that in the instant case, 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.

147. Based on these considerations, the IACHR finds that the State of Guatemala did not comply with its duty to act with due diligence to prevent, investigate and punish the acts of violence suffered by María Isabel Véliz Franco, in violation of Article 7 of the Convention of Belém do Pará in relation to Article 24 of the American Convention, and as required by the general obligation to respect and ensure rights undertaken in Article 1(1) of the American Convention. As it found in the preceding section with respect to María Isabel Véliz Franco’s rights under articles 8(1) and 25 of the American Convention, the State failed to comply with its duty to act with due diligence to conduct a proper investigation of and punish the persons responsible for the disappearance and death of María Isabel Véliz Franco and thus avoid impunity, in violation of articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Rosa Franco Sandoval (mother), Leonel Enrique Véliz Franco (brother), José Roberto Franco (brother), Cruz Elvira Sandoval Polanco de Franco (grandmother, deceased) and Roberto Franco Pérez (grandfather, deceased), in relation to Article 24 of the American Convention.

D. The rights of the child (Article 19) in relation to Article 1(1) of the American Convention

148. The petitioners maintain that the facts alleged constitute a violation of the rights of the child, protected by the American Convention. The Guatemalan State did not specifically address this particular allegation.

149. Article 19 of the American Convention guarantees to every child “the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” The Inter-American Court has held that the American Convention and the Convention on the Rights of the Child, which Guatemala ratified on June 6, 1990, form part of a “comprehensive

¹⁷⁶ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

¹⁷⁷ IACHR, Hearing Minutes No. 5, Case 12.578, María Isabel Véliz Franco, Guatemala, March 20, 2009.

¹⁷⁸ Communication from Rosa Elvira Franco, dated April 27, 2007, addressed to the IACHR.

international *corpus juris* for the protection of the child that should help establish [...] the content and scope of the general provision established in Article 19 of the American Convention."¹⁷⁹ Article 19 of the American Convention must be construed as an added right which the Convention establishes for those who, because of their physical and emotional development, require special protection.¹⁸⁰

150. The Convention on the Rights of the Child provides that every child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. Accordingly, the Convention on the Rights of the Child defines a child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (Article 1). The Convention on the Rights of the Child recognizes every child's intrinsic right to life and provides that no child shall be subjected to arbitrary or unlawful interference with his or her privacy and recognizes the child's right to the protection of the law against such arbitrary or unlawful interference or attacks (Article 16). The States parties are to ensure that no child is subjected to torture or any other cruel, inhuman or degrading treatment or punishment.

151. The Inter-American Court has written that: "[i]n the light of Article 19 of the American Convention, the Court wishes to record the particular gravity of the fact that a State Party to this Convention can be charged with having applied or tolerated a systematic practice of violence against at-risk children in its territory."¹⁸¹

152. Furthermore, the Convention of Belém do Pará provides that the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their minor age, as well as other conditions that expose them to greater risk of having their rights violated.¹⁸² The IACHR has written that this provision is the result of the fact that the various forms of discrimination do not affect all women to the same degree: some are more vulnerable than others to violations of their rights and to acts of violence and discrimination.¹⁸³

153. Given this framework of international responsibility, the State's obligations under the instruments of the inter-American human rights system have special connotations where children are concerned. The Inter-American Court observed that children "have the same rights as all human beings [...] and also special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State."¹⁸⁴ Moreover, their status requires special protection that must be understood as an additional right that complements all the other rights that the Convention recognizes to each individual.¹⁸⁵ Hence, the State must take special measures to

¹⁷⁹ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 194.

¹⁸⁰ I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 54. See also, I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, paragraph 147.

¹⁸¹ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 191.

¹⁸² Article 9, Convention of Belém do Pará.

¹⁸³ IACHR, *Las Mujeres Frente a la Violencia y la Discriminación Derivadas del Conflicto Armado en Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, paragraph 140.

¹⁸⁴ I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 54.

¹⁸⁵ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 408.

protect children with special care and a sense of responsibility that serve the principle of the best interests of the child.¹⁸⁶

154. The Court has observed that the prevalence of the best interest of the child must be understood as the need to satisfy all the rights of children and adolescents, which obligates the State and affects the interpretation of all the other rights of the Convention when a case concerns minors.¹⁸⁷ Furthermore, the State must pay special attention to the needs and rights of women owing to their condition as girls who, being women, belong to a vulnerable group.¹⁸⁸

155. This obligation is enhanced by the special danger that girls face and their vulnerability to acts of violence, as recognized in the Convention of Belém do Pará. Therefore, the Guatemalan State had an enhanced obligation to protect the human rights of María Isabel Véliz Franco, for two reasons: she was a minor and she was female. From this follows its obligation to adopt special measures of care, prevention and guarantee.

156. The Court has held that States have an obligation to take all positive measures necessary to ensure the rights of missing girls.¹⁸⁹ Specifically, States have an obligation to ensure that girls will be found as soon as possible once family members report them missing. Once a girl's body has been found, the State must conduct the necessary investigations and prosecute and punish the guilty parties, efficiently and expeditiously.¹⁹⁰

157. As was observed in the section on Article 4, the Inter-American Court has written that in cases of violence against girls, the State must show that it has taken effective measures for initiating a prompt search, activating all resources to mobilize the different institutions and deploy domestic mechanisms to obtain information to locate the girls rapidly and, once their bodies are found, to conduct the investigations, and prosecute and punish those responsible effectively and promptly.¹⁹¹

158. In the instant case, María Isabel Véliz Franco was 15 at the time she was reported missing. According to the information the Commission has received, since 2001 gender-based

¹⁸⁶ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraphs 124, 163-164, and 171; I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraphs 126 and 134; and I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraphs 146 and 191. See also, I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraphs 56 and 60.

¹⁸⁷ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 408; I/A Court H.R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraphs 56, 57 and 60, and, I/A Court H.R. *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005 of September 8, 2005. Series C No. 130, paragraph 134.

¹⁸⁸ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 408; CEDAW, General Recommendation 24: Women and Health, 20th session, A/54/38/Rev.1, 1999, paragraph 6, and I/A Court H.R. *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, paragraph 134.

¹⁸⁹ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 409.

¹⁹⁰ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 410.

¹⁹¹ I/A Court H.R. *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 410.

violence was among the principal causes of death and disability among women between the ages of 15 and 44.¹⁹²

159. The conclusion from the facts in this case is that the Guatemalan State did not act with due diligence to prevent, investigate, and punish the violence inflicted upon the victim in this case, a girl by the name of María Isabel Véliz Franco. The State has failed to show that, given her status as a minor, it took special measures to search for her as soon as she was reported missing; once her body was discovered, the State did not act with due diligence to investigate what happened. The Commission therefore finds that the Guatemalan State has incurred international responsibility for violation of Article 19 of the American Convention, to the detriment of María Isabel Véliz Franco, in relation to the general obligation set forth in Article 1(1) thereof to respect and ensure the Convention-protected rights.

E. Right to have one's integrity respected (Article 5(1)) in relation to Article 1(1) of the American Convention.

160. Article 5(1) of the American Convention provides that "[e]very person has the right to have his physical, mental, and moral integrity respected." In the case of María Isabel Véliz Franco, the IACHR observes that, as determined in the section on "established facts", when her body was discovered it showed "signs of strangulation with a black plastic cord around the neck," injuries to the cranium, a cut on the upper portion of her ear, heavy particles of food in the mouth and nose, and bite marks on her upper extremities. As for her clothes, the lower part of her underpants was ripped and had bloodstains and some hairs. Although the authorities did not conduct the tests to determine whether the victim had been raped, from the evidenced described here it is possible to infer that when her body was discovered, it bore signs of violence and other abuses, so that the State's failure to prevent had consequences for María Isabel Véliz Franco's personal integrity. Once the mother reported her missing, the State's failure to respond left the alleged victim defenseless.

161. Time and time again the Inter-American Court has held that the next of kin of the victims of human rights violations may also be victims by virtue of the additional suffering they have endured as a result of the human rights violations done to their loved ones and by virtue of the subsequent actions or omissions of the State authorities with regard to the events.¹⁹³ Following this line of jurisprudence, the Court has found that the next of kin's right to mental and moral integrity, protected under Article 5(1) of the American Convention, was violated.¹⁹⁴ In the present case, the irregularities and delays on the part of the Guatemalan State in the investigation into the disappearance of María Isabel Véliz Franco and her subsequent murder caused her next of kin profound suffering and anguish, and that despite the seriousness of the crimes, nine years have passed since the body of the murder victim was found and yet those responsible have not been punished.

¹⁹² IACHR, Press Release 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington, D.C., September 18, 2004.

¹⁹³ I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, paragraph 154; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, paragraph 60; I/A Court H.R., *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134, paragraphs 144-146; I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, paragraphs 113-114; I/A Court H.R., *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, paragraph 210.

¹⁹⁴ I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, paragraph 154; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, paragraph 60; I/A Court H.R., *Case of the Mapiripán Massacre*. Judgment of September 15, 2005. Series C No. 134, paragraphs 144-146; I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, paragraphs 113-114; I/A Court H.R., *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, paragraph 210.

162. The Commission also observes what little importance State officials attached to the concerns and suffering of the mother of María Isabel Véliz Franco, Rosa Elvira Franco, and how insensitive they were when she tried to move the investigations forward. The case file contains the statement that the Deputy Prosecutor in the Public Prosecutor's Office made, in which she reported to the Deputy Public Secretary of the Public Prosecutor's Office that they had expressly ordered her not to pursue the investigations because that was not her job:

Mindful of the instruction that the Prosecutor gave to me [not to pursue the investigation], I disregarded the order from the District Attorney and, knowing that the investigation could not be stopped, I opted instead to contact the District Attorney [...] to tell him what the Prosecutor wanted to do, and that it was not right that the mother of Maria Isabel Véliz Franco did not get an answer at Unit 32, and now we have her coming back and forth [...] ¹⁹⁵

163. From the foregoing, the Commission concludes that the State of Guatemala violated Article 5 of the American Convention on Human Rights to the detriment of María Isabel Véliz Franco, in relation to the general obligation to respect and ensure the Convention-protected rights, set forth in Article 1(1) of that instrument. It also violated Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of her next of kin: Rosa Elvira Franco Sandoval de Véliz (mother), Leonel Enrique Véliz Franco (brother), José Roberto Franco (brother), Cruz Elvira Sandoval Polanco de Franco (grandmother, deceased ¹⁹⁶) and Roberto Franco Pérez (grandfather, deceased ¹⁹⁷).

F. Violation of Article 11 of the American Convention

164. The petitioners maintain that from the start of the investigation, the State agents in charge, rather than investigate the facts, focused instead on discrediting and dismissing the victim and her mother, which constitutes a violation of their honor.

165. After examining the information supplied by the parties, the IACHR concludes that it does not have sufficient information to find violations of the right to have one's honor protected and dignity respected, recognized in Article 11 of the American Convention, in relation to María Isabel Véliz Franco and Rosa Elvira Franco Sandoval.

VI. CONCLUSIONS

166. In this report, the Inter-American Commission has evaluated all the elements available in the case file, based on the human rights standards of the inter-American system and other applicable instruments, the case law and the literature, in order to decide the merits of the case brought. The IACHR confirms its findings to the effect that the State of Guatemala is responsible for violations of the rights to life, to personal integrity, and the rights of the child, recognized in articles 4, 5, and 19 of the American Convention, all in relation to the obligation established in Article 1(1) thereof and to the detriment of María Isabel Véliz Franco. The Commission also finds that the State violated María Isabel Véliz Franco's rights under Article 7 of the Convention of Belém do Pará, in relation to Article 24 of the American Convention, as required

¹⁹⁵ Annex 19. Memorandum dated September 16, 2002, from Edgar Romero Arana, Deputy Prosecutor in Unit 5 of the Public Prosecutor's Office, addressed to Rubén Eliu Higueros Girón, Deputy Executive Secretary of the Public Prosecutor's Office. Document supplied by the petitioners on April 25, 2007.

¹⁹⁶ According to the petitioners, Mrs. Cruz Elvira Sandoval Polanco de Franco died in April 2011.

¹⁹⁷ According to the petitioners, Mr. Roberto Franco Pérez died in 2004.

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

167. Finally, the IACHR concludes that the State violated the right to have one's integrity respected under Article 5(1) of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of Rosa Elvira Franco Sandoval de Véliz (mother), Leonel Enrique Véliz Franco (brother), José Roberto Franco (brother), Cruz Elvira Sandoval Polanco de Franco (grandmother, deceased) and Roberto Franco Pérez (grandfather, deceased), and the right to guarantees and judicial protection recognized in Articles 8(1) and 25 of the American Convention, in relation to Article 24 thereof, and as required by the general obligation imposed in Article 1(1).

VII. RECOMMENDATIONS

Based on the foregoing analysis and the conclusions it reached in this case, the Inter-American Commission on Human Rights is recommending to that Guatemalan State that it:

1. Complete a timely, immediate, serious and impartial investigation to solve the murder of María Isabel Véliz Franco and to identify, prosecute and, if appropriate, punish those responsible.

2. Make full reparations to the next of kin of María Isabel Véliz Franco for the human rights violations herein established.

3. As a measure of non-repetition, introduce a comprehensive and coordinated State policy, backed 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 nonviolence and nondiscrimination.

5. Investigate the irregularities committed by agents of the State in their investigation of the case and punish those responsible.

6. Bolster 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 women'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, the police, as well as comprehensive policies on prevention.