

**SEPARATE OPINION OF
JUEZ EDUARDO FERRER MAC-GREGOR POISOT**
CASE OF VELÁSQUEZ PAIZ ET AL. V. GUATEMALA
JUDGMENT OF NOVEMBER 19, 2015
(Preliminary objections, merits, reparations and costs)

INTRODUCTION:

"OBLIGATION OF PREVENTION" IN GENDER-BASED VIOLENCE

1. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") is the regional instrument that has elicited the greatest consensus among the countries of the Americas, and has been signed, and ratified or adhered to by 32 of the 35 OAS Member States. Since its entry into force in 1995, it has reflected the concern of the States parties that "violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men"; while affirming that "violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms."¹

2. More than 20 years after it entered into force, it is a cause for concern that the culture of discrimination and violence against women,² continues to be present in the region, achieving its maximum expression in "feminicide" or "femicide"; that is, the "gender-based murder of women," as the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") first underlined in the case of *González et al. ("Cotton Field") v. Mexico* in 2009,³ and reiterated in the case of *Veliz Franco et al.*, and in the present case of *Velásquez Paiz et al.*, both against Guatemala.⁴ The term "feminicidio" was incorporated into the latest edition of the *Diccionario de la Lengua Española*, published by the *Real Academia Española* in October 2014,⁵ almost 10 years after the lamentable facts of the case that gives rise to this separate opinion.

¹ Preamble of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará"), adopted on June 9 1994, during the twenty-fourth General Assembly of the OAS, entered into force on May 5, 1995.

² Understood as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere." Article 1 of the "Convention of Belém do Pará."

³ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 143.

⁴ In the judgments in both cases, the terms "feminicide" and "femicide" were used interchangeably to refer to the "gender-based murder of women." Also, the two judgments underlined that, in May 2008, Guatemala had enacted the Law against Femicide and other forms of violence against women (Decree No. 22-2008), which criminalized "femicide," defining this as the "violent death of a woman, occurring in the context of the unequal power relations between women and men, in exercise of gender-based power against women." See *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 71, footnote 68; and *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, Merits, reparations and costs*. Judgment of November 19, 2015, Series C No. 307, para. 45, footnote 26.

⁵ "Femicide": from the lat. *femina* 'woman' and *-cidio*. 1.m. *Asesinato de una mujer por razón de su sexo*. Available at: <http://dle.rae.es/>

3. The persistence of this problem in the region – despite diverse actions by the States as noted in the instant case – underscores the urgent need to pay special attention to the “obligation of prevention” referred to in Article 7 of the “Convention of Belém do Pará”⁶; an obligation that, I consider, is of the greatest relevance to avoid the barbarity of the phenomenon of “femicide” and, in general, all forms of violence against women.

4. Consequently, I submit this concurring opinion in order to highlight some issues that were relevant in the study and analysis made in this case of the State obligation of prevention, because I consider it pertinent to observe carefully the moment in the facts analyzed in the judgment at which the State’s international responsibility was constituted for failing to comply with its obligation of prevention – with special emphasis on the proven “context” of an increase in the disappearance and violent murder of women.

5. I consider that this analysis should differ from the one made by the Court in previous cases,⁷ and accord greater relevance to the “first moment” of this general obligation of prevention (State actions before the victim went missing), which evidently conditioned the State’s actions during the “second moment” (State actions between the time of the family’s report and the discovery of the victim’s body), as I will try to explain in this opinion. And I will do so, based on the criterion of the “two moments” of the obligation of prevention established in the two previous cases on this matter, interpreted in light of the State’s obligations established in the American Convention and particularly in Article 7 of the “Convention of Belém do Pará,” bearing in mind that Guatemala ratified this treaty on January 4, 1995, with no reservations or limitations.

6. For greater clarity, this opinion is divided into the following sections: I. The “Convention of Belém do Pará” in the case law of the Inter-American Court (paras. 7 to 16); II. The “obligation of prevention” and its “two moments” in the cases of *González et al. (“Cotton Field”) v. Mexico* (2009), and *Veliz Franco et al. v. Guatemala* (2014) (paras. 17 to 31); III. The “obligation of prevention” in the case of *Velásquez Paiz et al. v. Guatemala* (2015) (paras. 32 to 49), and IV. Conclusions (paras. 50 to 58).

I. THE “CONVENTION OF BELÉM DO PARÁ” IN THE CASE LAW OF THE INTER-AMERICAN COURT

⁶ “Article 7: “The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

(a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;

(b) apply due diligence to prevent, investigate and impose penalties for violence against women;

(c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;

(d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

(e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; (f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;

(g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

(h) adopt such legislative or other measures as may be necessary to give effect to this Convention.”

⁷ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277.

7. Based on the competence that Article 12 of the “Convention of Belém do Pará” grants the inter-American system for the protection of human rights to examine violations of Article 7 of this regional instrument,⁸ the Inter-American Court has examined the phenomenon of violence against women in different circumstances,⁹ placing special emphasis on the State’s obligation to “condemn all forms of violence against women [and to adopt], by all appropriate means and without delay, policies to prevent, punish and eradicate such violence,”¹⁰ and this, in addition, to the specific measures indicated in that provision – some of which have been examined by the Inter-American Court in its case law.

8. The interpretation and application of the provisions of the “Convention of Belém do Pará” first took place in 2006, in the case of the *Miguel Castro Castro Prison v. Peru*.¹¹ Based on the facts of the case, the Court declared the violation of Article 7(b) of this instrument, concerning the State obligation “to apply due diligence to prevent, investigate and impose penalties for violence against women.” In that case, the Court indicated that the State obligation to investigate the facts that had occurred meant that the State should “take into consideration the seriousness of the facts that constitute violence against women, taking into account the obligations imposed on it by the treaties it has ratified on this matter.”¹² Consequently, the Inter-American Court declared the violation of Article 7(b) of the “Convention of Belém do Pará” together with the right to judicial guarantees and judicial protection (Articles 8(1) and 25 of the American Convention) because the domestic proceedings instituted in that case did not constitute “effective remedies to guarantee a true access to justice by the victims, within a reasonable time, that [would] include the elucidation of the facts, the investigation and punishment, as appropriate, of those responsible and the reparation of the violations to the right to life and integrity.”¹³

9. In 2009, in the case of *González et al. (“Cotton Field”) v. Mexico*, the Court again had the occasion to examine facts that involved obligations under the “Convention of Belém do

⁸ In the instant case, the State questioned the Court’s competence *ratione materiae*. Based on its precedents, the Inter-American Court rejected this preliminary objection in the understanding that “it seems clear that the literal meaning of Article 12 of the Belém do Pará Convention grants competence to the Court, by not excluding from its application any of the norms and procedural requirements for individual communications”, and also, that in other contentious cases against Guatemala, the Court had declared that the State was responsible for the violation of Article 7 of the Convention of Belém do Pará and found no evidence to change its case law. See paras. 16 to 19 of the judgment.

⁹ I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160; *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205; *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211; *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010 Series C No. 216; *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250; *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252; *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289.

¹⁰ Article 7 of the “Convention of Belém do Pará,” see *supra* nota 6.

¹¹ I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160.

¹² I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 394.

¹³ I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 408.

Pará.” The case related to the context of gender-based violence in Mexico, and the Inter-American Court examined Articles 4, 5 and 7 of the American Convention and the obligations arising from Articles 7(b) and 7(c) of the “Convention of Belém do Pará” in relation to the general obligation to ensure rights (Art. 1(1) of the American Convention) and the obligation to adopt domestic legal provisions (Art. 2 of the Pact of San José) to the detriment of the three women victims in the case. Consequently, in its judgment in that case, the Court established that the State had not acted with “the due diligence required to adequately prevent the attacks on the victims and their deaths,” an omission that had resulted in non-compliance with its obligation to ensure rights – placing the women victims in a situation of vulnerability – and the enhanced obligations imposed in cases of violence against women by Article 7(b) of the “Convention of Belém do Pará.”¹⁴ Furthermore, with regard to Article 7(c) of this instrument, it determined that the State had not proved that it had adopted legislation or implemented the necessary measures, “pursuant to Article 2 of the American Convention and Article 7(c) of the “Convention of Belém do Pará” that would have allowed the authorities to provide an immediate and effective response to the missing person reports and adequately prevent violence against women”; moreover, it had not proved that it had “adopted norms or taken measures to ensure that the officials responsible for receiving reports had the capacity and the sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.”¹⁵

10. The same year, the Court again invoked the “Convention of Belém do Pará” in the judgment in the case of the *Las Dos Erres Massacre v. Guatemala*,¹⁶ as a result of the violations of life, torture and acts of violence against women victims perpetrated during the massacre;¹⁷ considering that Articles 8(1) and 25(1) of the American Convention, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and 7(b)) of the “Convention of Belém do Pará” had been violated to the detriment of 155 victims, owing to the impediment for the victims to obtain access to justice and full reparation, as a result of the failure to investigate, prosecute and punish those presumed to be responsible for the massacre.¹⁸

11. In 2010, in the cases of *Fernández Ortega et al.*¹⁹ and *Rosendo Cantú et al.*,²⁰ both against Mexico, the Court, for the first time, declared the violation of paragraph (a) of Article 7 of the “Convention of Belém do Pará” as a result of rape perpetrated by soldiers.²¹ In both cases, the Court also declared the violation of Articles 8(1) and 25(1) in relation to Article

¹⁴ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 284.

¹⁵ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 285.

¹⁶ I/A Court HR, *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211.

¹⁷ I/A Court HR, *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 139 a 141.

¹⁸ I/A Court HR, *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 153.

¹⁹ I/A Court HR, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010 Series C No. 215.

²⁰ I/A Court HR, *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010 Series C No. 216.

²¹ I/A Court HR, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010 Series C No. 215, para. 131, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010 Series C No. 216, para. 121.

1(1) of the Convention and Article 7(b) of the “Convention of Belém do Pará,” due to the lack of due diligence in the investigation of the rape and acts of torture inflicted on the victims.²²

12. Subsequently, in 2012, the Court examined violations of Article 7(b) of the “Convention of Belém do Pará” while hearing the cases of the *Río Negro Massacres v. Guatemala*,²³ the *Massacres of El Mozote and neighboring places v. El Salvador*²⁴ and *Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*,²⁵ due to the failure to investigate facts related to torture, rape and other acts of violence against women.²⁶

13. Following these rulings, in 2013, in the case of *J. v. Peru*,²⁷ the Court declared a failure to comply with the obligation to ensure rights owing to an ineffective investigation into threats, and physical and sexual violence (which constituted violations of Articles 5(1), 5(2), 11(1) and 11(2) of the American Convention),²⁸ in relation to Article 1(1) of this instrument, and Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7(b) of the “Convention of Belém do Pará.”

14. In 2014, in the case of *Veliz Franco et al. v. Guatemala*²⁹ — related to the State’s failure to provide an effective response to the report of the disappearance of María Isabel Veliz Franco, 15 years of age, as well as the flaws in the investigation into the facts that involved the discovery of her body – in addition to declaring the violation of Article 7(b) of the “Convention of Belém do Pará”³⁰ for the second time in its case law, the Court established the violation of Article 7(c) of this instrument, owing to failure to conduct the investigation with a gender perspective, due to the possibility that the murder had been committed for reasons of gender; deficiencies in the State’s actions (as a result of the inexistence of laws and protocols concerning this type of facts), and actions with a discriminatory bias, as well as

²² I/A Court HR, *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010 Series C No. 215, paras. 197 and 198, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010 Series C No. 216, paras. 181 and 182.

²³ I/A Court HR, *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250.

²⁴ I/A Court HR, *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252.

²⁵ I/A Court HR, *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253.

²⁶ I/A Court HR, *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012 Series C No. 250, para. 227 and 236; *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012 Series C No. 252, paras. 2 and 252, and *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012 Series C No. 253, paras. 2 and 281.

²⁷ The case related to the unlawful and arbitrary detention of J., and the home searches conducted on April 13, 1992, by State agents who had presumably perpetrated acts of torture and cruel, inhuman and degrading treatment, including sexual violence. I/A Court HR, *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275.

²⁸ I/A Court HR, *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of 2 November 7, 2013. Series C No. 275, paras. 365 to 368.

²⁹ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277.

³⁰ In that case, the Court declared the violation of Articles 7(b) and 7(c) of the “Convention of Belém do Pará.” It also declared the violation of Articles 4(1) and 5(1) of the American Convention, in relation to Articles 19 and 1(1), as well as 7(b) of the “Convention of Belém do Pará” based on “the lack of due diligence in the investigation, from the outset, which resulted in the impunity of the facts” in reference to the initial hours after the report that María Isabel Veliz was missing. I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 157.

failure to respect a reasonable time frame in the initial stage of the investigation and the substantiation of the facts.³¹

15. That same year, in the case of *Espinoza Gonzáles v. Peru*,³² the Court again determined violations of Article 7(b) of the "Convention of Belém do Pará." On the one hand, together with violations of Articles 8(1) and 25, and 1(1) of the American Convention, and also of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the State's failure to comply with the obligation to investigate the sexual violence that was clear from the facts that occurred to the victim during her detention in the Yanamayo Prison, and those that occurred in the DIVISE and the DINCOTE;³³ and, on the other hand, together with violation of Articles 5(1), 5(2) and 11, as well as Articles 8(1), 25 and 2 of the American Convention, and 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, owing to the stereotyped assessment of the evidence by the Judiciary, which constituted gender-based discrimination in access to justice,³⁴ and also due to the sexual violence and torture suffered by the victim.³⁵

16. As can be appreciated from this brief overview, the Court's case law has not remained on the sidelines of the problem of violence against women in the region. To the contrary, it has examined this on various occasions as a result of an interpretation of the provisions of the American Convention in relation to Article 7 of the "Convention of Belém do Pará," establishing invaluable standards for State obligations in cases of gender-based violence, especially – and based on the matter which is the purpose of this opinion – on the "obligation of prevention" to which I will refer below.

II. THE "OBLIGATION OF PREVENTION" AND ITS "TWO MOMENTS" IN THE CASES OF GONZÁLEZ ET AL. ("COTTON FIELD") V. MEXICO (2009), AND VELIZ FRANCO ET AL. V. GUATEMALA (2014)

17. In two of its outstanding case on gender-based violence,³⁶ the Inter-American Court has established important standards concerning compliance with the State obligations to respect and to ensure human rights in order to combat violence against women. Particularly, when analyzing the obligation to ensure rights such as to life, to personal integrity and to personal liberty, it has made a detailed examination of the State's obligation of prevention,³⁷ emphasizing the criterion of the "two moments" in the obligation of prevention in order to determine the international responsibility of States.

³¹ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 225.

³² That case relates to the alleged unlawful and arbitrary detention of Gladys Carol Espinoza Gonzáles, as well as the alleged rape and other acts that constituted torture that she was a victim of while in the custody of State agents. I/A Court HR, *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 1.

³³ I/A Court HR, *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 287.

³⁴ I/A Court HR, *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 288.

³⁵ I/A Court HR, *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 229.

³⁶ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277.

³⁷ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 249 to 286, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 133 to 158.

18. This criterion has permitted the Court to make a detailed examination of the obligation of prevention – and, when appropriate – determine international responsibility – in cases in which the facts concerned the disappearance and subsequent death of the victims, as in the cases that preceded the one that has motivated this opinion: *González et al. ("Cotton Field") v. Mexico* (2009), and *Veliz Franco et al. v. Guatemala* (2014).

19. Regarding the obligation of prevention, in the case of *González et al. ("Cotton Field") v. Mexico*,³⁸ the Court established that States "must adopt comprehensive measures to comply with due diligence in cases of violence against women," particularly with regard to "an adequate legal protection framework and its effective enforcement, and prevention policies and practices that permit effective actions when reports are received."³⁹ Also, regarding the characteristics of the prevention strategy, the Court has indicated that "this must be comprehensive; that is, it must prevent the risk factors and also reinforce the institutions so that they can provide an effective response to cases of violence against women," underlining the obligation of States "to adopt preventive measures in specific cases in which it is evident that specific women and girls may be victims of violence."⁴⁰

20. In the said case, the Court established, for the first time, that there were two key moments at which the obligation of prevention should be analyzed in relation to the disappearance and death of the victims, indicating that the first moment was "before the disappearance of the victims" and the second was "before their bodies were discovered."⁴¹

21. When examining the "first moment" (before the victim's disappearance), the Inter-American Court considered that "the failure to prevent the disappearance d[id] not *per se* result in the State's international responsibility because, even though the State was aware of the situation of risk for women [particularly] in Ciudad Juárez," – given that a context of violence against women had been proved – it was not aware of a real and imminent danger for the victims in this case. It also indicated that, "[e]ven though the context of this case and the State's international obligations impose[d] on it a greater responsibility with regard to the protection of women in Ciudad Juárez, [...] these factors d[id] not impose unlimited responsibility for any unlawful act against [them]." Consequently, it indicated that the Court could "only note that the absence of a general policy" with regard to the pattern of violence against women, had constituted "a general failure [...] to comply with its obligation of prevention."⁴²

³⁸ This case related to the disappearance and subsequent death of the adolescents, Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez, whose bodies were found in a field of cotton in Ciudad Juárez on November 6, 2001, as well as the lack of due diligence on the part of the authorities. I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205.

³⁹ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, paras. 258 and, 108.

⁴⁰ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, para. 258; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 136 and 108.

⁴¹ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, para. 281 and ff; *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, paras. 138 and 110 of the judgment.

⁴² I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No.205, para. 282.

22. In relation to the “second moment” (before the discovery of the bodies), the Court decided to make a more detailed examination, establishing that, since the State was aware that “there was a real and imminent risk that the victims would be sexually abused, subjected to ill-treatment and killed,” “an obligation of strict due diligence ar[ose] with regard to reports of missing women,” which required “that exhaustive search activities be conducted.”⁴³

23. In this regard, the Court determined that owing to the State’s lack of due diligence to prevent the deaths of the victims at that moment, as well as State’s failure to adopt the necessary laws or measures “that would have allowed the authorities to provide an immediate and effective response to the reports of disappearance,”⁴⁴ it had violated the rights to life, personal integrity and personal liberty, in relation to the general obligation to ensure rights established in Article 1(1) of the American Convention and the obligation to adopt domestic legal provisions contained in Article 2 thereof, as well as the obligations established in Articles 7(b) and 7(c) of the Convention of Belém do Pará, to the detriment of [the victims].⁴⁵

24. Subsequently, in the case of *Veliz Franco et al. v. Guatemala*,⁴⁶ the Court also examined the obligations of guarantee, considering the obligation of prevention as an expression of these obligations that “encompasses all those measures of a legal, political, administrative and cultural nature that ensure the safeguard of human rights, and that any possible violation of these rights is considered and treated as an unlawful act [...]”;⁴⁷ reconfirming this in the case of *González et al. (“Cotton Field”) v. Mexico*⁴⁸ in relation to the characteristics of the strategy for the obligation of prevention.

25. Furthermore, based on the criterion of the “two moments” used in *González et al. (“Cotton Field”) v. Mexico*,⁴⁹ the Court determined in the “first moment” — as it had already done in the above case — that the failure to prevent the disappearance “d[id] not *per se* result in the State’s international responsibility” because, although it was aware of the increase of violent acts against women and girls, it was not aware of a real and immediate risk for the victim in that case and, also — contrary to its case law precedent — it recognized State actions (taken prior to the date of the facts) with regard to the problem of violence against women,⁵⁰ considering the analysis of that moment concluded.

⁴³ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, para. 283.

⁴⁴ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 284 and 285.

⁴⁵ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 284 and 286.

⁴⁶ This case relates to the disappearance of subsequent death of María Isabel Veliz, as well as the absence of an effective response by the State when she was reported missing, and the subsequent deficiencies in the investigation of the facts. I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277.

⁴⁷ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 135. See, similarly: *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No.205, paras. 252 and 107.

⁴⁸ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 136, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 258.

⁴⁹ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 138, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 281.

⁵⁰ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 139.

26. With regard to the “second moment” (the time elapsed between the report and discovery of the body), the Court sought to elucidate the existence of the State’s international responsibility by, first, evaluating whether “the State [had been], or should have been, aware of the situation of real and immediate danger of [the victim]”; second, “whether, being aware, it had a reasonable possibility of preventing or avoiding the perpetration of the crime” and, third, “whether it exercised due diligence with measures or actions to avoid the violation of the rights of this child.”⁵¹

27. To this end, the Court divided its analysis into two moments, the first with regard to the “[e]xistence of a situation of risk for [the victim],”⁵² and the second with regard to the “[p]ossibility of diligent action by the State to prevent the risk and its implementation.”⁵³ Regarding the first moment, the Court determined that, following the report made by the victim’s mother, the State was aware of the dangerous situation of the victim given the context in Guatemala⁵⁴ and, regarding the second moment, that, despite being aware of the missing person report, the State had not taken any substantive action to investigate what had happened or to avoid possible violations of the victim’s rights.⁵⁵

28. Accordingly, the Court concluded that Guatemala had incurred State responsibility because it had failed to comply with its obligation to ensure the rights to life and personal integrity recognized in Articles 4(1) and 5(1) of the American Convention, in relation to Article 19 (Rights of the Child) and 1(1) of this instrument, as well as its obligations under Article 7(b) of the “Convention of Belém do Pará.”⁵⁶

29. As can be observed in the two cases examined, in its case law, the Court has established State responsibility as a result of the analysis of the “second moment” of the obligation of prevention, where it has examined the State’s awareness of the dangerous situation, as well as the actions and measures taken based on its obligation to act with diligence in the specific case.

30. However, it may be noted that, when analyzing the “first moment” — which I am intending to emphasize in this opinion — it has opted to rule that, despite the context of violence against women, the lack of prevention did not *per se* result in the State’s international responsibility, since the State was unaware of a real and immediate danger for the victims before they went missing, as well as the impossibility for the State to respond unrestrictedly for every wrongful act against the victims.⁵⁷

31. Regardless of the foregoing, the Court has also concluded in its analysis of the said “first moment” — in the case of *González et al. (“Cotton Field”) v. Mexico* — that, in light of

⁵¹ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 142.

⁵² I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 155.

⁵³ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 144.

⁵⁴ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 154.

⁵⁵ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 155.

⁵⁶ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 158.

⁵⁷ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 282, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 139.

the pattern of violence against women, the absence of a general policy constitutes a violation of the general duty under the obligation of prevention.⁵⁸ Meanwhile, in the case of *Veliz Franco et al. v. Guatemala*, it recognized previous actions taken by the State in relation to the problem of the context.⁵⁹ I consider that these considerations should be taken into particular consideration in the analysis and conclusions of the case *sub judice* (which gives rise to this separate opinion), when examining the “first moment” of the State’s obligation of prevention, as will be seen in the following section.

III. THE “OBLIGATION OF PREVENTION” IN THE CASE OF *VELÁSQUEZ PAIZ ET AL. V. GUATEMALA* (2015)

32. The facts of the case relate to the disappearance, abuse and death of Claudina Velásquez Paiz in 2005, as well as the failure of the State to act diligently and the inconsistencies in the subsequent investigation of the facts, a situation which took place in a “context” of an escalation of violence against women⁶⁰ that the State was already aware of and the Court had examined in case of *Veliz Franco et al. v. Guatemala*, decided in 2014.

33. In general, it is worth mentioning that, as can be seen throughout the judgment, given that the facts of this specific case bear a sequential relationship to the facts of the case of *Veliz Franco et al. v. Guatemala*, the Court’s considerations in that case were constantly cited in this judgment, especially with regard to the establishment of a “context” of an escalation of violence against women.

34. I consider that this “context” is of fundamental importance for the analysis of the State obligation of prevention, particularly when examining the “first moment”; in other words, the general obligation to prevent the disappearance and murder of women. That is why I consider it essential to emphasize the significance of the context of this case, and then to examine in greater detail the State’s duty to guarantee rights by means of the obligation of prevention, which will be examined using the criterion of the “two moments” of this obligation, already used by the Court in the two cases of violence against women highlighted in the preceding section.

III.1 The context of violence against women in Guatemala

35. The context represents a useful and necessary tool for understanding the specific facts of the case and determining the responsibility of the State. It should be mentioned that, when establishing the context of this case, various aspects of the context found in the case of *Veliz Franco et al. v. Guatemala* were referred to as a result of the sequential relationship between the two cases.⁶¹ In this regard, the present judgment referred back to the context in which the facts of the case of *Veliz Franco et al.* occurred, indicating that, starting in December 2001, there was a “context of an escalation of homicidal violence against women in Guatemala” that the State was aware of;⁶² it also referred back to the figures for the murder of women in subsequent years up until 2004,⁶³ data that was supplemented by the figures

⁵⁸ I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 282.

⁵⁹ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 139.

⁶⁰ Paras. 45 to 48 of the judgment.

⁶¹ Paras. 45 and ff.

⁶² Paras. 45 of the judgment. Citing: I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 73, 81 and 152.

⁶³ Paras. 46 of the judgment. Citing: I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 76.

from 2005 to 2015 provided as evidence in the instant case, which were consistent with the increase in the murder of women.⁶⁴

36. The foregoing, allowed the Court to observe the contextual situation in Guatemala – in which the facts took place – in *Veliz Franco et al.*, in order to compare this with the context of the instant case. This revealed that, in addition to showing a sustained increase in 2004 and 2005 (the year in which the facts of the instant case occurred), the escalation of homicidal violence against women has remained high up until 2015, with the result that the number of violent deaths of women increased by 20% more than the number of violent deaths of men between 1995 and 2004.⁶⁵ The Court also underlined aspects of the context established in the previous case, such as the “exacerbation of the level of violence against women and the cruelty inflicted on the women’s bodies”;⁶⁶ the “high levels of general impunity [...] in relation to different types of crimes” including crimes against women,⁶⁷ and also the tendency of authorities and investigators to discredit and blame the victims for their lifestyle or clothing.⁶⁸

37. In this situation, it is admissible to consider that, at least since 2001 (as noted in the judgment in the case of *Veliz Franco et al.*), the State was aware of a context of an escalation of violence against women – including the phenomenon of “femicide”; a situation that should have resulted in State actions to take measures or create mechanisms that would have an impact on combating this context; irrespective of the measures taken prior to 2001.⁶⁹

38. Thus, the Guatemalan State’s awareness of the context of an escalation of violence against women that went back to at least 2001, as revealed in the case of *Veliz Franco et al. v. Guatemala*, leads to the presumption that the State was or should have been aware of the phenomenon of femicide at the time of the facts that occurred in 2005, years after that case.

39. In this hypothesis, I consider that the context of which the State was already aware regarding the problem of gender violence in Guatemala is essential for understanding the analysis of the “first moment” of the obligation of prevention, also referred to in the judgment as the “general obligation to prevent the disappearance and murder of women” in Guatemala, as will be noted in the following section.

III.2 The “two moments” of the obligation of prevention

40. To establish non-compliance with the obligation to prevent violations of the rights to life and personal integrity, the Court referred to the case of *the Pueblo Bello Massacre v. Colombia*, to indicate the factors that must be verified as regards the obligation of prevention, which were the State’s awareness of the real and immediate risk for those rights, and the adoption of measures by the authorities to prevent or avoid that risk.⁷⁰ Subsequently, the Inter-American Court repeated the criterion of the “two moments” of the obligation of prevention in the present judgment, indicating that this must be analyzed with regard to the “first moment” (before the disappearance Claudia Velásquez: general obligation to prevent

⁶⁴ Paras. 46 of the judgment.

⁶⁵ Paras. 45, 46 and 47 of the judgment.

⁶⁶ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 78 and 48.

⁶⁷ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 89 and 49.

⁶⁸ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, paras. 90, 212 and 49.

⁶⁹ I/A Court HR, *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of May 19, 2014. Series C No. 277, para. 82.

⁷⁰ Para. 109 of the judgment.

the disappearance and murder of women), and the “second moment” (before the discovery of the body of Claudina Velásquez: specific obligation to prevent violations of the rights to integrity and life of Claudina Velásquez”), in order to corroborate the existence of Guatemala’s international responsibility.⁷¹

41. Regarding the “first moment” — before the disappearance Claudina Velásquez — I consider it pertinent to underline the Court’s analysis regarding the existence, in 2001, of a context of an escalation of homicidal violence against women in Guatemala.⁷² Also, the subsequent mention of the measures taken by the State following the case of *Veliz Franco et al. v. Guatemala*, as well as the measures and mechanisms implemented by the State before and after the facts of the case examined in this judgment,⁷³ which it then compared with reports of national and international agencies and organizations that criticized the effectiveness of such measures and institutions,⁷⁴ while acknowledging the State’s initiative of implementing “actions aimed at addressing the problem of violence against women,” but revealing the insufficiency of such measures.⁷⁵ In this regard, I should stress that the analysis of this “first moment” does not conclude with a ruling by the Court, which I consider should have been made owing to its importance and the special consequences on the following moment (the “second moment”).

42. When examining the “second moment” — before the discovery of the body of Claudina Velásquez — the Court analyzed, on the one hand, the moment at “which the State authorities knew or ought to have known about the existence of a real and immediate danger to the life and integrity of Claudina Velásquez” determining that this was the moment at which the authorities received the telephone call from the victim’s parents;⁷⁶ and, on the other hand, “the steps taken by the Guatemalan authorities, knowing the context and the nature of the danger reported, [and also whether they] promptly took the necessary measures within the scope of their powers” to prevent or avoid that danger.⁷⁷

43. In this regard, and following an analysis of the facts already described in the judgment, it determined that the response of the authorities had been “clearly insufficient given the possibility that the [victim’s] personal integrity and life were in danger,”⁷⁸ and also the lack of clarity in the law regarding the proper moment to file a report.⁷⁹ considering that the action of the authorities had not involved the adoption of the necessary measures to prevent or avoid the danger reported by the victims.⁸⁰ Consequently, the Court considered that Articles 2 of the American Convention and 7 of the “Convention of Belém do Pará” had been violated owing to the lack of capacity, sensitivity, willingness and training to respond to missing person

⁷¹ Para. 110 of the judgment.

⁷² Para. 111 of the judgment.

⁷³ Paras. 112 and *ff.* of the judgment.

⁷⁴ Para. 118 a 120 of the judgment.

⁷⁵ Para. 120 of the judgment.

⁷⁶ Para. 121 of the judgment.

⁷⁷ Para. 123 of the judgment.

⁷⁸ Para. 126 of the judgment.

⁷⁹ In this regard, it is worth mentioning, first, that the Court noted the lack of clarity as to the moment as of which the 24-hour period before presentation of the report that Claudina Velásquez was missing should have been calculated. Second, in response to its request to the State for information concerning the existence of any law or practice according to which it was necessary to wait 24 hours to receive missing person reports, the State indicated that “there is no provision in domestic law” relating to this lapse and, third, the law on which the State argued that the agents had based their actions (article 51 of Decree No. 40-90 of the Organic Law of the Public Prosecution Service) did not indicate the actions that the authorities should have taken in that case and made no reference to receiving the report, reflecting confusion “as to the rules that the police should follow.” Paras. 128 to 131 of the judgment.

⁸⁰ Para. 132 of the judgment.

reports in the Guatemalan context, as well as the absence of immediate and effective actions.⁸¹ The Court also declared the violation of Article 7 of the “Convention of Belém do Pará” as a result of the failure to ensure the free and full exercise of the rights to life and to personal integrity.⁸²

44. The foregoing reveals, at first sight, that based on the absence of a ruling by the Court on concluding its analysis of the general obligation of prevention – in other words, during the “first moment” of this obligation (before the disappearance of Claudina Velásquez) – the State’s responsibility is constituted by the Court’s analysis of the specific obligation of prevention, establishing the international responsibility of Guatemala as a result of the analysis of the “second moment” – before Claudina Velásquez’s body was found – as a result of the failure of the authorities to take measures aimed at preventing the danger reported by the victim’s parents.

45. I consider that this has a negative impact on the analysis of the obligation of prevention *as a whole* and, subsequently, on the determination of international responsibility, because the failure of the authorities to adopt measures and take diligent actions – during the “second moment” of the State’s obligation of prevention that, in this specific case, had the purpose of preventing the danger and avoiding the injuries suffered by Claudina Velásquez – was a result of the lack of clarity in the laws that should have defined the actions to be taken following the report that the victim was missing. And this resulted from the adoption of “insufficient measures to resolve the problem” of violence against women in Guatemala,⁸³ non-compliance that plainly formed part of the State’s general obligation of prevention with regard to the “first moment” – that is, related to the general obligation to prevent the disappearances and murder of women.

46. In this regard, I consider that this constitution of responsibility is a result of a State responsibility that appears during the “first moment” of the obligation of prevention because, in the context of an escalation of homicidal violence against women in Guatemala of which the State was aware,⁸⁴ and despite all the measures taken by the State with regard to the problem, at least since 2001,⁸⁵ none of these measures was aimed at establishing an effective mechanism or practice that would ensure an immediate search for missing women; a situation that evidently had an impact on the “second moment,” when the victim’s parents were confronted by the inexistence – that persists up until the present – of an instrument, mechanism or practice requiring the immediate search for their daughter.

47. This is logical when noting the measures of reparation ordered by the Court. Indeed, among the “guarantee of non-repetition” and under the heading “Measures to prevent violence against women: State policies,”⁸⁶ the Inter-American Court indicated the insufficiency of the measures implemented by the State to address the problem,⁸⁷ stressing that, despite the existence of a “bill on the immediate search for missing women” – which

⁸¹ Para. 133 of the judgment.

⁸² Para. 133 of the judgment.

⁸³ Para. 120 of the judgment.

⁸⁴ Para. 111 of the judgment.

⁸⁵ Para. 112 of the judgment.

⁸⁶ Para. 259 and ff of the judgment.

⁸⁷ The insufficiency stems from the failure to allocate resources, “the lack of coordination between the different institutions and a comprehensive protection strategy,” as well as the fact that the State “had not proved that it had implemented the necessary measures to ensure that the officials responsible for receiving missing person reports had the capacity and the sensitivity to understand the gravity of such reports in the context of violence against women, and the willingness and training to act immediately and effectively.” Para. 264 of the judgment.

addressed the problem of the lack of an immediate search mechanism for missing women – to date this has not been adopted by the Guatemalan Congress.⁸⁸

48. In this regard, the Court concluded in the need “to regulate the search for missing women in Guatemala” and, consequently required the State “to adopt a national strategy, system, mechanism or program, by legislative or other means, to ensure the immediate and effective search for missing women, and that ensures that in cases of reports of this nature, the corresponding authorities receive them immediately, without the need for formalities and, at the same time, initiate actions to locate the possible victims and prevent the violation of their rights to life and to personal integrity.”⁸⁹

49. In this scenario, it is evident that, to address the context of violence against women in Guatemala, the State must establish laws, measures or a mechanism that, regardless of the fact that they exist, are “effective” in “practice” – in the terms of Article 2 of the American Convention – aimed at preventing the disappearance of women through diligent and appropriate actions by the authorities entailing the immediate search for these women and prevent the perpetration of violations of their human rights.

IV. CONCLUSION

50. The culture of discrimination and violence against women is a phenomenon that persists up until the present, nullifying the dignity and also the enjoyment and exercise of the human rights of women in the Americas. To confront this situation, the State obligation “of prevention” plays an essential role, to which, I consider, States should pay special attention.

51. As emphasized in the judgment, the obligation of prevention is an essential presumption to ensure the rights to life and to personal integrity,⁹⁰ and “encompasses all those measures of a legal, political, administrative and cultural nature that promote the safeguard of human rights and that ensure that eventual violations of these rights are truly considered and dealt with as wrongful acts that, as such, may result in punishment for those who commit them, as well as the obligation to compensate the victims for the harmful consequences.”⁹¹

52. In particular, Article 7 of the “Convention of Belém do Pará” establishes State obligations to prevent, punish and eradicate violence against women,⁹² which specify and supplement the State obligations regarding compliance with the rights recognized in the American Convention, including those established in Articles 4 and 5.⁹³ And the Court has indicated that States must adopt comprehensive measures to comply with due diligence, in cases of violence against women.⁹⁴ Thus, the general obligation of prevention or during its

⁸⁸ Para. 265 of the judgment.

⁸⁹ Para. 266 of the judgment.

⁹⁰ Para. 107 of the judgment.

⁹¹ Para. 107 of the judgment. Citing: I/A Court HR, *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 166, and *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 519.

⁹² Para. 108 of the judgment.

⁹³ Para. 108 of the judgment. Citing: I/A Court HR, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 346, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 133.

⁹⁴ Para. 108 of the judgment. Citing: I/A Court HR, *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 258,

"first moment" of analysis, includes the existence of a legal protection framework that is enforced effectively, prevention policies, and prevention practices and strategies; while the specific obligation of prevention or during its "second moment" of analysis, consists in the adoption of preventive measures in specific cases to avoid the perpetration of human rights violations when the State is aware that a person is in danger.

53. Based on the above, with regard to the "general" and "specific" particularities of the obligation of prevention, or its "two moments" of analysis, it can be seen that, when analyzing the "first moment," although the Court has established that, in a context of violence against women "international obligations impose on the State an enhanced responsibility with regard to the protection of women [...] which includes the obligation of prevention," it has also indicated that this does not impose on the State "unlimited responsibility for every wrongful act committed against them."⁹⁵

54. Even though I share this opinion, I also consider that, in reality, compliance with its obligation "to have an adequate legal protection framework that is enforced effectively and prevention policies and practices that permit efficient actions in response to reports, does not represent imposing an unlimited responsibility on the State; nor does the fact that the prevention strategy must be comprehensive and must prevent "the risk factors and, at the same time, reinforce the institutions so that they can provide an effective response to cases of violence against women" as the Court has established in its case law,⁹⁶ aspects that form part of the general obligation of prevention or the "first moment" of the analysis. Thus, this "first moment" of the obligation of prevention has a determinant impact on the "second moment" in which the State prevention apparatus is applied to the cases of missing persons and gender-based violence that confront the State.

55. In the instant case, it should be noted that, faced with a persistent "context" of an escalation of violence against women and even though the Guatemalan State has taken some actions to address the problem,⁹⁷ the insufficiency and ineffectiveness of such measures has meant that the country still does not have a mechanism, instrument or, in particular, a practice to search immediately for missing women, in accordance with the standard established by the Inter-American Court in the two previous cases on this matter,⁹⁸ that could prevent the risk faced by Guatemalan women and girls given the escalation in the murder of women and the brutal circumstances in which it is perpetrated.

56. It is a factor of special concern that, as a result of the failure to adopt effective and sufficient measures to prevent violence against Guatemalan women, they continue to face a constant situation of danger, where the guarantee of their rights is nullified, as well as the rights of their next of kin, as in the instant case.

and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 136.

⁹⁵ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 282, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 139.

⁹⁶ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 258, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 136.

⁹⁷ As described in paras. 112 to 120 of the judgment.

⁹⁸ I/A Court HR, *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, and *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014.

57. Consequently, the undersigned finds it pertinent to indicate that, given the context of violence faced by women in Guatemala and, consequently, the enhanced obligation of the State to prevent this situation, the Court should have declared the international responsibility of the State for failing to comply with its general obligation of prevention when examining the "first moment" of the measures adopted by the State. This is because this failure originated the absence of specific prevention or the "second moment" of prevention; in other words, when the State was confronted by the disappearance of Claudina Velásquez; because, as there was no mechanism, instrument or practice for the immediate search for missing women (which should have existed owing to the State's "general obligation of prevention"), this evidently influenced the actions of the State when it was informed that the victim was missing.

58. On this point, I consider that States must pay special attention to the general obligation of prevention in accordance with the requirements for this obligations established by the American Convention on Human Rights and the "Convention of Belém do Pará." Thus, it is not sufficient for the State to take just any measure or action to comply with the obligation of prevention; rather, it must ensure that such measure or action effectively has the purpose of preventing, as of the first moment and in general, the specific danger that women and girls in the region may face. In sum, this represents a fundamental question to which the States should give special consideration in contexts of violence against women – as seen in the instant case – because the eradication of femicide and, in general, of violence against women, a social burden that regrettably continues to afflict the region, depends to a large extent on compliance with the said "obligation of prevention.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Secretary