

**REPORT No. 53/13**  
CASE 12.777  
CLAUDINA ISABEL VELASQUEZ PAIZ ET AL  
MERITS  
GUATEMALA  
November 4, 2013

**I. SUMMARY**

1. On December 10, 2007, the Inter-American Commission on Human Rights (hereinafter the “Commission,” “Inter-American Commission,” or “IACHR”) received a petition lodged by the Instituto de Estudios Comparados en Ciencias Penales [Guatemalan Institute of Comparative Studies in Criminal Sciences] and Jorge Rolando Velásquez Durán (hereinafter “the petitioners”), on behalf of Claudina Isabel Velásquez Paiz, Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz (hereinafter “the alleged victims”). The petition was lodged against the State of Guatemala (hereinafter the “State,” “Guatemalan State,” or “Guatemala”), for failure to investigate the murder of Claudina Isabel Velásquez in August 2005 in Guatemala City, allegedly committed during a time of systematic violence against women.

2. On October 4, 2010, the Commission adopted Report on Admissibility 110/10,<sup>1</sup> in which it concluded that it was competent to take up the petition and decided, based on the arguments of fact and law given and without prejudging the merits of the matter, to declare the petition admissible with respect to the alleged violation of the rights enshrined in Articles 4, 5, 11, and 24 of the American Convention, taken in conjunction with to Article 1(1) of that instrument, and of Article 7 of the Convention of Belém do Pará, in respect of Claudina Isabel Velásquez Paiz. It further decided to declare the case admissible with regard to the alleged violation of the rights enshrined in Articles 5(1), 8(1), and 25 of the American Convention, taken in conjunction with Article 1(1) of said instrument, in respect of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz.

3. The petitioners held that the State of Guatemala had behaved negligently in the investigation of the murder of Claudina Isabel Velásquez Paiz, particularly in light of the negligence and disinterest of the authorities, which, more than seven year after the events occurred, have still not managed to identify, prosecute and punish those responsible for the crime. They said that, as a result, these failings in the investigation had enabled the case to remain in impunity.

4. The State of Guatemala held that the inquiries needed to locate those responsible in this case are still underway and that, therefore, it had not violated the human rights of the alleged victims. It also states that the initial acts of violence were not imputable to the State as they appeared to have been committed by private citizens.

5. After examining the positions of the parties and analyzing the facts in the case, and pursuant to Article 50 of the American Convention, the IACHR has concluded in this report that the State of Guatemala violated the rights enshrined in Articles 4, 5, and 11 of the American Convention in

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<sup>1</sup> Report on Admissibility 110/10, Petition 1560/07, Claudina Isabel Velásquez Paiz et al. (Guatemala), October 4, 2010.

connection with Article 1(1) thereof, to the detriment of Claudina Isabel Velásquez Paiz; and that it has breached its duty under Article 7 of the Convention of Belem Do Para in relation to Article 24 of the American Convention, in conjunction with the general obligation to observe and ensure rights envisaged in Article 1(1) of the latter. In this report, the IACHR has concluded also that the State violated the right recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz, as well as Articles 8(1) and 25 the American Convention taken in conjunction with the obligation of the State under Article 1(1) thereof and Article 7 of the Convention of Belém do Pará.

## **II. PROCESSING BY THE IACHR**

6. On October 4, 2010, the Commission adopted Report on Admissibility 110/10. The Commission forwarded the report to the petitioners and the State in a communication of October 15, 2010, and gave the petitioners three months to submit additional observations as to merits. It also placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter in accordance with Article 48(1)(f) of the American Convention. The petitioners' response was received on January 18, 2011, and forwarded on January 31, 2011, to the State, which was given three months to submit its comments. The response of the State was received on May 3, 2011, and duly relayed to the petitioners. In this case the parties had no desire to enter into a friendly settlement agreement.

7. The IACHR also received information from the petitioners on the following dates: August 31 and November 4, 2011, and May 31, 2012. Those communications were duly forwarded to the State.

8. In addition the IACHR received comments from the State on the following dates: January 19, 2012; March 19 and 27, 2012; August 30, 2012; and September 28, 2012. Those communications were duly forwarded to the petitioners.

9. On March 27, 2012, the IACHR, in the course of its 144th regular session, held a public hearing that was attended by Álvaro Rodrigo Castellanos Howell as an expert put forward by the petitioners, the petitioners themselves, and the State of Guatemala.

## **III. POSITIONS OF THE PARTIES**

### **A. The Petitioners**

10. According to the petitioners, at the time of her murder 19-year-old Claudina Isabel Velásquez Paiz was in the fourth semester of her law degree at the Faculty of Legal and Social Sciences of the University of San Carlos of Guatemala. At approximately 8:30 a.m. on August 12, 2005, she and her brother left home, headed for the University where she was studying. At 7:30 p.m. that day, Jorge Velásquez Durán, Claudina's father, spoke to her by cellphone. After several subsequent contacts by telephone, at around 10 p.m. that day the alleged victim contacted her parents to tell them that she was at a party in Colonia Panorama (a gated community in Guatemala City) and that she was with a female friend. Thereafter she contacted her parents and brother several times to tell them that she was at a party and that she would be home by midnight. However, she never came home.

11. According to the alleged victim's friend Pedro Julio Samayoa Moreno, who was with her that night, Claudina Isabel left the party at around 12:30 a.m. on August 13, 2005, and set off home alone. At approximately 2 a.m. on August 13, 2005, Pedro Julio Samayoa's mother appeared at

Claudina's parents' house to ask after her son's whereabouts because a male friend of his had told her that he was with Claudina. She also wanted to inform them that at around 1:30 a.m. she called Claudina's cell phone and as she was speaking to her she heard screams of "No, no, no!" whereupon she said to her son Eduardo, "Something is going to happen to that girl. She might be killed." For that reason she went to Claudina's parents' house.

12. Claudina Isabel's parents immediately launched a search for her, together with Pedro Julio Samayoa's mother and the persons who were with her. They said that they went to where the party had been held. At around 2:55 a.m., while waiting at the security barrier to Colonia Panorama, Pedro Julio Samayoa's mother told them that she had just received a call from her son Pedro Julio, who, in tears, had told her that he had arrived home. As a result, she left, offering to look for Claudina Isabel along the cliffs on the way to her house.

13. While they were waiting at the security barrier, Claudina's mother used her cell phone to call the National Civil Police and they waited for a patrol car to arrive, which did so at around 3:00 a.m. They immediately told the policemen what had happened and said that they wanted to report their daughter's disappearance. However, the policemen told them that they had to wait at least 24 hours before filing a missing person's report.

14. The petitioners said that Mr. and Mrs. Velásquez Paiz carried on looking for their daughter. At approximately 5:00 a.m. the parents of the alleged victim went to National Civil Police precinct 1651 located in Ciudad San Cristobal to report the disappearance; however the petitioners say that they were again told by the police that 24 hours had to elapse since her disappearance before they could receive the report. They say that it was not until 8:30 a.m. that the family was able to file a missing person's report with the police, which, in spite of that, did not initiate a search.

15. At approximately 10:30 a.m. on August 13, 2005, Mr. Velásquez received a call from a family friend telling him that there was an "unidentified" body at the morgue of the Judicial Coroner's Office (*Servicio Médico Forense del Organismo Judicial*) that matched his daughter's description. Claudina Isabel Velásquez was identified by her parents at the morgue at around 11:00 a.m. The alleged victim's corpse, which was removed as "XX" (Jane Doe), had been found at 5:30 a.m. on August 13, 2005 at 10 Avenida 8-87 "A", Colonia Roosevelt, Zone 11, Guatemala City, by National Civil Police agents who arrived at the scene in response to an anonymous telephone call. No one informed the Velásquez family.

16. The petitioners said that at approximately 9:00 p.m. that same day, while the family was holding a wake for the corpse, officials from the Public Prosecution Service's Crime Scene Experts Group had arrived at the funeral home to take the alleged victim's fingerprints. They said that the family was dismayed, humiliated, and offended by the tactlessness of the visit and the absurdity of the requirement. Nonetheless, the family agreed on the condition that the corpse be removed from the viewing area and taken to a more discreet location.

17. They said that the alleged victim's murder had occurred within a broader context of impunity and denial of access to justice that female victims of violence faced. Furthermore, many investigations were driven forward by the families, who were also not given the treatment or attention they deserved, putting them through severe emotional and psychological distress.

18. The petitioners referred to the State's indifference toward violence against women and girls. They said that the indifference was "so great that there are no reliable official data and statistics, and it is nongovernmental organizations, rather, that try to obtain up-to-date and accurate information."<sup>2</sup> According to the petitioners, fear, shame, and impunity continued to be the main factors that deterred women from making complaints and, for that reason, the data collected tended to be insufficient and inconsistent.

19. According to the petitioners, although there had been progress at the statutory level in the fight to eradicate all forms of violence against women, and they cited the law against femicide and other forms of violence against women as an example, that progress had not been backed up with effective public policies and concrete measures to tackle this problem. Although the progress had produced some results, they said that the ineffectiveness in reducing the incidence of violence against women persisted because of the absence of an effective criminal policy.

20. They said that murders of women had increased and worsened in terms of cruelty, and that there were even cases of mutilation and quartering. One peculiar feature of female killings in the country is the way in which the corpses are left, in some cases with their legs apart, nude, or with their underwear torn. According to the petitioners, these are extreme expressions of the sexual nature of the violence perpetrated against women. This situation was no random occurrence, but founded on the patriarchal construct of a woman's sexual body being men's property. In this way, the system of oppression is built through violence against their bodies and sexuality. The petitioners noted that in this context the alleged victim was one of 518 women murdered in 2005.

21. The petitioners said that throughout the entire process the family of the alleged victim have repeatedly been made victims of in their long and fruitless quest for justice, arousing in them feelings of anger, impotence, and despair. They say that Dr. Denisse Peña Juárez, a psychiatric specialist who performed an assessment of Mr. Jorge Velásquez in October 2009 at the request of the petitioners, the whole family had the "clinical profile of collateral victims of Claudina Isabel's violent murder."

22. They said that time after time, the investigation procedures suggested by Mister Rolando Velásquez in his capacity as co-complainant were carried out after delays or deficiently, resulting in a lost opportunity well as harm to the family caused by the realization of the indifference with which their case was being treated. On a number of occasions they said that they were denied access to information, while on others they were asked to give the investigations time to move forward. However, the petitioners said that whenever Mr. Velásquez stopped going to the Public Prosecution Service, no progress was made with the inquiries. They also said that Jorge Velásquez and Elsa Claudina Paiz Vidal voluntarily visited the offices of the Public Prosecution Service on seven occasions between 2005 and 2007 to offer statements as witnesses, given that they were never invited to come forward.

23. Among other flaws, they mentioned the following: irregularities in processing the crime scene, particularly the failure to protect the crime scene, as well as the fingerprinting of the corpse during the wake. They said that the Public Prosecution Service's coroner's report stated that upon arriving at the crime scene the corpse was found covered with a white sheet. The report also said that the corpse had been disturbed before it was examined.

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<sup>2</sup> Petitioners' observations on merits. Brief of January 17, 2011.

24. They also referred to the failure to establish the time of death, the position of the victim when the shot was fired, the distance from the gunshot, the corpse's movement from its original position, and the lack of detail regarding the wounds on the victim's body. Furthermore, not all of the alleged victim's clothes were kept, nor was a pubic combing ordered, despite strong evidence of a possible rape. Evidence was also contaminated as a result of the fact that when the body was turned over unstained garments became contaminated with blood. Potential witnesses were not interviewed and a number of statements were taken months and in some cases almost a year after the events occurred. The petitioners said that twice when the medical examiner at the crime scene got blood on his forearm he wiped it off with the alleged victim's sweater. He did the same to clean the hair at the back of the alleged victim's head in order to better see the exit wound in the right occipital region, which also caused contamination.

25. The petitioners also pointed to irregularities in the autopsy, especially the lack of identification of the corpse, despite the fact that it had already been identified and taken away by the mother. In addition, no description was offered of signs of sexual violence in the genital region, no mention was made of the possible existence of evidence of sexual violence, and there was no record of the abrasions on the alleged victim's face. The results of the gynecological tests were not provided, neither were examinations done of her mouth and anus, or of her breasts, abdomen or inner thighs. Nor were tests done to screen for pregnancy or sexually transmitted diseases.

26. The petitioners said that the Human Rights Ombudsman drew attention to these shortcomings in a report on the case released in July 2006. The Ombudsman determined in the report that the alleged victim and her next of kin had had a series of their human rights violated. In his conclusions, the Ombudsman recommended a variety of measures for improving criminal investigations.

27. They held that the absence of programs for reporting disappearances or abductions of women and taking immediate action thereon, plus the fact that the police twice refused to receive a missing persons report is a clear violation of prevention-of-violence obligations, amounting to a violation of the alleged victim's right to life. In addition, the authorities violated the alleged victim's right to have the integrity of her person respected by their failure to immediately accept her reported disappearance and by failing to respond to a 110 call that they received regarding a possible rape being committed two blocks from where the body of Claudina Isabel Velázquez was later found.

28. The petitioners also claimed a violation of the alleged victim's right to privacy through the failure to prevent the commission of a brutal act against the free exercise of her autonomy, liberty, and sexual privacy. They also held that the sexual violation committed against her impaired her personal autonomy. They also claimed a failure to respect the alleged victim's right to honor and dignity as a result of the absence of a proper investigation of the facts, as well as by the visit to the funeral home to take her fingerprints, causing greater suffering to the family. With that attitude, the prosecutors displayed profound disdain for the victim's dignity and the family's grief. In addition, in the course of the investigation, the family had to suffer disparaging remarks against the dignity of the alleged victim. At the beginning of the investigation the authorities told them that the profile of the alleged victim had been confused with that of a female gang member or a prostitute and, therefore, according to the authorities, a person whose death was not worthy of investigation.

29. With regard to the right to equality before the law, they say that in the eyes of prosecutors and the police, women who are murdered in Guatemala are automatically assumed to be prostitutes or gang members before any investigation commences. As a result of the gender stereotype

that agents of the State of both sexes apply and reproduce, the mere fact of being a victim of a violent death puts them in a despised, negative category. Due to this prejudice, they refuse to investigate and close cases virtually without carrying out any inquiries, which is not only a discriminatory and sexist practice, but also against Guatemalan law. The petitioners say that Carolina Elizabeth Ruiz Hernández, the investigator from the Criminal Investigation Service, arrived at the home of the parents of Claudina Isabel Velásquez three days after the alleged victim's death. They say that upon asking her why the crimes scene had been handled so carelessly, the investigator "answered them without the slightest attempt at tact or consideration that it was because it was assumed that the victim (Claudina Isabel) was a woman of "easy virtue" (*una cualquiera*), and that they had reached that conclusion based on the following factors: a. The place where the body was found (a lower-middle-class neighborhood); b. Because she was wearing a choker around her neck and a ring through her navel (which was too big in her opinion); and, c. Because she was wearing sandals.<sup>3</sup>

## **B. Position of the State**

30. The State held that the violent murder and possible rape of Claudina Velásquez was under investigation by the Public Prosecution Service (Homicide Unit 7), according to case file MP001/2005/69430. According to the investigations carried out, the initial acts of violence were not imputable to the State as they were apparently committed by private citizens.

31. It said that the Public Prosecution Service and the National Civil Police had conducted a variety of inquiries. As to the investigation, the State mentioned that although the petitioners argued that the body of the alleged victim was removed as "XX" (Jane Doe) with no effort being made to identify her, when police and officials from the Public Prosecution Service arrived at the crime scene to remove the body they found no identity documents.

32. The State says that in this case the time and duration of the processing of the crime scene were established. The certificate of removal of the corpse indicates that the procedure commenced at 6:30 p.m. and concluded at 7:30 p.m. The removal-of-corpse form also states that the procedure was carried out at 6:30 p.m. It also stated that the address to which Public Prosecution Service officials were called to remove Claudina Velásquez's corpse was on the corner of 10<sup>a</sup> Avenida and 8<sup>a</sup> Calle, opposite house No. 8-87 "A." The photographs identified the hanging sign and the name painted on part of the building identified as *Restaurante Mary*. A planimetric diagram was also drawn of the crime scene and it indicates the address of the building opposite which the alleged victim's corpse was found.

33. The State said that the estimated distance from which the gunshot was fired and a determination as to the time of death "were not made in the removal-of-corpse report prepared by the medical examiner because the protocol used was determined by a form that did not require that information to be recorded."<sup>4</sup>

34. The State also mentioned that the fingerprints were not taken at the crime scene because the medical examiner at the scene ordered the fingernails to be scraped for evidence. Had he

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<sup>3</sup> Initial petition of December 10, 2007.

<sup>4</sup> State's reply of March 27, 2012.

fingerprinted the body, he would have contaminated any evidence that might have been obtained from the fingernails, the results of which indicated the presence of animal blood.

35. According to the autopsy performed, the State said that the cause of death was a “perforating wound to the head caused by a firearm projectile and cerebral hemorrhage.” It described the constitution of the alleged victim, the signs of death, and the wounds that she presented, which consisted of one caused by a firearm projectile and abrasions to the right lumbar region, left knee, and rear of the left foot. It stated that no lesions were described in or around the genital area because there were none. The State also noted that urine and liver blood samples were taken to screen for blood alcohol and drug levels, and anal and vaginal swabs were taken to test for the presence of semen.

36. As regards the investigation, the State held that the crime scene was processed, inspections were made of the place where the corpse was found and the surrounding areas, as well as the place where the party that the alleged victim attended on August 12, 2005 has been held. Statements were taken, elaborations requested on the medico-legal reports on the autopsy, and requests made for telephone records, expert opinions, and DNA tests, among other procedures. The State said that the country lacked the necessary special technology for transferring cadavers to the judicial morgue to perform a forensic autopsy. The State noted that the case file showed that administrative penalties were imposed on the officials who took part in the initial investigation procedures.

37. According to the State, biological tests were performed to identify the blood type in evidence that was submitted, as well as to establish the presence of semen and/or sperm. It was established that the alleged victim had sexual intercourse prior to her death but there is no evidence of rape in the various reports contained in the case file. The vaginal swabs taken from the victim indicate a genetic profile consistent with that of a male that did not match the genetic profile of any of the suspects.

38. The State said the two suspects had been ruled out and that the inquiries were continuing. The exhumation had been requested at La Verbena cemetery of the corpse of an unidentified male, thought to be that of Elmer Danilo Portillo Samayoa (a suspect). The State also mentioned that lines of inquiry had been pursued with respect to Claudio Cana (a suspect), who was living in the area where the dead body of the alleged victim was found. According to information received, he drove a taxi as well as engaging in the robbery of vehicles and drug distribution in Colonia Roosevelt, Zone 11 of Guatemala City. Claudio Cana was a friend of the suspect Elmer Portillo. Claudio Cana is reportedly in custody in the United States where he is facing homicide charges.

39. According to the State, the report of Precinct 142 of National Civil Police District 14, indicated that there was no record of any call for assistance made from Colonia Roosevelt, Zone 11 on August 13, 2005.

40. The State said that in order to move forward in the pursuit of justice, the Ministry of Justice holds monthly roundtable meetings with the family members of the alleged victim to update them on progress made in the investigations and on the various lines of inquiry being pursued. State said that psychological support was offered to the relatives but turned down.

41. The State said that it “has come to its attention, through the cases presented to the illustrious Commission, that government employees and officials (though not all of them), make

stigmatizing judgments about victims based on their gender, social class, attire, and tattoos. However, such actions and comments are not the position of the State and have not been used in its arguments; they are not institutional conduct or behavior tolerated by the State, given that victims of such unacceptable conduct have the right of recourse to the relevant administrative proceedings before the Office of the Supervisor of Courts (*Supervisión de Tribunales*) or the Office of the Supervisor General of the Public Prosecution Service (*Supervisión General del Ministerio Público*) to denounce such misconduct.”<sup>5</sup>

42. Aside from several international instruments for protection of human rights ratified by Guatemala, the State made reference to various institutions to prevent, provide assistance in, punish, and eradicate domestic violence and violence against women. The State referred to the creation on November 24, 2000, of the National Coordinator for Prevention of Domestic and Gender Violence (CONAPREVI) as a state entity to advise on and implement public policies for eradicating domestic violence and violence against women, which acts as the coordinating body for public and private institutions that provide assistance in, prevent, punish, and eradicate these problems. In 2006, the judiciary created the Unit for Women and Gender Analysis in the Judicial Branch, whose mission is to mainstream gender awareness in the judiciary. The Unit, in coordination with the Institutional Training Unit, has made courses on advancement and observance of human rights part of the induction training provided to would-be judges; it has also included them in the ongoing training given to jurisdictional and administrative staff, as well as in specialized training. In 2008, the judiciary implemented a new management model for primary assistance in cases of violence against women and sexual crimes in the Guatemala City area.

43. May 7, 2008, saw the enactment of the Law against Femicide and Other Forms of Violence against Women, which contains preventive measures, criminal classifications, and punitive mechanisms for ensuring the right of women to a life free from physical, psychological, sexual, and moral violence, as well as from violence against property. In addition, in September 2010 the first edition was published of the Protocol for the Law against Femicide and Other Forms of Violence against Women with the aim of providing judicial system personnel with a toolkit for ensuring women’s right of access to justice. Furthermore, the Law against Sexual Violence, Exploitation, and Trafficking in Persons was passed in 2009, aimed at preventing, suppressing, punishing, and eradicating sexual violence, exploitation, and trafficking in persons, in addition to providing victims with assistance and protection as well as compensation for damages.

44. The State notes that the Public Prosecution Service has a Prosecution Unit for Women and that in May 2008 the Office of the Government Prosecutor for the Metropolitan Area created the Comprehensive Assistance Model for Cases of Domestic Violence and Sex Crimes (MAI) which is designed to enhance technical investigation capabilities in cases of violence against women by reducing the time taken to grant protection measures for victims, augmenting the number of preliminary investigation procedures and cases submitted to the criminal justice system, and increasing the number of cases comprehensively dealt with. Moreover, five criminal courts of first instance and sentencing tribunals for cases of femicide and other forms of violence against women were created in Guatemala Department and other departments. The State also has in place institutions such as the Office of the Ombudsperson for Indigenous Women (1999) and the Presidential Secretariat for Women (2001), which work in the area of national policy for women’s advancement and integral development. There is also

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<sup>5</sup> Communication from the State, Note No. 381-11 of May 2, 2011.

the Domestic Violence Prevention and Eradication Program (PROPEVI), attached to the Secretariat for Social Works of the Office of the First Lady.

45. The Presidential Committee to Address Femicide in Guatemala was institutionalized on March 9, 2012. Its mandate is to study, analyze, and identify the causes of femicide in the country and to recommend policies, strategies, programs, plans, and projects to prevent, provide assistance in, punish, and reduce cases of femicide in Guatemala. The State also referred to the National Policy on Advancement and Integral Development for Women, the Equity and Opportunities Plan, and the National Plan for Prevention and Eradication of Domestic Violence and Violence against Women (PLANNOVI) 2004-2014.

46. The State said that in this case the investigation procedures necessary to find the culprits were still proceeding.

#### **IV. ESTABLISHED FACTS**

47. In the following section the Commission sets out its position regarding the established facts in this case.

##### **The reported disappearances**

48. In his statement to the Public Prosecution Service, Jorge Rolando Velásquez said that at approximately 3:00 a.m. a national Civil Police patrol car arrived at the main gate to Colonia Panorama, the area where the witnesses had allegedly seen the victim alive. He said that they had followed the patrol car to the entrance to Pinares, “where they said that there was nothing more to be done and that they were going to continue patrolling.”<sup>6</sup> Furthermore, in a statement to the Public Prosecution Service, Elsa Claudina Paiz Vidal said that a patrol car arrived at the Panorama gate in response to a telephone call that they had made concerning their daughter’s disappearance. The patrol car accompanied them through the streets as far as the Pinares entrance, when the officers told them that they had to “wait at least 24 hours.”<sup>7</sup>

49. Among the documents supplied by the petitioners is a receipt for a missing person’s report issued on August 13, 2005, by San Cristobal Precinct 1651 (of the 16th Police District), which records that Claudina Paiz reported her daughter’s disappearance at 8:30 a.m.<sup>8</sup>

##### **The Discovery of the Body**

50. According to a police report, members of that body had gone to the place where the body of the alleged victim was found on the instructions of the dispatcher. The parties offer no

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<sup>6</sup> Appendix 1. Statement by Jorge Rolando Velásquez Durán of September 22, 2005, to the Public Prosecution Service. Copy of the judicial record presented by the petitioners on May 31, 2012.

<sup>7</sup> Appendix 2. Statement by Elsa Claudina Paiz Vidal of September 22, 2005 to the Public Prosecution Service. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>8</sup> Appendix 3. Receipt for missing person’s report issued on August 13, 2005 by National Civil Police Precinct 1651 situated in Ciudad San Cristóbal Mixco. Appendix to the original petition of December 10, 2007.

additional information regarding the person or persons who found the body and notified the police. The police report of August 13, 2005, states that they went to verify the possible existence of a dead person:

That today, at 5:30 a.m., on the orders of the controller on duty at the 14th Police District radio dispatch center, they went to a location on 10<sup>a</sup> Avenida opposite a house numbered 8-87 "A," where a restaurant known as "Mary" is situated, in Colonia Roosevelt, Zone 11, in order to investigate the report that there was a possibly dead female there; they confirmed that there was a dead female person on her back on the asphalt lying from South to North, opposite the aforementioned house or building, whereupon they immediately coordinated with the scene-of-crime units.<sup>9</sup>

51. The report states that at the scene there arrived an assistant prosecutor, a medical examiner, two investigators from the Public Prosecution Service, and the crime scene protection unit "in order to prepare the requisite notice of removal for a female person by the name of: XX [Jane Doe]."<sup>10</sup> The report describes details of the discovery:

Approximately 20 years old; regular complexion; long, straight black hair with brown highlights; elongated face, closed eyes, thick eyebrows, aquiline nose; clothes: stained blue trousers, black blouse, pale pink sweater, black sandals, white brassiere, pale pink briefs; approximately 1.66 meters tall.

In addition, evidence found at the scene included a cartridge case and a "illegible" [sic], possibly 9 mm caliber. Which remained in the possession of the crime scene investigators from the Public Prosecution Service. According to information collected by the reporting agents, who were told by several individuals who were at the scene that a white taxi-like vehicle, arrived at the place possibly to dump her where she was found; they did not provide their names for fear of reprisals.<sup>11</sup>

52. According to the Removal of Body Form exclusively for police and prosecutorial use, at 6:30 a.m. on August 13, 2005, the body of "XX - female" was removed from 10 Ave. 8<sup>a</sup> calle opposite house No. 8-87 "A" *Restaurante Mery*.<sup>12</sup> The report of the Guatemala Volunteer Fire Department establishes that the "deceased was not identified because she did not have any identity documents."<sup>13</sup>

## The investigation

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<sup>9</sup> Appendix 4. Official communication No. 2,544/2005, Ref. agente.mazariegos of August 13, 2005, issued by Saul Rigoberto Estrada García, 142nd Station Chief, Zone 11. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>10</sup> Appendix 4. Official communication No. 2,544/2005, Ref. agente.mazariegos of August 13, 2005, issued by Saul Rigoberto Estrada García, 142nd Station Chief, Zone 11. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>11</sup> Appendix 4. Official communication No. 2,544/2005, Ref. agente.mazariegos of August 13, 2005, issued by Saul Rigoberto Estrada García, 142nd Station Chief, Zone 11. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>12</sup> Appendix 5. Removal-of-Corpse Form exclusively for police and prosecutorial use, signed by Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012; Appendix 6, Autopsy report of August 16, 2005, No. 2604-05, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>13</sup> Appendix 7. Notice No. 828.09-. 2005 issued by Fire Department Official Oscar Rafael Sánchez Aguilar. Copy of judicial record presented by the petitioners on May 31, 2012.

53. The report prepared by the investigating medical examiner of the Public Prosecution Service indicates that they arrived at the scene of the crime at 6:30 a.m. and that the corpse was examined at 8:10 a.m. The report also notes that the corpse was covered with a white sheet. In addition, the clothes were stained with blood, the brassiere and belt had been removed, and the blouse was on inside-out

GENERAL DATA:<sup>14</sup>

DATE: 13/08/05. TIME OF ARRIVAL AT THE SCENE: 6:30 a.m., OF CORPSE EXAMINATION: 8:10 a.m. [...]

MEDICO-LEGAL HISTORY:

History of having been found dead at approximately 5:00 a.m.

POSITION OF THE CORPSE: Face up.

PRIOR MANIPULATION: Yes

Examination of scene and surrounding area:

Cadaver [lying] on the asphalt covered with a white sheet with a cartridge case and blood around it, underneath the corpse [there was] a condom wrapper and [there was] a strong smell of alcohol.

EXTERNAL EXAMINATION OF THE CORPSE:

Clothes: Bloodstained. Brassiere removed, belt removed, zipper lowered, blouse on inside-out.

[...]

CONCLUSIONS:

ESTIMATED TIME OF DEATH: 1-3 hours.

PROBABLE MANNER OF DEATH: Homicide

LABORATORY TESTS REQUESTED: Blood alcohol and drug test Rectal and vaginal swabs, and scraping of fingernails.

54. Subsequently, on June 21, 2006, the Medical Examiner from the Public Prosecution Service who carried out the external inspection said that the correct time of the examination of the cadaver was 6:55 a.m., not 8:10 a.m., as he had stated in the earlier report.<sup>15</sup>

55. The report of the criminalistic investigators from the Public Prosecution Service also said that the clothes “worn by the unidentified female” were inside out and she was not wearing a brassiere: “It should be noted that the blouse was on inside out and she was not wearing the brassiere.”<sup>16</sup> According to an investigation report, Mynor Norberto García, an agent of the National Civil Police who arrived at the scene of the crime, said that the brassiere was covered in blood and the alleged victim was not wearing it; rather it was around her trousers, which led him to assume that she had been raped.<sup>17</sup> In that connection, the same investigation report documented the interview with Santiago Haz, another policeman, who also said that he presumed that a rape could have been committed because

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<sup>14</sup> Appendix 8. Report DMF-2947-05 ESCENA 2413-05 PAC/Im of August 30, 2005, prepared by Mr. Pedro Adolfo Ciani, Investigating Medical Examiner, Public Prosecution Service. Enclosed with the original petition of December 10, 2007.

<sup>15</sup> Appendix 9. Report, unnumbered, of June 21, 2006, signed by Dr. Pedro Adolfo Ciani, Medical Examiner of the Public Prosecution Service. Enclosed with the original petition of December 10, 2007.

<sup>16</sup> Appendix 10, Report of Public Prosecution Service criminalistic investigations technicians Walter Adolfo Morales Rosales and Sergio Antonio Polanco Rivera, RAC 3,970-2005 of August 19, 2005. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>17</sup> Appendix 11. Report by investigators Jose Antonio Anaya and Dairyn Antonieta López, RAC. 2005-4813 of October 24, 2005, addressed to Celeste Díaz García, Government Prosecutor, Unit No. 14. Copy of judicial record presented by the petitioners on May 31, 2012.

the “underwear was stained with blood and she was not wearing the brassiere.” The report also states that a witness claimed to have heard the sound of a gunshot opposite his house and immediately afterward heard the noise of a vehicle traveling at full speed in an unknown direction.

56. According to the information in the record, the corpse was fingerprinted at the crime scene and the relevant card sent to the forensics laboratory.<sup>18</sup> However, it is a proven fact that the fingerprints were not taken at the scene of the crime but later, at the place where the alleged victim’s wake was held. The record contains the report of August 16, 2005, issued by the Public Prosecution Service criminalistic investigations technician, forwarding to the Public Prosecution Service Forensics Department a ten-print card containing the prints of the alleged victim taken at *Funerales Reforma* funeral home on August 13, 2005, at 9 p.m.<sup>19</sup>

57. The record shows that the authorities did not fully complete the removal-of-corpse form. The box for “Background information on the deed and conditions of the scene” is blank. It is also stated that the following tests were ordered: blood drug level, blood alcohol level, rectal and vagina swab, and scraping of fingernails.<sup>20</sup> It was also established that the alleged victim was wearing a “black singlet,” pink and orange briefs (Bloomer), and black sandals. In addition, the following items were found on the corpse: “Two rings in her navel and a “–illegible–” [sic] with a pendant around her neck,” which remained in the possession of the assistant prosecutor.<sup>21</sup>

58. As regards the evidence collected, the report by investigator Carolina Elizabeth Ruiz Hernández mentions that the crime scene specialists from the Public Prosecution Service bagged the following items for analysis: a firearm cartridge case, a firearm projectile, a condom wrapper, a silver ear stud with a rose-colored pearl, a choker made of pink cloth fabric with a pendant of the queen [sic] Osiris, and a broken, pink, elastic hair band.<sup>22</sup> According to a communication from the criminalistic investigations technician, the following items were found at the hospital morgue: a firearm cartridge case, a firearm projectile, a *Cup Ramen* sachet containing dehydrated vegetables, and a pink sweater with possible bloodstains, despite the fact that they had been presented, suitably bagged, to the assistant prosecutor at the scene, with the respective chain-of-custody record.<sup>23</sup>

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<sup>18</sup> Appendix 12. Report 2242-2005 E.E.C.G10 of August 16, 2005, issued by Edwin Omar de León Pineda, criminalistic investigations technician, Group No. 10 Coordinator, addressed to the Homicide Section Prosecution Unit. Enclosed with the original petition of December 10, 2007.

<sup>19</sup> Appendix 13. Report No. 2242-2005 Group 11 of August 16, 2005. Report of Marta Yolanda Samayoa López, criminalistic investigations technician, addressed to the Public Prosecution Service Fingerprint Section. Enclosed with the original petition of December 10, 2007.

<sup>20</sup> Appendix 14. Removal-of-Corpse Form exclusively for police and prosecutorial use, signed by Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>21</sup> Appendix 14. Removal-of-Corpse Form exclusively for police and prosecutorial use, signed by Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>22</sup> Appendix 15. Report of investigator Carolina Elizabeth Ruiz Hernández, Official communication 824-05 Ref/JU.JRMF.ruiz of August 13, 2005. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>23</sup> Appendix 16. Report of Maynor Giovanni Garrido Veliz, criminalistic investigations technician of September 23, 2005, addressed to Assistant Prosecutor Rocío Reyna. Enclosed with the original petition of December 10, 2007.

59. Claudina Isabel Velásquez Paiz's body was identified by her mother, Elsa Claudina Paiz Vidal, and turned over to the latter at 12:00 p.m. on August 13.<sup>24</sup> The clothes that she was wearing were all returned to the family, except a pink sweater which was kept for investigation.

60. As regards the investigation of the death and the circumstances in which it occurred, the autopsy report of August 16, 2005, gave the cause of death as a "perforating wound to the head caused by a firearm projectile and cerebral hemorrhage."<sup>25</sup> As regards the wounds found, the autopsy report established the presence of a wound caused by a firearm projectile and abrasions to the right lumbar region, left knee, and rear of the left foot. With respect to the genital organs, the report noted that they were found to be "normal."<sup>26</sup>

61. Subsequently, at the request of the Public Prosecution Service,<sup>27</sup> the autopsy report was enlarged upon and it was determined that the body had been identified as that of Claudina Isabel Velásquez Paiz. It was also indicated that the distance of the gunshot was less than 45 centimeters. The time of death was established as "between 7 and 11 hours after the autopsy was carried out."<sup>28</sup> In this regard, at the request of the Public Prosecution Service the time of death was amended and it was established that "the person had been dead approximately 7 to 11 hours when the autopsy was carried out."<sup>29</sup> It also states that the external examination carried out found no evidence to suggest where the alleged victim had died.<sup>30</sup>

62. The ballistics expert's report of December 6, 2005, indicated that the exhibits were received from the Public Prosecution Service on February 2, 2005, and at Prosecution Unit 14 (according to the receipt stamp) it was recorded that the expert's report was received on February 28, 2005. Those dates are mistaken, given that the alleged victim died on August 13, 2005. According to the Model Autopsy Protocol of the United Nations, X-rays should be taken in gunshot cases to aid in locating the

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<sup>24</sup> Appendix 17. Record No. 8379 of August 13, 2005, 12:00 p.m., by which Elsa Claudina Paz recognizes the body of her daughter Claudina Isabel Velásquez Paiz. Enclosed with the original petition of December 10, 2007. Appendix 10, report of Public Prosecution Service criminalistic investigations technicians Walter Adolfo Morales Rosales and Sergio Antonio Polanco Rivera, RAC 3,970-2005 of August 19, 2005. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>25</sup> Appendix 18, Autopsy report of August 16, 2005, No. 2604-05, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>26</sup> Appendix 18, Autopsy report of August 16, 2005, No. 2604-05, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>27</sup> Appendix 19. Request by Assistant Prosecutor Etz Sai Rodríguez Cho to Sergio Alder Alfredo Martínez Martínez, to elaborate on autopsy report No. 2604-2005. Enclosed with the original petition of December 10, 2007.

<sup>28</sup> Appendix 20. Enlarged Autopsy Report No. 617-05 of October 7, 2005, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Etz Sai Rodríguez Cho, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>29</sup> Appendix 21. Enlarged Autopsy Report 2604-2005 of June 7, 2006, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Carlos Antonio Miranda Arévalo, Assistant Prosecutor. Enclosed with the original petition of December 10, 2007.

<sup>30</sup> Appendix 20. Enlarged Autopsy Report No. 617-05 of October 7, 2005, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Etz Sai Rodríguez Cho, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

projectile(s).<sup>31</sup> In this case, the trajectory of the gunshot was not formulated, nor were X-rays taken of the corpse.

63. The IACHR notes that several reports drafted after the body of the alleged victim was identified continued to refer to body “XX.”<sup>32</sup>

64. With respect to the investigation of the possibility that the alleged victim had been raped, it is a proven fact that the tests conducted found semen on the vaginal swabs.<sup>33</sup> The enlarged autopsy report, however, indicates a lack of physical signs in the genital area:

The forensic gynecological examination of the corpse found genitals normal for the age and that she was not a virgin. At the entrance to the vagina the hymen is ring-shaped with old abrasions at three, six, and nine o’clock. There are no recent physical signs of genital trauma. Samples were taken from the vaginal canal to screen for the presence of semen.<sup>34</sup>

65. As regards the findings of other tests, the presence of animal blood was found under the alleged victim’s fingernails.<sup>35</sup> In addition the expert’s report on the tests to screen for the presence of alcohol or other volatile substances and/or drugs gave no indication as to the area from which the blood sample was taken during the autopsy for the purposes of those tests.<sup>36</sup>

66. Among the documents furnished by the petitioners is a complaint made by a “neighbor” to the National Civil Police’s 110 System concerning a possible rape that allegedly occurred on August 13, 2005, at 2: a.m. on 7ma. Calle “A” 11-32, Zone 11, Colonia Roosevelt, near where the dead body of Claudina Isabel Velásquez Paiz was found.<sup>37</sup> There is no record of the authorities having followed up on the complaint.

67. In a brief dated November 15, 2005, Jorge Rolando Velásquez Durán requested the judge of the Second Court of First Instance for Criminal Matters to include him definitively in the

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<sup>31</sup> Model Autopsy Protocol of the United Nations ratified in 1991 by the United Nations General Assembly.

<sup>32</sup> For example, Appendix 18., Autopsy report of August 16, 2005, prepared by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner (Nec 2604-05). Enclosed with the original petition of December 10, 2007; Appendix 21, Request by Carlos Antonio Miranda Arévalo Arévalo, Assistant Prosecutor, MP001-2005-69430-C.S., addressed to the Chief of the Judicial Forensic Service. Enclosed with the original petition of December 10, 2007.

<sup>33</sup> Appendix 22. Opinion No. BIOL-05-1455 of September 26, 2005, issued by Ms. Ana Cecilia Díaz Ovalle de Mayorga of the Public Prosecution Service, addressed to Alma Dinorah Moreno Escudero, Prosecution Unit No. 10. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>34</sup> Appendix 20. Enlarged Autopsy Report No. 617-05 of October 7, 2005, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Etz Sai Rodríguez Cho, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>35</sup> Appendix 22. Opinion No. BIOL-05-1455 of September 26, 2005, issued by Ms. Ana Cecilia Díaz Ovalle de Mayorga of the Public Prosecution Service, addressed to Alma Dinorah Moreno Escudero, Prosecution Unit No. 10. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>36</sup> Appendix 23. Expert’s Report No. TOXI-05-2620 of September 16, 2005, issued by Ms. Isabel Mata Lemus of the Public Prosecution Service, addressed to Alma Dinorah Moreno Escudero, Prosecution Unit No. 10. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>37</sup> Appendix 24. Complaint to the National Civil Police’s System 110—Confidential information and emergency calls, August 13, 2005 Information submitted by the petitioners with their communication of January 18, 2011.

proceedings as a plaintiff. In a decision of November 28, 2005, the First Court of First Instance for Criminal Matters granted Jorge Rolando Velásquez provisional leave to intervene as a co-complainant.<sup>38</sup>

68. Several irregularities in the way in which the investigation in this case was conducted were documented by the Office of the Human Rights Ombudsman of Guatemala, which, in use of its powers, opened an investigation in response to the complaint brought by Mr. Jorge Rolando Velásquez Durán alleging that the State had violated its duty to investigate and prosecute those responsible for his daughter's murder. The Ombudsman's Office issued a Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz. The irregularities referred to by the Office of the Ombudsman included the refusal of the police to receive a missing persons report from the parents of the alleged victim at around 3:30 a.m., arguing that they had to wait 24 hours before they could file a report; deficiencies in the way in which the scene of the crime was processed; deficiencies in the judiciary's forensic medical examination and report; unnecessary victimization of the family during the funeral in order to take the fingerprints; deficiencies in the handling of evidence, in the collection, safekeeping, and forwarding of evidence, and in the way in which the expert opinions were prepared; failure on the part of the prosecutors in charge of the case to assume technical leadership of the investigation; and secondary victimization of the family of the alleged victim.<sup>39</sup>

69. According to the Ombudsman's report, police officer Carolina Ruiz stated that "the crime scene was not processed as it should have been because of prejudgment of the victim's background and status." She was classified as a person whose death should not be investigated.<sup>40</sup>

70. Among the various irregularities encountered in the investigation of Claudina Isabel Velásquez Paiz's murder, the Ombudsman's Office noted a lack of continuity in the prosecutors in charge of the case. The Ombudsman's Office mentioned that the case passed through the hands of several different prosecutors and assistant prosecutors at Prosecution Unit 10, Prosecution Unit 14, and the Section Prosecutor's Office, with each transfer entailing an interruption in the investigation, not to mention that many procedures were not carried out in a timely manner or were ignored by the subsequent prosecutors.<sup>41</sup>

71. The Office of the Ombudsman issued a resolution in which it declared:

"I.- Violation of the duty to respect and ensure the rights to life, to personal safety, to justice within a reasonable time, and to effective judicial protection of CLAUDINA ISABEL VELÁSQUEZ PAIZ and her family members; and, II.- Violation of the right of the members of the victim's family who have demanded justice to be treated with dignity and respect, and violation of the

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<sup>38</sup> Appendix 25. Decision C-14280-2005 Of. 3, First Court of First Instance for Criminal Matters, Drug Trafficking, and Crimes against the Environment, of November 28, 2005. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>39</sup> Appendix 26. Office of the Human Rights Ombudsman, *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz].

<sup>40</sup> Appendix 26. Office of the Human Rights Ombudsman, *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz].

<sup>41</sup> Appendix 26. Office of the Human Rights Ombudsman, *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz].

other rights recognized in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>42</sup>

72. As a result of the Ombudsman's findings, an investigation was opened against the medical examiner Sergio Alder Alfredo Martínez Martínez for irregularities in documenting the autopsy carried out on Claudina Isabel Velásquez. The Judicial Branch Human Resources Disciplinary Unit found that Mr. Martinez had committed a serious fault and in 2007 imposed on him two penalties of 20 days' suspension without pay.<sup>43</sup>

73. Furthermore, in Report No. 48-2006 of May 5, 2006, the Office of the Supervisor General of the Public Prosecution Service found that "the victim, her parents, and members of her family, particularly Mr. Jorge Rolando Velásquez Durán, were improperly treated." The report contained two recommendations for the Crime Scene Specialists Area: that they avoid, at all costs, any further carrying out of investigative procedures (fingerprinting) at funeral homes, in view of its potential impact on collateral victims, and that work teams report immediately any difficulties or obstacles that they encounter in carrying out their work, and resolve them without harming the rights of others.<sup>44</sup>

### **The Context of Violence against Women and Girls**

74. The IACHR and an array of international agencies, nongovernmental organizations, and national agencies have expressed concern over the past 12 years at the lack of due diligence on the part of the State in preventing, investigating, and punishing acts of violence against women in Guatemala amid a worsening context in that regard.<sup>45</sup>

75. In its Fifth Report on the Situation of Human Rights in Guatemala adopted in April 2001, the IACHR stated that violence against women in Guatemala was a profound problem in that country.<sup>46</sup> In that report, the IACHR referred to the upsurge in the number of reported rapes and acts of domestic

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<sup>42</sup> Appendix 27. Office of the Human Rights Ombudsman, resolution of July 20, 2006 on the criminal investigation into the murder of Claudina Isabel Velásquez Paiz.

<sup>43</sup> Appendix 28. Ruling of the Judicial Branch Human Resources Disciplinary Unit of October 16, 2007; and Appendix 29. Ruling of the Judicial Branch Human Resources Disciplinary Unit of February 12, 2007. Enclosed with the original petition of December 10, 2007.

<sup>44</sup> Appendix 30. Report No. 48-2006, issued by Militza V. Rodríguez Alvarez and Zulma Lisbeth Rodríguez, to Gloria Patricia Porras Escobar, Supervisor General. Enclosed with the original petition of December 10, 2007.

<sup>45</sup> IACHR, Press Release No. 20/04, *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 Discrimination against Women, CEDAW/C/GUA/CO/6, 2 June 2006, Original: English, 35th Session, 15 May to 2 June 2006, para. 23, available online at <http://www.un.org/womenwatch/daw/cedaw/35sess.htm>; *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women*, Report of United Nations Special Rapporteur, Yakin Ertürk, on her mission to Guatemala, 8 to 14 February 2004; Human Rights Ombudsman of Guatemala, *Compendio "Muertes Violentas de Mujeres", 2003 to 2005* [Compendium "Violent Deaths of Women, 2003 to 2005"], p. 92. [http://www.pdh.org.gt/files/inf\\_especiales/muerte\\_mujeres03-05.pdf](http://www.pdh.org.gt/files/inf_especiales/muerte_mujeres03-05.pdf); Amnesty International, *Guatemala: No protection, no justice: killings of women (an update)*, AMR 34/019/2006, 2006; Amnesty International, *Guatemala: No protection, no justice: killings of women*, AMR 34/017/2005, June 2005. International Federation for Human Rights, International Investigation Mission, *El Femicidio en Mexico y Guatemala* [Femicide in Mexico and Guatemala], No. 446/3, April 2006.

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

violence in 1999 compared with previous years.<sup>47</sup> The IACHR also mentioned reports that violence based on gender was “a leading cause of death and disability among women between 15 and 44 years of age.”<sup>48</sup>

76. The IACHR also noted that Guatemala’s response to domestic violence revealed specific areas where further steps needed be taken in order to provide victims with effective protection for their basic rights.<sup>49</sup> One of the serious limitations on the design of effective responses to gender violence that was highlighted by the IACHR was the lack of clear data on the precise magnitude of the problem.<sup>50</sup> In 2003, the IACHR reiterated that while precise statistics were difficult to obtain, the number of murders involving female victims had risen and that these cases had not been properly investigated nor the guilty parties punished.<sup>51</sup> According to data provided by the National Police of Guatemala to the IACHR,<sup>52</sup> 303 women were murdered in 2001, 317 in 2002, 383 in 2003, 509 in 2004, and 552 in 2005.<sup>53</sup>

77. In 2004, the IACHR Office of the Rapporteur on the Rights of Women announced in the context of its working visit to Guatemala that several sources had stated that not only had the number of murders of women increased, but that there had also been an increase in the degree of violence and cruelty displayed against the bodies of many of the victims. The Office of the Rapporteur said that it had received consistent reports describing cases of murders “to set an example,” in which “the abuse reflected by the state of the victim’s body and the areas in which the corpses were left, [was] designed to send a message of terror and intimidation.”<sup>54</sup> In this context, the Office of the Rapporteur

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<sup>47</sup> Figures supplied by the Public Prosecution Service indicated that it had received 1,400 reports of domestic violence and almost 600 reports of rape in 1999. In 1998, the figures were little over 600 and slightly more than 400, respectively.

<sup>48</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, OEA/Ser.L/V/II.111, Doc. 21 rev., par. 41.

<sup>49</sup> In the report, the IACHR mentioned that the organization MINUGUA carried out a comprehensive study on the State’s response to intrafamilial violence and rape in 1999. On examining how State personnel assigned to receive complaints of intrafamilial violence responded, MINUGUA identified a tendency on the part of many, particularly police officers, to blame the victim. One officer was quoted as expressing the view of many that “the principal cause of intrafamilial violence is the behavior of the woman.”

<sup>50</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, April 6, 2001, OEA/Ser.L/V/II.111, Doc. 21 rev., par. 47. In its report, the IACHR noted that the director of the Domestic Violence Program of the United Nations Latin American Institute for the Prevention of Crime (ILANUD) estimated that half of all Guatemalan women suffer some form of violence, primarily physical. In addition, a representative of the —nongovernmental Network of Nonviolence against Women estimated that every 46 minutes a woman is subjected to violence.

<sup>51</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 2003, par. 296.

<sup>52</sup> The IACHR collected information on the murder rate for women in Guatemala during a working visit that it conducted from September 12 to 18, 2004, and on a follow-up visit by the Rapporteur on the Rights of Women, Víctor Abramovich, from July 14 to 17, 2006, as part of the activities carried out in Guatemala during the 125th regular session on the IACHR.

<sup>53</sup> According to those statistics, the number of women murdered between January and June 2006 was 303. National Police of Guatemala, powerpoint presentation on female homicides, 2005-2006. June 2006.

<sup>54</sup> IACHR, Press Release No. 20/04, *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 on-line at <http://www.cidh.org/Comunicados/English/2004/20.04.htm>. With respect to differences between murders of women and men, Guatemala’s Human Rights Ombudsman noted that, with men, in almost 80% of cases they were killed in a way that did not necessarily entail physical contact between victim and assailant, such as, for instance, with a firearm. However, this was only true in 69% of cases where women were concerned, whereas in 31% of cases it was found that forms of direct physical violence were employed, such as through the use of stabbing weapons or blunt instruments, as well as by strangulation. The

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underscored the impunity associated with these cases of violence against women, a fact recognized by both civil society organizations and state authorities.<sup>55</sup>

78. Several international organizations have spoken out emphatically about the seriousness of the problem of violence against women in Guatemala and the overall impunity in which these crimes remain.<sup>56</sup> The United Nations Committee on the Elimination of Discrimination against Women stated:

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, victims' families and the lack of information and data regarding the cases, the causes of violence and the profiles of the victims.<sup>57</sup>

79. For its part, in its July 2006 considerations on Guatemala, the United Nations Committee against Torture, expressed alarm about the violence against women:

The Committee is seriously concerned about the numerous allegations concerning:

[...]

b) The increase in violent killings of women, which often involve sexual violence, mutilations and torture. The fact that these acts are not investigated exacerbates the suffering of relatives seeking justice, who, in addition, complain of gender discrimination by the authorities in the course of investigatory and judicial proceedings;<sup>58</sup>

[...]

80. In its concluding observations on Guatemala adopted in 2013, the United Nations Committee against Torture welcomed the legislative and other measures adopted by the State party to

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Human Rights Ombudsman concluded that by using such forms of violence the assailant appeared to want to demonstrate their physical superiority over their victim. Human Rights Ombudsman, Guatemala, C.A, Powerpoint presentation, Guatemala, March 2006, available on-line at [http://www.pdh.org.gt/files/inf\\_especiales/presentacion\\_muertemujeres03-05.pdf](http://www.pdh.org.gt/files/inf_especiales/presentacion_muertemujeres03-05.pdf).

<sup>55</sup> IACHR, Press Release No. 20/04, 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, par. 17.

<sup>56</sup> IACHR, Press Release No. 20/04, *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 Discrimination against Women, CEDAW/C/GUA/CO/6, 2 June 2006, Original: English, 35th Session, 15 May to 2 June 2006, para. 23, available online at <http://www.un.org/womenwatch/daw/cedaw/35sess.htm>; *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women*, Report of United Nations Special Rapporteur, Yakin Ertürk, on her mission to Guatemala, 8 to 14 February 2004; Human Rights Ombudsman of Guatemala, *Compendio "Muertes Violentas de Mujeres", 2003 to 2005* [Compendium "Violent Deaths of Women, 2003 to 2005"], p. 92. [http://www.pdh.org.gt/files/inf\\_especiales/muerte\\_mujeres03-05.pdf](http://www.pdh.org.gt/files/inf_especiales/muerte_mujeres03-05.pdf); Amnesty International, *Guatemala: No protection, no justice: Killings of women* (an update), AMR 34/019/2006, 2006; Amnesty International, *Guatemala: No protection, no justice: killings of women*, AMR 34/017/2005, June 2005. International Federation for Human Rights, International Investigation Mission, *El Femicidio en Mexico y Guatemala* [Femicide in Mexico and Guatemala], No. 446/3, April 2006.

<sup>57</sup> Committee on the Elimination of Discrimination against Women, CEDAW/C/GUA/CO/6, 2 June 2006, Original: English, 35th Session, 15 May to 2 June 2006, para. 23, available on-line at <http://www.un.org/womenwatch/daw/cedaw/35sess.htm>

<sup>58</sup> United Nations, Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Guatemala, CAT/C/GTM/CO/4, 25 July 2006.

prevent and punish violence against women, particularly the definition of femicide as a specific offence.<sup>59</sup> However, the Committee noted with deep concern that the level of violence against women, including murders, remained high.<sup>60</sup> Accordingly, it urged the State to redouble its efforts to prevent and combat violence against women, including gender-related murder; ensure the full and effective application of the relevant legislation; and ensure effective coordination between the various bodies that have a role to play in tackling violence against women.<sup>61</sup>

81. Upon noting the alarming rise in the number of women's murders, the United Nations High Commissioner for Human Rights, following her visit to Guatemala in 2006, said "Expectations have been raised, again and again, but results have rarely followed. Insecurity and inequality prevail, and a history of failed opportunities has created disenchantment in a population eager for change."<sup>62</sup>

82. Amnesty International said that it had received reports of cases where "where police authorities had failed in their duty to take urgent action to prevent injury to women and girls believed to be at immediate risk."<sup>63</sup> In that regard, Amnesty International said that:

"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."<sup>64</sup>

83. As regards measures adopted by the State to address violence against women, 1996 saw the promulgation of the Law to Prevent, Punish and Eradicate Intrafamilial Violence (Decree 97-96). In 2000 and 2001, this legal framework was enhanced with the adoption of the rules governing application of the law and the creation of the Agency to Coordinate the Prevention, Punishment and Eradication of Intrafamilial Violence and Violence against Women (CONAPREVI), whose function is to coordinate institutions active in this area.<sup>65</sup> The Presidential Secretariat of Women (SEPREM) was created by Government Agreement 200-2000. A National Policy for Guatemalan Women's Advancement and

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<sup>59</sup> United Nations, Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013).

<sup>60</sup> United Nations, Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013).

<sup>61</sup> United Nations, Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013).

<sup>62</sup> Office of the United Nations High Commissioner for Human Rights, Press statement by the United Nations High Commissioner for Human Rights following her official visit to Guatemala, 27 May 2006. Available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/C7F2A41A172BC438C125717D0056605A?opendocument>.

<sup>63</sup> Amnesty International, *Guatemala, No Protection, No Justice: Killings of women (an update)*, AI AMR/ 34/019/2006, July 18, 2006.

<sup>64</sup> Amnesty International, *Guatemala: No protection, no justice: Killings of women (an update)*, AI AMR/ 34/019/2006, July 18, 2006.

<sup>65</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 2003, par. 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.

Development was also established, as was their Equal Opportunity Plan (2001-2006).<sup>66</sup> In addition, the Commission to Address the Problem of Femicide was created in 2005. 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.<sup>67</sup> On March 8, 2006, the Specific Commission to Address Femicide in Guatemala was officially launched.<sup>68</sup> On October 6, 2006, the Supreme Court created the Women's and Gender Analysis Unit.<sup>69</sup> On November 23, 2007, the Congress of the Republic adopted Resolution 15-2007, in which it condemned femicide in Guatemala.<sup>70</sup> Then, in 2008, the Law against Femicide and Other Forms of Violence against Women was passed.

84. Furthermore, as regards prevention, provision of assistance in, punishment, and eradication of domestic violence and violence against women, the State has pointed out the existence of the National Committee for Prevention of Domestic Violence and Violence against Women; the Secretariat against sexual violence, exploitation and trafficking in persons; and jurisdictional bodies, including specialized prosecution units for crimes against women and homicide, as well as the courts that deal with cases of femicide and other forms of violence against women.<sup>71</sup>

85. In this regard, the consensus is that although a number of institutions are working together to advance the cause of women, they have overlapping mandates. The result is weak state coordination and a shortage of funds for carrying out their programs.<sup>72</sup>

86. The IACHR must now determine if the authorities acted with due diligence in investigating what happened to Claudina Isabel Velásquez Paiz.

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<sup>66</sup> 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. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/204/74/PDF/N0820474.pdf?OpenElement>.

<sup>67</sup> "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 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. 10.

<sup>68</sup> 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, para. 169.

<sup>69</sup> 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 their efforts to obtain 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, para. 184.

<sup>70</sup> 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](http://www.congreso.gob.gt/gt/ver_noticia.asp?id=4472).

<sup>71</sup> IACHR, Record of Hearing No. 30, Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>72</sup> 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, para. 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.

## V. LEGAL ANALYSIS

### A. Right to life (Article 4) and humane treatment (Article 5), in connection with Article 1(1) of the American Convention and Article 7 of the Convention of Belém do Pará

87. The inter-American human rights system has affirmed the States' obligation to act with due diligence in response to human rights violations.<sup>73</sup> 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.<sup>74</sup> As the Court has held 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.<sup>75</sup>

88. There is an international recognition that the duty of states to act with due diligence in protecting and preventing violence against women has special connotations, due to the discrimination they have historically faced as a group.<sup>76</sup> The preamble of the Convention of Belém do Pará recognizes that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men.<sup>77</sup>

89. 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.

90. The United Nations Special Rapporteur on violence against women has written that based on the precedents established in the inter-American, European and universal human rights systems, "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."<sup>78</sup>

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

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

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

<sup>76</sup> IACHR, Report No. 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), July 21, 2011, par. 129.

<sup>77</sup> Article 1 of the Convention of Belém do Pará defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."

<sup>78</sup> 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, para. 29.

91. 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.<sup>79</sup>

92. 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.<sup>80</sup>

93. 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:

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

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<sup>79</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111, par.

<sup>80</sup> I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 123.

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).<sup>81</sup>

94. 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, therefore, constituted a failure of the obligation, not only to prevent such degrading practices, but also to prosecute and convict the culprits.<sup>82</sup>

95. 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. Article 4(1) of the American Convention provides, “Every person has the right to have his life respected. ... No one shall be arbitrarily deprived of his life.” Compliance with Article 4, in combination with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.<sup>83</sup>

96. The IACHR has held that protection of the right to life is a critical component of the due diligence that states are required to show in protecting women from acts of violence. That legal obligation applies to the entire state apparatus and includes the actions of all those charged with ensuring the security of the State and enforcing the law, such as the police.<sup>84</sup> It also includes any obligations the State has to prevent and respond to actions of non-state actors and private parties.<sup>85</sup>

97. 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.<sup>86</sup>

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<sup>81</sup> European Court of Human Rights, *Kiliç v. Turkey*, Judgment of March 28, 2000, Application No. 22492/93, §§ 62-63; *Osman v. The United Kingdom*, Judgment of 28 October 1998, *Reports of Judgments and Decisions 1998-VIII*, §§ 115-116; I/A Court H.R. *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 124.

<sup>82</sup> IACHR, Report on Merits No.54/01, *María Da Penha Fernandes (Brazil)*, April 16, 2001.

<sup>83</sup> 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, par. 245.

<sup>84</sup> See, IACHR, Report No.28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez et al. (Mexico)*, March 9, 2007, pars. 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, par. 245.

<sup>85</sup> IACHR, Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al. (United States)*, July 21, 2011, par. 128. See, IACHR, Report No.28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez et al. (Mexico)*, March 9, 2007, pars. 247-255.

<sup>86</sup> 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, par. 252.

98. Using these parameters as a frame of reference, the Commission will now consider whether the above-described facts, given the failure to prevent them and provide a response, engage the State's international responsibility. The petitioners hold that the State of Guatemala has committed a series of irregularities: First, by telling the parents of the alleged victim that they had to wait at least 24 hours before filing a report, and second by failing to meet their obligation to ensure a meaningful, effective investigation to identify those responsible for her murder. For its part, the State says that in this case the investigation procedures necessary to find the culprits are still under way.

99. Following the first attempt by Claudina Isabel Velásquez's parents to report the disappearance to the police, there is nothing in the judicial record to suggest that the State took effective steps to find her alive. For example, as the section on proven facts states, a police patrol car arrived at the main gate to the Panorama zone, where Claudina's parents were waiting for them, at around 3:00 a.m. Although they then followed the patrol car to the Pinares entrance, the officers in the patrol car said that there was nothing more that they could do and they left to continue their patrol. The patrol car accompanied them through the streets as far as the Pinares entrance, where the officers told them that they had to "wait at least 24 hours."<sup>87</sup> In other words, they not only did not permit the parents to formally lodge a complaint, but failed to take seriously the complaint and their concern about their daughter's disappearance, despite a well-known context of violence against women and girls in Guatemala.

100. Available at Inter-American Court has held 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.<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup>

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<sup>87</sup> Appendix 31. Statement by Elsa Claudina Paiz Vidal of September 22, 2005 to the Public Prosecution Service. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>88</sup> 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, par. 283.

<sup>89</sup> 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, par. 285.

<sup>90</sup> 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, par. 285.

<sup>91</sup> 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, par. 283.

<sup>92</sup> 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, par. 283.

101. In this case, the police not only failed to diligently investigate the complaint made by the parents, but refused to accept the complain the initial hours, which were of critical importance in the case of a young woman reported as missing.

102. 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.<sup>93</sup> In the instant case, given that Claudina Isabel Velásquez was in peril from the moment her parents sought to report her as missing, it was the State's duty to take immediate steps to look for her. The above was especially true, given the context of violence against women of which the state was aware.

103. Indeed, as is explained in the section on established facts, in view of the situation in Guatemala, by 2005 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.<sup>94</sup> As was established in the section on proven facts, in this particular case, Claudina Isabel Velásquez Paiz was found dead with signs of having been the victim of violence.

104. Article 5(1) of the American Convention on Human Rights provides, "Every person has the right to have his physical, mental, and moral integrity respected." In the case of Claudina Isabel Velásquez Paiz, the IACHR notes that, according to what was established in the section on proven facts, her body was found with her clothes on inside out and her brassiere removed. According to a police report, the brassiere was covered in blood and the alleged victim was not wearing it; rather it was around her trousers, which led to the presumption that she had been raped.<sup>95</sup> Despite the discovery, it was determined that her genital organs were "normal" and the presence of semen was later discovered in the alleged victim's vaginal cavity. Despite the fact that the authorities did not offer a conclusion about the possibility that she had been raped, notwithstanding the aforementioned evidence, in addition to the bruising around the orbit and jaw, as well as the bleeding around the nose,<sup>96</sup> it is fair to surmise that when the alleged victim's body was discovered it bore signs of having been subjected to violence and other abuse, and therefore, the State's failure to prevent had consequences for Claudina Isabel Velásquez's physical integrity.

105. The Commission notes that while the number of reported violent deaths between 2000 and 2005 rose in the population as a whole, the increase was considerably higher in women. The figures

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<sup>93</sup> 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, par. 243.

<sup>94</sup> Application to the I/A Court H.R., María Isabel Véliz Franco, Case 12.578, Guatemala, May 3, 2012. See: <http://www.oas.org/en/iachr/decisions/cases.asp>

<sup>95</sup> Appendix 11. report by investigators Jose Antonio Anaya and Dairyn Antonieta López, RAC. 2005-4813 of October 24, 2005, addressed to Celeste Díaz García, Government Prosecutor, Unit No. 14. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>96</sup> Appendix 26. Office of the Human Rights Ombudsman. *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz], 24 de octubre de 2006.

supplied by the National Civil Police showed that whereas the incidence of violent deaths among men was up 36%, the increase was 56.8% in the case of women.<sup>97</sup>

106. The Inter-American Court has found that States should adopt comprehensive measures to comply with due diligence in cases of violence against women.<sup>98</sup> 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 complaints.<sup>99</sup>

107. 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.<sup>100</sup> The IACHR has held 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.

108. The IACHR Rapporteur found in 2004 that the steps taken by the State to address violence against women were still insufficient for tackling the problem.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> 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."<sup>104</sup>

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<sup>97</sup> International Federation for Human Rights, International Investigation Mission, *El Femicidio en Mexico y Guatemala* [Femicide in Mexico and 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 Ombudsman for Human Rights. See Human Rights Ombudsman, Guatemala, C.A, Powerpoint presentation, Guatemala, March 2006, available on-line at [http://www.pdh.org.gt/files/inf\\_especiales/presentacion\\_muertemujeres03-05.pdf](http://www.pdh.org.gt/files/inf_especiales/presentacion_muertemujeres03-05.pdf)

<sup>98</sup> 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, par. 258.

<sup>99</sup> 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, par. 258.

<sup>100</sup> 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, par. 258.

<sup>101</sup> IACHR, Press Release No. 20/04, *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 on-line at <http://www.cidh.org/Comunicados/English/2004/20.04.htm>.

<sup>102</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 151. 18.

<sup>103</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 151. 130.

<sup>104</sup> Guatemala's Human Rights Ombudsperson, Compendium "Muertes Violentas de Mujeres", 2003 a 2005 [Violent Deaths among Women, 2003 to 2005], p. 92. [http://www.pdh.org.gt/files/inf\\_especiales/muerte\\_mujeres03-05.pdf](http://www.pdh.org.gt/files/inf_especiales/muerte_mujeres03-05.pdf)

109. On her visit to Guatemala in 2004, the IACHR Rapporteur heard evidence showing how discriminatory stereotypes operated in practice during the investigation of cases,<sup>105</sup> which was 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 person<sup>106</sup> and which, in the opinion of the Commission, may affect the investigation of cases.

110. 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 them.<sup>107</sup> This matter is discussed in greater depth in the following sections.

111. The IACHR concludes that the Guatemalan State has not shown that reasonable measures were taken to adequately prevent the attack and murder of Claudina Isabel Velásquez Paiz, in spite of her parents attempts to report her as missing. This failure to comply with the duty to ensure rights is particularly serious, given that the context of violence against women—of which the State was well aware—made them particularly vulnerable and bearing in mind the enhanced obligations that the Convention of Belém do Pará imposes upon the State in cases of violence against women.

112. 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 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.<sup>108</sup>

113. Based on the foregoing considerations, the Commission concludes that in the instant case, by failing to conduct a search, the State infringed its duty to prevent violations and ensure rights with respect to Claudina Isabel Velásquez Paiz, in violation of Articles 4(1) and 5 of the American Convention, in relation to Article 1(1) thereof; and Article 7 of the Convention of Belém do Pará.

**B. Right to a fair trial and judicial protection (Articles 8(1) and 25 of the American Convention, in connection with Article 1(1) thereof; and Article 7 of the Convention of Belém do Pará)**

114. The obligation of the States to act with due diligence includes enabling access to suitable and effective remedies when human rights are violated.<sup>109</sup> The Inter-American Court has held

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<sup>105</sup> 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.

<sup>106</sup> 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.

<sup>107</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 151. 135.

<sup>108</sup> See 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, par. 285.

<sup>109</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

that any person whose human rights have been violated has a right to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.<sup>110</sup> 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.<sup>111</sup>

115. Article 25 of the American Convention provides:

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.

116. 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.

117. The Convention of Belém do Pará establishes that the obligation to act with due diligence has special connotations in cases of violence against women.<sup>112</sup> The Inter-American Court has stated that the obligation to investigate effectively has a wider scope when dealing with the cases of violence against women.<sup>113</sup> Moreover, for an investigation to be effective, the States must conduct it from a gender perspective.<sup>114</sup>

118. 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:

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<sup>110</sup> I/A Court H.R., *Barrios Altos Case v. Peru*. Judgment of March 14, 2001. Series C No. 75, par. 48.

<sup>111</sup> See I/A Court H.R. *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 382, citing *Caso Vargas Areco*; I/A Court H.R. *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, par. 289; and I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 171.

<sup>112</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 151. 32.

<sup>113</sup> 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, par. 293.

<sup>114</sup> 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, par. 455.

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. ... 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.” That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees ... for the determination of his rights, whatever their nature.<sup>115</sup>

119. The main objectives of the regional human rights system and the principle of efficacy require that those guarantees be implemented in practice. Therefore, when 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.<sup>116</sup>

120. 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.<sup>117</sup>

121. 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 duties to investigate, prosecute and punish the responsible parties; but it also includes the “obligation to

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<sup>115</sup> I/A Court H.R., *Loayza Tamayo Case v. Peru. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, par. 169; I/A Court H.R., *Velásquez Rodríguez Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, par. 91; I/A Court H.R., *Fairén Garbi and Solís Corrales Case v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 2, par. 90; I/A Court H.R., *Godínez Cruz Case v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3, par. 93.

<sup>116</sup> I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, par. 235, citing I/A Court H.R., *Cesti Hurtado Case v. Peru*. Judgment of September 29, 1999. Series C No. 56, par. 121; I/A Court H.R., *Castillo Petruzzi et al. Case v. Peru*. Judgment of May 30, 1999. Series C No. 52, par. 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, par. 24.

<sup>117</sup> I/A Court H.R., *Godínez Cruz Case v. Honduras*. Judgment of January 20, 1989. Series C No. 5, par. 188; I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 177; I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 226.

prevent these degrading practices.”<sup>118</sup> 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.”<sup>119</sup>

122. The Inter-American Court has also written that the duty to investigate is one of means, not of results.<sup>120</sup> 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.<sup>121</sup>

123. The IACHR has determined 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,”<sup>122</sup> 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.<sup>123</sup> 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.<sup>124</sup>

124. 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.<sup>125</sup> In addition, the scene of the crime must be searched exhaustively, and autopsies and tests of the human remains must be performed rigorously by competent professionals

<sup>118</sup> IACHR, Merits Report, No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56. 56.

<sup>119</sup> IACHR, Merits Report, No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56. 56.

<sup>120</sup> I/A Court H.R., *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, par. 93.

<sup>121</sup> I/A Court H.R., *Case of Carpio Nicolle et al. v. Guatemala*. Judgment of November 22, 2004. Series C No. 117, par. 134

<sup>122</sup> IACHR, Report on Merits No. 55/97, *Juan Carlos Abella et al. (Argentina)*, November 18, 1997, par. 412.

<sup>123</sup> 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, par. 300; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 383.

<sup>124</sup> I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 230.

<sup>125</sup> 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, par. 300; IACHR, Report No. 10/95, *Manuel Stalin Bolaños* (Ecuador), September 12, 1995, pars. 32 - 34; Report No. 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, pars 413 to 424; Report No. 48/97, *Ejido Morelia* (Mexico), April 13, 1996. para. 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 151. 47.

using the most appropriate procedures.<sup>126</sup> In the case of homicides, specific evidence must be preserved if rape is suspected.<sup>127</sup>

125. The Inter-American Court has also found that 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.<sup>128</sup> 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.<sup>129</sup>

126. Based on information in the judicial record, the IACHR notes a series of irregularities in the investigation into the death of Claudina Isabel Velásquez Paiz, particularly failings in the preservation of the crime scene and in the handling and analysis of the evidence collected.

127. As was shown in the “Proven Facts” section, according to the police report the body of Claudina Isabel Velásquez was discovered on August 13, 2005.<sup>130</sup> The record does not show how it was that the authorities came to be at the place where the body was found; specifically, how the 14th Police District radio dispatch center learned of the discovery. The crime scene was contaminated before it was processed, since the report of the investigating medical examiner from the Public Prosecution Service indicated that the body had been covered with a white sheet.<sup>131</sup> There is no document indicating which person or persons had access to the body and if it was manipulated.

128. The police report states that several individuals were at the scene but did not give their names for fear of reprisals; they told them that a white taxi-like vehicle, arrived at the place possibly to

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<sup>126</sup> 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, par. 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, par. 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, par. 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, par. 102.

<sup>127</sup> 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), paras. 29-30.

<sup>128</sup> 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, par. 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.

<sup>129</sup> 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, par. 301.

<sup>130</sup> Appendix 4. Official communication No. 2,544/2005, Ref. agente.mazariegos of August 13, 2005, issued by Saul Rigoberto Estrada García, 142nd Station Chief, Zone 11. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>131</sup> Appendix 8. Report DMF-2947-05 ESCENA 2413-05 PAC/Im of August 30, 2005, prepared by Mr. Pedro Adolfo Ciani, Investigating Medical Examiner, Public Prosecution Service. Enclosed with the original petition.

dump the body.<sup>132</sup> There is nothing in the documents in the possession of the IACHR to suggest that the State made an effort to take official statements from these witnesses or to obtain other relevant testimony in the days following the disappearance of Claudina Isabel Velásquez. Similarly, the relatives of the alleged victim were not interviewed until a month after the incident. Testimony was received from individuals who came forward of their own volition to give statements without the investigation having any clear objectives, and it was on that basis that an inquiry was launched.<sup>133</sup>

129. The IACHR notes that the medical examiner's report indicated that he arrived at the scene of the crime at 6:30 a.m. and that the corpse was examined at 8:10 a.m.<sup>134</sup> The morgue stated that the body was received at 6:30 a.m., denoting carelessness in the investigation. On June 21, 2006, several months after the incident, the time of examination of the corpse was amended with a note that it was not at 8:10 a.m. as had been recorded, but at 6:55 a.m.<sup>135</sup>

130. The inspection was not conducted with the necessary rigor, as important details are missing about the state in which the body was found, the condition of the clothing, and whether there were bloodstains, fibers, threads or other clues. There is also no indication if the site was examined for footprints or any other relevant evidence.<sup>136</sup> The IACHR notes that there is no record that an analysis was done of the hairs on the victim's body or of the hair of the main suspects. According to the Human Rights Ombudsman, on September 6, 2005, at the request of the prosecutor, Jorge Rolando Velásquez Durán provided sample hairs obtained from the alleged victim's hairbrushes for comparison with those found on the only item of clothing—a pink sweater—of which the authorities had retained custody. The report addressed the connection between Jorge Rolando Velásquez's hairs and the hairs found on the pink sweater, which, in the opinion of the Office of the Human Rights Ombudsman, demonstrated a lack of professionalism on the part of the authorities, as it evinced a failure to properly record to whom the analyzed samples belonged.<sup>137</sup>

131. The authorities also failed to record the most basic information required for the removal-of-corpse form. The box for "Background information on the deed and conditions of the scene" was left blank.

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<sup>132</sup> Appendix 4. Official communication No. 2,544/2005, Ref. agente.mazariegos of August 13, 2005, issued by Saul Rigoberto Estrada García, 142nd Station Chief, Zone 11. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>133</sup> Appendix 26. Office of the Human Rights Ombudsman. *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz], 24 de octubre de 2006.

<sup>134</sup> Appendix 5. Report DMF-2947-05 ESCENA 2413-05 PAC/Im of August 30, 2005, prepared by Mr. Pedro Adolfo Ciani, Investigating Medical Examiner, Public Prosecution Service. Enclosed with the original petition of December 10, 2007.

<sup>135</sup> Appendix 32. Report, unnumbered, of June 21, 2006, signed by Dr. Pedro Adolfo Ciani, Medical Examiner of the Public Prosecution Service. Enclosed with the original petition of December 10, 2007.

<sup>136</sup> Appendix 26, Office of the Human Rights Ombudsman. *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz], 24 de octubre de 2006.

<sup>137</sup> Appendix 25. Office of the Human Rights Ombudsman. *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz], 24 de octubre de 2006.

132. The removal-of-corpse form states that the following items were found on the corpse: “Two rings in her navel and a “–illegible–” [sic] with a pendant around her neck,” which remained in the possession of the assistant prosecutor.<sup>138</sup> However, according to a report by the criminalistic investigations technician that evidence had been presented, suitably bagged, to the assistant prosecutor at the scene, with the respective chain-of-custody record.<sup>139</sup> Likewise, according to the report by investigator Carolina Elizabeth Ruiz, the crime scene specialists from the Public Prosecution Service collected the following items for analysis: a firearm cartridge case, a firearm projectile, a condom wrapper, a silver ear stud with a rose-colored pearl, a choker made of pink cloth fabric with a pendant of the queen [sic] Osiris, and a broken, pink, elastic hair band.<sup>140</sup> In that regard, at the place where the condom wrapper was found there was a sachet of dehydrated vegetables of the *Cup Ramen* brand as well as a pink sweater. It is curious that the report of the criminalistic investigations technician omits any mention of the chain and pendant retrieved at the crime scene or of the elastic hair band.

133. The IACHR notes that Claudina Isabel Velásquez’s clothes were not bagged by the Public Prosecution Service for analysis for possible evidence, even though, as the section on proven facts shows, they had blood on them, demonstrating negligence in the preservation of evidence. On the contrary, the clothes were “put in the coffin and given to the relatives without explanation.”<sup>141</sup> According to the Human Rights Ombudsman, “this seems to be a common practice on the part of the Forensic Medical Service, which prevents the preservation of important evidence and makes the forensic medical authorities responsible for adequately ensuring the chain of custody of evidence.”<sup>142</sup>

134. The IACHR notes that although the cause of death was established, the autopsy report did not state the manner, place and time of death.<sup>143</sup> Subsequently, at the request of the Public Prosecution Service,<sup>144</sup> the enlarged autopsy report indicated that the distance of the gunshot was less than 45 centimeters. The time of death was established as “between 7 and 11 hours **after the autopsy** was carried out.” [Emphasis added]<sup>145</sup> Given the incongruity of the time of death in that report, at the

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<sup>138</sup> Appendix 14. Removal-of-Corpse Form exclusively for police and prosecutorial use, signed by Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>139</sup> Appendix 16. Report of Maynor Giovanni Garrido Veliz, criminalistic investigations technician of September 23, 2005, addressed to Assistant Prosecutor Rocío Reyna. Enclosed with the original petition of December 10, 2007.

<sup>140</sup> Appendix 15. Report of investigator Carolina Elizabeth Ruiz Hernández, Official communication 824-05 Ref/JU.JRMF.ruiz of August 13, 2005. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>141</sup> Appendix 26. Office of the Human Rights Ombudsman. *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz], 24 de octubre de 2006.

<sup>142</sup> Appendix 26. Office of the Human Rights Ombudsman. *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz], 24 de octubre de 2006.

<sup>143</sup> Appendix 18, Autopsy report of August 16, 2005, No. 2604-05, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>144</sup> Appendix 19. Request by Assistant Prosecutor Etz Sai Rodríguez Cho to Sergio Alder Alfredo Martínez Martínez, to elaborate on autopsy report No. 2604-2005. Enclosed with the original petition of December 10, 2007.

<sup>145</sup> Appendix 20. Enlarged Autopsy Report No. 617-05 of October 7, 2005, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Etz Sai Rodríguez Cho, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

request of the Public Prosecution Service, the time of death was amended and it was established that “the person had been dead approximately 7 to 11 hours when the autopsy was carried out.”<sup>146</sup>

135. The autopsy report contains no photographs or videos, fails to say what clothes the victim was wearing when the external examination was carried out at the morgue, and makes no reference to the fact that the hands were protected with manila paper bags.<sup>147</sup> This fact was documented in the medico-legal expert’s report submitted by the petitioners, based on a review of several documents connected with the case file, including a video of the crime scene in which this fact can be seen. It also stated that the external examination carried out found no evidence to suggest where the alleged victim had died.<sup>148</sup>

136. 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,<sup>149</sup> especially bearing in mind that the clothes were stained with blood, the brassiere and belt had been removed, and the blouse was on inside-out.<sup>150</sup> Although swabs were taken of the alleged victim’s vaginal and anal cavities for analysis, no examination was ordered of the pubic region and no hairs were taken from the clothes. Neither were the alleged victim’s breasts analyzed. In spite of the fact that all the evidence indicated a rape, the autopsy report merely established that the genital organs were “normal.”<sup>151</sup> Furthermore, the enlarged autopsy report stated that “the forensic gynecological examination of the corpse found genitals normal for the age and that she was not a virgin.”<sup>152</sup> The analyses of the samples detected the presence of semen in the vaginal swabs.<sup>153</sup>

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<sup>146</sup> Appendix 21. Enlarged Autopsy Report 2604-2005 of June 7, 2006, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Carlos Antonio Miranda Arévalo, Assistant Prosecutor. Enclosed with the original petition of December 10, 2007.

<sup>147</sup> Appendix 33. Medico-legal expert’s report on the homicide of Claudina Isabel Velásquez Paiz, issued on December 10, 2009. Document submitted by the petitioners with their communication of March 19, 2010.

<sup>148</sup> Appendix 20. Enlarged Autopsy Report No. 617-05 of October 7, 2005, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Etz Sai Rodríguez Cho, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>149</sup> 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), paras. 29-30.

<sup>150</sup> Appendix 34. Notice No. 828.09-. 2005 issued by Fire Department Official Oscar Rafael Sánchez Aguilar. Copy of judicial record presented by the petitioners on May 31, 2012. Appendix 10, report of Public Prosecution Service criminalistic investigations technicians Walter Adolfo Morales Rosales and Sergio Antonio Polanco Rivera, RAC 3,970-2005 of August 19, 2005. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>151</sup> Appendix 18, Autopsy report of August 16, 2005, No. 2604-05, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Rocío Yesenia Reyna Pérez, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>152</sup> Appendix 20. Enlarged Autopsy Report No. 617-05 of October 7, 2005, issued by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner, addressed to Etz Sai Rodríguez Cho, Assistant Prosecutor. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>153</sup> Appendix 22. Opinion No. BIOL-05-1455 of September 26, 2005, issued by Ms. Ana Cecilia Díaz Ovalle de Mayorga of the Public Prosecution Service, addressed to Alma Dinorah Moreno Escudero, Prosecution Unit No. 10. Copy of judicial record presented by the petitioners on May 31, 2012.

137. An agent of the National Civil Police who arrived at the scene of the crime, said that the brassiere was covered in blood and the alleged victim was not wearing it; rather it was around her trousers, which led him to assume that she had been raped.<sup>154</sup> In this connection, the IACHR is struck by the fact that, as the section on proven facts establishes, a suspected rape was called in to the police's 110 system on the day of the alleged victim's disappearance at 2:12 a.m. on 7ma. Calle "A" 11-32, Zone 11, Colonia Roosevelt, near where the dead body of Claudina Isabel Velásquez Paiz was found.<sup>155</sup> There is no record of the authorities having followed up on the complaint.

138. The IACHR notes that, as is shown in the proven facts section, a report in the judicial record stated that the corpse was fingerprinted at the crime scene and that the relevant card was sent to the forensics laboratory.<sup>156</sup> However, as the record shows, those ten-print fingerprints were not taken at the scene of the crime but at 9:00 p.m. on August 13, 2005, at *Funerales Reforma*, where the alleged victim's wake was held.<sup>157</sup>

139. In spite of the fact that the body was identified as that of Claudina Isabel Velásquez Paiz on August 13, 2005, later reports continued to refer to the body as "XX" [Jane Doe].<sup>158</sup>

140. 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. According to that organization, "Claudina is yet another victim in a country that fails to protect women from violence."<sup>159</sup>

141. Amnesty International addressed the case of Claudina Isabel Velásquez Paiz, saying the following.<sup>160</sup>

In the case of 19-year-old university student Claudina Velásquez who was studying to become a lawyer, her dead body was found on 13 August 2005. She had been shot and traces of semen were found on her body. Serious deficiencies were reported in relation to the effectiveness of the investigation. For example, tests on the principal suspects, to ascertain if they had fired a

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<sup>154</sup> Appendix 11. report by investigators Jose Antonio Anaya and Dairyn Antonieta López, RAC. 2005-4813 of October 24, 2005, addressed to Celeste Díaz García, Government Prosecutor, Unit No. 14. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>155</sup> Appendix 24. Complaint to the National Civil Police's System 110—Confidential information and emergency calls, August 13, 2005 Information submitted by the petitioners with their communication of January 18, 2011.

<sup>156</sup> Appendix 12. Report 2242-2005 E.E.C.G10 of August 16, 2005, issued by Edwin Omar de León Pineda, criminalistic investigations technician, Group No. 10 Coordinator, addressed to the Homicide Section Prosecution Unit. Enclosed with the original petition of December 10, 2007.

<sup>157</sup> Appendix 13. Report No. 2242-2005 Grupo 11. Report of Marta Yolanda Samayoa López, criminalistic investigations technician, addressed to the Public Prosecution Service Fingerprint Section. Copy of judicial record presented by the petitioners on May 31, 2012.

<sup>158</sup> For example, Appendix 18, Autopsy report of August 16, 2005, prepared by Mr. Sergio Alder Alfredo Martínez Martínez, Judicial Medical Examiner (Nec 2604-05). Enclosed with the original petition of December 10, 2007; Appendix 34, Request by Carlos Antonio Miranda Arévalo Arévalo, Assistant Prosecutor, MP001-2005-69430-C.S., addressed to the Chief of the Judicial Forensic Service. Enclosed with the original petition of December 10, 2007.

<sup>159</sup> Amnesty International, Guatemala: *Killings of women continue unchallenged*, AI: AMR 34/043/2005, November 24, 2005.

<sup>160</sup> Amnesty International, Guatemala: *Killings of women continue unchallenged*, AI: AMR 34/043/2005, November 24, 2005.

gun, were not carried out. Since the death of his daughter, Claudina's father had repeatedly visited the Public Ministry, suggested lines of investigation and even carried out independent inquiries. Recognizing the deficiencies in the investigation of the case, in November 2005, the head of the Special Prosecutor's Office on Crimes against Life took over the investigation. Since then investigations have effectively restarted including sending blood samples of the five suspects to Spain for DNA analysis. While the reactivation of investigations is a positive step, it is likely that critical evidence has been lost.

142. Several of these irregularities were mentioned by Alvaro Rodrigo Castellanos Howell, an expert witness, to the IACHR.<sup>161</sup> The expert's report also mentioned "the situation where, when the doctor got some of the victim's blood on himself, he cleaned it off with the victim's sweater and in fact cleaned part of the wound in order to record the information he needed."<sup>162</sup> This fact was also documented in the medico-legal expert's report submitted by the petitioners, based on a review of several documents connected with the case file, including a video of the crime scene in which this fact can be seen.<sup>163</sup> The expert's report states the following:

One can also see in the video that twice when the medical examiner at the crime scene got blood on his forearm he wiped it off with the decedent's sweater. He did the same to clean the hair at the back of the alleged victim's head in order to better see the exit wound in the right occipital region. The only thing that this achieved was the cross-contamination of that evidence, a practice prohibited by the crime-scene processing protocol.<sup>164</sup>

143. 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. 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.

144. 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.<sup>165</sup>

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<sup>161</sup> Record of Hearing No 30. Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>162</sup> Record of Hearing No 30. Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>163</sup> Appendix 33. Medico-legal expert's report on the homicide of Claudina Isabel Velásquez Paiz, issued on December 10, 2009. Document submitted by the petitioners with their communication of March 19, 2010.

<sup>164</sup> Appendix 33. Medico-legal expert's report on the homicide of Claudina Isabel Velásquez Paiz, issued on December 10, 2009. Document submitted by the petitioners with their communication of March 19, 2010.

<sup>165</sup> IACHR, *Justice and Social Inclusion: IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118, December 29, 2003, par. 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.

145. In a hearing on the case before the IACHR, the State held that among the procedures carried out at the scene of the crime, given the death of the alleged victim, photographs were taken and a planimetric diagram was drawn of the exact address where the body was found. The state said that the fingerprints were not taken at the scene of the crime so as not to contaminate the evidence, owing to the fact that the medical examiner at the scene said that the fingernails had to be scraped for any possible clues. It was determined that the cause of death was a perforating wound to the head caused by a firearm projectile and cerebral hemorrhage. The State also indicated that the Public Prosecution Service has taken a number of procedural steps, including taking statements from, visiting, and interviewing witnesses; raids and confiscation of objects; the exhumation of a corpse; genetic profile comparisons of the semen samples found on the alleged victim's body with nine persons, requests for telephone records, requests for *ne exeat* orders, and requests for assistance to the FBI in the USA to obtain DNA samples from a suspects who was in detention in that country, among other measures.<sup>166</sup>

146. According to the State, the report of Precinct 142 of National Civil Police District 14, indicated that there was no record of any call reporting a rape made from Colonia Roosevelt, Zone 11 at 2:12 a.m. on August 13, 2005. The petitioners provided a copy of it and said that they obtained it as a result of an institutional inquiry ordered by the then-Minister of the Interior, Adela Torre.<sup>167</sup>

147. 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 Claudina Isabel Velásquez Paiz. 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.<sup>168</sup>

148. 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.<sup>169</sup> Therefore, the Commission observes that in this case the State failed to meet its obligation to investigate the violations of Claudina Isabel Velásquez Paiz's human rights with the requisite diligence.

149. The IACHR also notes that the continual reassignment of the case to different prosecutors interrupted and, therefore, delayed its investigation, with the result that procedures were not carried in a timely manner or were not considered by the new prosecutors. This situation was documented by the Ombudsman's Office, which mentioned that the case passed through the hands of several different prosecutors and assistant prosecutors at Prosecution Unit 10, Prosecution Unit 14, and the Section Prosecutor's Office, with each transfer entailing an interruption in the investigation, not to mention that many procedures were not carried out in a timely manner or were ignored by the

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<sup>166</sup> IACHR, Record of Hearing No. 30, Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>167</sup> IACHR, Record of Hearing No. 30, Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>168</sup> 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, par. 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, par. 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, par. 173.

<sup>169</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

subsequent prosecutors.<sup>170</sup> The Office of the Ombudsman issued a resolution in which it declared that the rights of Claudina Isabel Velásquez Paiz and her family members to justice within a reasonable time and to effective judicial protection had been violated.<sup>171</sup>

150. 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 ruled 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.”<sup>172</sup>

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

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.<sup>173</sup>

152. 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 in conducting a proper investigation of the facts surrounding the death of Claudina Isabel Velásquez Paiz, to punish those responsible, and thereby prevent impunity, in violation of Articles 8(1) and 25 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz,<sup>174</sup> and Article 7 of the Convention of Belém do Pará.

**C. Right to equal protection (Article 24) and right to have one’s honor and dignity respected (Article 11), in connection with Article 1(1) of the American Convention; and right to live free of violence and discrimination (Article 7 of the Convention of Belém do Pará)**

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<sup>170</sup> Appendix 26. Office of the Human Rights Ombudsman, *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz].

<sup>171</sup> Appendix 27. Office of the Human Rights Ombudsman, resolution of July 20, 2006 on the criminal investigation into the murder of Claudina Isabel Velásquez Paiz.

<sup>172</sup> I/A Court H.R., *Loayza Tamayo Case Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, par. 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, par. 173.

<sup>173</sup> IACHR, Report on Merits No. 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, par. 43, citing I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 176, and I/A Court H.R., *Case of Godínez Cruz*. Judgment of January 20, 1989. Series C No. 5, par. 175.

<sup>174</sup> 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, par. 408; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 212; I/A Court H.R., *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, par. 241.

153. The petitioners claim that before beginning any investigation, prosecutors and police automatically assume that women who are murdered in Guatemala are prostitutes or gang members. As a result of the gender stereotype that agents of the State of both sexes apply and reproduce, the mere fact of being a victim of a violent death puts them in a despised, negative category. Due to this prejudice, they refuse to investigate and close cases virtually without carrying out any inquiries, which is not only a discriminatory and sexist practice, but also against Guatemalan law. The State, for its part says that although it “has come to its attention, through the cases presented to the illustrious Commission, that government employees and officials (though not all of them), make stigmatizing judgments about victims based on their gender, social class, attire, and tattoos,” such actions and comments “are not the position of the State and have not been used in its arguments; they are not institutional conduct or behavior tolerated by the State, given that victims of such unacceptable conduct have the right of recourse to the relevant administrative proceedings before the Office of the Supervisor of Courts (Supervisión de Tribunales) or the Office of the Supervisor General of the Public Prosecution Service (Supervisión General del Ministerio Público) to denounce such misconduct.” It also said that in this case the investigation procedures necessary to find the culprits were still proceeding.

154. Consequently, they are entitled, without discrimination, to equal protection of the law.” Consequently, they are entitled, without discrimination, to equal protection of the law.” As the Court has held in this regard:

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 congenerous character.<sup>175</sup>

155. As for the obligation of nondiscrimination, Article 1(1) of the American Convention provides:

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.

156. The Convention of Belém do Pará,<sup>176</sup> 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.” It also observes that the due diligence obligations have special connotations in the case of violence against women.

157. 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

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<sup>175</sup> 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.

<sup>176</sup> 32 OAS member states have ratified the Convention of Belém do Pará.

recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>177</sup> 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.<sup>178</sup>

158. 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.<sup>179</sup> 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.<sup>180</sup> 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.<sup>181</sup>

159. The Commission also finds that violence against women, discrimination and due diligence are also closely related. 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.<sup>182</sup> 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.”<sup>183</sup>

160. The Inter-American Court has found 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

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<sup>177</sup> 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 on the Elimination of All Forms of Discrimination against Women.

<sup>178</sup> United Nations, CEDAW, General Recommendation 19.

<sup>179</sup> IACHR, Report on Merits No. 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

<sup>180</sup> 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*, par. 65.

<sup>181</sup> 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*, 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*, par. 65.

<sup>182</sup> United Nations, CEDAW, General Recommendation 19.

<sup>183</sup> 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.

discrimination in access to justice.<sup>184</sup> 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.”<sup>185</sup> 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.”<sup>186</sup> Finally, it 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.”<sup>187</sup>

161. 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.

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

162. 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

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<sup>184</sup> 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, par. 400.

<sup>185</sup> 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, par. 32.

<sup>186</sup> 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, par. 32.

<sup>187</sup> 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, par. 32.

“the obligation to prevent these degrading practices.”<sup>188</sup> 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.”<sup>189</sup> 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.”<sup>190</sup> In *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.<sup>191</sup>

163. In this case, the IACHR notes that upon being informed of the disappearance the State authorities failed to act with due diligence to investigate the whereabouts and subsequent death of Claudina Isabel Velásquez, in violation of its obligations under the Convention of Belém do Pará.

164. The irregularities committed by the Guatemalan State in the investigation of this case, such as the failure to take the missing person’s report seriously and the subsequent flawed handling and analysis of the evidence collected; the errors made in handling and preserving the crime scene and in the collection of expert evidence; irregularities in the autopsy report; lack of comprehensive analyses, such as collection of hairs or analysis of the victim’s breasts and other parts of her body to determine if she had been raped; irregularities in taking the victim’s fingerprints; and failure to take statements from relevant witnesses, constitute a violation of the provisions of Article 7 of the Convention of Belém do Pará. This lack of effort in probably investigating the signs of sexual violence, in itself reflects a form of discrimination. 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.

165. The case of Claudina Isabel Velásquez is a symptomatic of the causes and consequences of the discrimination that women suffer. The traditional attitudes that regard women as subordinate to men, as well as gender stereotypes such as those examined in the paragraphs below, not only perpetuate violence against them but also justify it in contravention of the principle of equality. According to the Inter-American Court, “[t]he notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual.”<sup>192</sup> The Court has also held that “States must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all

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<sup>188</sup> IACHR, Report on Merits No. 54/01, *María Da Penha Fernandes (Brazil)*, April 16, 2001, par. 56.

<sup>189</sup> IACHR, Report on Merits No. 54/01, *María Da Penha Fernandes (Brazil)*, April 16, 2001, par. 56.

<sup>190</sup> 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, par. 400.

<sup>191</sup> 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, par. 402.

<sup>192</sup> I/A Court H.R., *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4.

individuals.”<sup>193</sup> This includes the duty of the States not only to abstain from producing discriminatory legislation, standards and policies affecting women’s equality, but also that such standards and policies must be eliminated.

166. Based on the foregoing, the IACHR finds that 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 the 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.<sup>194</sup>

167. With respect to the stereotypes, the petitioners claim that in Guatemala, as a result of the gender stereotype that agents of the State of both sexes apply and reproduce, the mere fact of being a victim of a violent death puts them in a despised, negative category. In this case, as a state official described, “the crime scene was not processed as it should have been because of prejudgment of the victim’s background and status.” She was classified as a person whose death should not be investigated. According to the expert Alvaro Rodrigo Castellanos Howell, the alleged victim “was certainly stigmatized as a prostitute.”<sup>195</sup> He also pointed out that it was not common to encounter such stigmatization or prejudice in male murders.<sup>196</sup>

168. The IACHR notes that in Guatemala at the time that the facts occurred, there was a context of violence against women of which the State was all too aware, in which acts of violence went unpunished thanks to failings and omissions on the part of the authorities. On this subject, the IACHR has held that the influence of discriminatory socio-cultural patterns can adversely affect an investigation of a case and the assessment of any evidence compiled.<sup>197</sup> The Court, for its part, has stated that the creation and use of stereotypes becomes one of the causes and consequences of gender violence practiced against women.<sup>198</sup> In this context of violence and impunity, the prevailing sexual stereotype in Guatemala consisted of being a young woman from a low socioeconomic stratum. The lack of a state response perpetuated this stereotype, according to which women are inferior and subordinate to men. The IACHR also notes that these stereotypes in the investigation are the result of the existing situation of inequality and discrimination that many women confront due to multiple factors that are interrelated with their sex, such as race, age, ethnicity, socioeconomic condition and others.

169. Indeed in this case, Claudina Isabel Velásquez, a law student, was the victim of stereotypes based on the fact that she was young, her body was found in a low-income area, her manner of dress, and because she had a pierced navel. The authorities’ imposition of stereotypes led to

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<sup>193</sup> See I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, par. 141.

<sup>194</sup> 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. 191.

<sup>195</sup> IACHR, Record of Hearing No. 30, Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>196</sup> IACHR, Record of Hearing No. 30, Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>197</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, paragraph 151. 151.

<sup>198</sup> 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, par. 401.

the justification of violence against her and the failure to investigate it properly, thereby denying her her dignity.<sup>199</sup> That situation was confirmed by a statement made by an official from the prosecutor's office mentioned above, who said, "the crime scene was not processed as it should have been because of prejudice of the victim's background and status." She was classified as a person whose death should not be investigated.<sup>200</sup> It is also corroborated by comments made at the beginning of the investigation by the authorities to relatives of Claudina Velásquez, who told them that the profile of the alleged victim had been confused with that of a female gang member or a prostitute and, therefore, a person whose death was not worthy of investigation. Likewise, it was demonstrated by the irregularities in the investigation, particularly the failure to conduct interviews in connection with the case in the initial hours after the body was discovered, as well as the irregularities in the preservation of evidence and the failure to identify the cadaver, even after its identity was known.

170. 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.<sup>201</sup> The State must demonstrate that it has a real commitment to eradicating the kind of impunity that exists in the case *sub examine*.<sup>202</sup> Seven years after the disappearance and death of Claudina Isabel Velásquez Paiz, the case is still emblematic of the problem of impunity.

171. 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 Claudina Isabel Velásquez Paiz, 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. The IACHR also finds that Article 11 of the American Convention, in conjunction with Article 1(1) thereof, was violated to the detriment of Claudina Isabel Velásquez:

**Right to humane treatment (Article 5[1]) in connection with Article 1(1) of the American Convention**

172. Time and 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

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<sup>199</sup> Appendix 35. *Gender Stereotyping Transnational Legal Perspectives*. Rebecca J. Cook and Simone Cusack, p. 217.

<sup>200</sup> Appendix 26. Office of the Human Rights Ombudsman, *Informe de Verificación sobre Violaciones al deber de investigar en el caso de Claudina Isabel Velásquez Paiz* [Verification Report on Violations of the Duty to Investigate in the Case of Claudina Isabel Velásquez Paiz].

<sup>201</sup> IACHR, Report on Merits No. 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, par. 57.

<sup>202</sup> IACHR, Report on Merits No. 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, par. 57.

omissions of the State authorities with regard to the events.<sup>203</sup> 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.<sup>204</sup> In the present case, the irregularities and delays on the part of the Guatemalan State in the investigation into the disappearance of Claudina Isabel Velásquez Paiz and her subsequent murder caused her family profound suffering and anguish, and that despite the seriousness of the crimes, seven years have passed since her lifeless body was found and yet those responsible have not been punished.<sup>205</sup>

173. The IACHR notes that the continuous changes of prosecutors in charge of the case has also been a source of victimization of the family, which has had to repeat the facts in the case countless times with the attendant pain and emotional suffering that has caused. In the words of Mr. Velásquez, "Basically they did not ask us any questions. They asked me to narrate the facts and I was hurried by the assistant prosecutor, so that we should not take up so much of his time."<sup>206</sup>

174. According to the Human Rights Ombudsman, the Velásquez family has had to put up not only with indifference, but also offensive comments: for example, that the victim's profile had been confused because of certain characteristics, such as that she was wearing sandals or had a pierced navel. In its report, the ombudsman's office found that on a number of occasions Rolando Velásquez was denied access to information in the case file, while on others he was asked to give the investigations time to move forward. However, he says that whenever he stops going to the Public Prosecution Service's offices the investigations halt. In a hearing on the merits of the case before the IACHR, the petitioners said that Jorge Rolando Velásquez Durán has been categorized within the justice system as "*persona non grata* in prosecutors' offices."<sup>207</sup>

175. The Commission also notes the scant concern and sensitivity that State officials showed for the family's grief. An example of this was the arrival of officials from the Public Prosecution Service to fingerprint the corpse at the wake that the family was holding for the alleged victim,<sup>208</sup> with "the

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<sup>203</sup> I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 154; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 60; I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, pars 144-146; I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, pars 113-114; I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 210.

<sup>204</sup> I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, par. 154; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 60; I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, pars 144-146; I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, pars 113-114; I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 210.

<sup>205</sup> Appendix 36. Psychological experts' reports submitted by the petitioners

<sup>206</sup> Appendix 37. Andrea Diez *Informe sobre las condiciones y condicionantes de género presentes en la sociedad guatemalteca y en cultura judicial y estatal. El caso de Claudina Velásquez Paiz* [Report on gender conditions and constraints in Guatemalan society and in the judicial and state culture: The case of Claudina Isabel Velásquez Paiz] October 2009. Enclosed with the original petition of December 10, 2007, and attached to the communication of March 19, 2010.

<sup>207</sup> IACHR, Record of Hearing No. 30, Case 12.777, Claudina Isabel Velásquez Paiz, March 27, 2012.

<sup>208</sup> Appendix 13. Report No. 2242-2005 Group 11 of August 16, 2005. Report of Marta Yolanda Samayoa López, criminalistic investigations technician, addressed to the Public Prosecution Service Fingerprint Section. Enclosed with the original petition of December 10, 2007.

officials from the Public Prosecution Service even threatening prosecution if the parents refused to allow the procedure.”<sup>209</sup>

176. From the foregoing, the Commission concludes that the State of Guatemala violated Article 5(1) of the American Convention to the detriment of the family members Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz, taken in conjunction with the general obligation to respect and ensure rights envisaged in Article 1(1) of that international instrument.

## VI. CONCLUSIONS

177. 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 and humane treatment recognized in Articles 4, 5 and 11 of the American Convention, all in connection with its obligations under Article 1(1) of that treaty and Article 7 of the Convention of Belém do Pará. The Commission also finds that the State violated Claudina Isabel Velásquez Paiz’s rights under Article 7 of the Convention of Belém do Pará, in relation to Article 24 of the American Convention, in conjunction with the general obligation to respect and ensure rights established in Article 1(1) of the latter treaty.

178. Finally, the IACHR concludes that the State violated the right to have one’s integrity respected, as recognized in Article 5(1) of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz, as well as the right to a fair trial and judicial protection recognized at Articles 8(1) and 25 of the American Convention, in conjunction with the obligations under Article 1(1) thereof and Article 7 of the Convention of Belém do Pará.

## 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 Claudina Isabel Velásquez Paiz and identify, prosecute and, as appropriate, punish those responsible.
2. Adopt and/or, as appropriate, adapt investigation protocols and expert witness services used in all crimes connected with the disappearance, rape or murder of women, in accordance with international standards on such matters and with a gender-aware perspective.

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<sup>209</sup> Appendix 37. Andrea Diez *Informe sobre las condiciones y condicionantes de género presentes en la sociedad guatemalteca y en cultura judicial y estatal. El caso de Claudina Velásquez Paiz* [Report on gender conditions and constraints in Guatemalan society and in the judicial and state culture: The case of Claudina Isabel Velásquez Paiz] October 2009. Enclosed with the original petition of December 10, 2007.

3. Make full reparations to the next of kin of Claudina Isabel Velásquez Paiz for the human rights violations herein established.

4. As a measure of non-repetition, introduce a comprehensive and coordinated State policy, backed by sufficient public funds, for prevention of violence against women.

5. 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 follow up, thereby ensuring proper punishment and redress.

6. Implement a system of production of disaggregated statistics, which will allow the design and evaluation of public policies in relation to the prevention, sanction and elimination of violence against women.

7. 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.

8. Adopt comprehensive public policies and institutional programs designed to eliminate discriminatory stereotypes about the role of women and to promote the eradication of discriminatory socio-cultural patterns that 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.