

INTER-AMERICAN COURT OF HUMAN RIGHTS

ROSENDO CANTÚ *ET AL.* v. MEXICO

JUDGMENT OF AUGUST 31, 2010

(Preliminary Objections, Merits, Reparations and Costs)

In the case of *Mrs. Rosendo Cantú et al.*,

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

Diego García Sayán, President;
Leonardo A. Franco, Vice President;
Manuel E. Ventura Robles, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge;
Alberto Pérez, Judge;
Eduardo Vio Grossi, Judge, and
Alejandro Carlos Espinosa, Judge *ad hoc*;

also present,

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

In accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) and Articles 30, 38(6), 56(2), 58, 59 and 61 of the Rules of Procedure of the Court¹ (hereinafter, “the Rules of Procedure”), delivers this Judgment.

I

INTRODUCTION OF THE CASE AND PURPOSE OF THE APPLICATION

1. On August 2, 2009, in accordance with the provisions of Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “the Commission”) submitted to the Court a complaint against the United Mexican States (hereinafter, “the State” or “Mexico”), based on a petition filed on November 10, 2003, by Valentina Mrs. Rosendo Cantú (hereinafter, “Mrs. Rosendo Cantú” or “the alleged victim”), the Indigenous Organization of Mixtec and Tlapanec Peoples and the Tlachinollan Mountain Human Rights Center (hereinafter, “Tlachinollan”), and the Miguel Agustín Human Rights Center. On October

¹ As stipulated in Article 79(1) of the Court’s Rules of Procedure that entered into force on June 1, 2010, “[c]ontentious cases submitted for consideration by the Court before January 1, 2010, will continue to be processed in accordance with the previous Rules of Procedure until the delivery of a judgment.” Consequently, the Court’s Rules of Procedure in this Judgment correspond to the instrument approved by the Court at its 49th Regular Session, held on November 16-25, 2000, and partially amended at its 82nd Regular Session, held on January 19-31, 2009.

21, 2006, the Commission issued Admissibility Report No. 93/06² and on March 27, 2009, approved the Report on Merits No. 36/09³ in accordance with Article 50 of the Convention and made a series of recommendations to the State. The State was notified of this report on April 2, 2009, and was granted two months to provide information on actions taken to implement the recommendations. On May 7, 2009, the State requested a one-month extension to comply with the recommendations. The Commission agreed to the request on June 17, 2009, and asked the State to report on the measures taken. On July 31, 2009, the Commission decided to submit the case to the Court, given that the deadline had passed “and the State had not presented information regarding the implementation of the recommendations.” The Commission appointed Florentín Meléndez, Commissioner at the time, and Executive Secretary, Santiago A. Canton, as delegates, and Deputy Executive Secretary Elizabeth Abi-Mershed and the lawyers Isabel Madariaga, Rosa Celorio, Fiorella Melzi, and Lilly Ching, specialists of the Secretariat, as legal advisors.

2. According to the Commission, the application refers to the State’s alleged international responsibility for the “rape and torture” of Mrs. Rosendo Cantú which occurred on February 16, 2002; the “lack of due diligence in the investigation and punishment of those responsible” for these actions; “the consequences of the facts of the case for the daughter of the [alleged] victim”; “the failure to make adequate reparation to the [alleged] victim and her family”; the “use of the military justice system to investigate and prosecute human rights violations” and the difficulties encountered by indigenous people, particularly women, to obtain access to justice and health care.”

3. Based on the foregoing, the Commission asked the Court to declare the State responsible for the violation of Articles 5 (Right to Personal integrity), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), 11 (Right to Privacy) and 19 (Rights of the Child) of the American Convention, in relation to its general obligation to respect and guarantee the human rights established in Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú. It also asked that the State be declared responsible for the violation of Article 5 of the Convention (Right to Personal integrity) to the detriment of Yenys Bernardino Rosendo, daughter of Mrs. Rosendo Cantú. In addition, it stated that Mexico is responsible for the violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter, “the Convention of Belém do Pará”) and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter, “the Convention Against Torture”), all to the detriment of Mrs. Rosendo Cantú. Accordingly, the Commission asked the Court to order the State to make a number of reparations.

4. On October 28, 2009, the *Organización del Pueblo Indígena Tlapaneco/Me´phaa*⁴ [Organization of Tlapaneco/Me´phaa Indigenous People] (hereinafter, “OPIM” for its

² In Admissibility Report No. 93/06, the Commission declared the petition admissible with regard to the alleged violation of Articles 5(1), 7, 8(1), 11, 19 and 25, in relation to Article 1(1), of the American Convention; and also Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (File of attachments to the application, volume I, attachment 2, page 4053).

³ In the Report on Merits No. 36/09, the Commission concluded that the State was “responsible for violating the rights to a fair trial and to judicial protection embodied in Articles 8(1) and 25 of the American Convention in relation to Article 1(1) thereof, and Articles 5(1), 11 and 19 of the American Convention, in relation to Article 1(1) of this international instrument. Furthermore, it conclude[d] that the State [was] responsible for the violation of Article 7 of the Inter-American Convention [on the Prevention, Punishment, and Eradication of Violence against Women] and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Valentina Rosendo Cantú. Regarding her daughter, it conclude[d] that the State [was] responsible for violating Article 5(1) of the American Convention, in relation to [...] Article 1(1) of this international instrument” (File of attachments to the application, volume I, attachment 1, page 404).

⁴ The parties use the terms *me´paa* or *me´phaa* to refer to the community or the language of Rosendo Cantú. The Court observes that there are distinct linguistic variants of Tlapaneco, which are written in different ways in Spanish depending on the geographical location of the community in question. According to the National Institute of Indigenous Languages of the State, the variant that corresponds to Barranca Bejuco is

Spanish acronym), *Centro de Derechos Humanos de la Montaña "Tlachinollan" A.C.* [the Center for Human Rights of the Tlachinollan Mountain A.C. (Tlachinollan)], and the Center for Justice and International Law (hereinafter, "CEJIL", all of the above, hereinafter, "the representatives") forwarded their brief of pleadings, motions and evidence (hereinafter, "brief of pleadings and motions"), in accordance with Article 24 of the Rules of Procedure. The representatives concurred with the violations alleged by the Commission, and also requested that the Court declare a violation of Articles 5 (Right to Personal integrity), 11 (Right to Privacy), 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, to the detriment of the family of Mrs. Rosendo Cantú; Article 24 (Right to Equal Protection) in relation to the other rights cited and Article 2 of the Convention (Domestic Legal Effects), in relation to Articles 8 and 25 thereof, 1, 6 and 8 of the Convention Against Torture and 7 of the Convention of Belém do Pará, to the detriment of Mrs. Rosendo Cantú. Finally, the representatives asked the Court to order the State to make a number of reparations and to pay certain costs and expenses.

5. On February 17, 2010, the State filed a brief containing a preliminary objection, responded to the petition and made observations on the brief of pleadings and motions (hereinafter, "answer to the application"). The State asked the Court to admit the preliminary objection and to declare its lack of jurisdiction under the Convention of Belém do Pará. It also asked the Court to declare non-existent the violations of the rights established by the American Convention and the Convention Against Torture alleged by the Commission and the representatives. The State appointed Mrs. Zadalinda González y Reynero as its Agent in this case.

6. On April 23, 2010, the Commission and the representatives presented their arguments to the State's preliminary objection, in accordance with Article 38(4) of the Rules of Procedure.

II

PROCEEDINGS BEFORE THE COURT

7. The representatives and the State were notified of the Commission's petition on August 27, 2009.⁵ After presenting of the answer to the application, the representatives requested information regarding the alleged supervening facts, granting the Commission and State an opportunity to respond. During the Court proceedings, in addition to the presentation of the main briefs (*supra* paras. 1, 4 and 5) and others sent by the parties, by means of a resolution on April 23, 2010, the President of the Court (hereinafter, "the President") ordered the submission of testimony rendered before a notary public (hereinafter, "affidavit"), the testimony of three witnesses proposed by the Commission and the representatives, as well as the expert opinions of six expert witnesses proposed by the Commission and the representatives.⁶ Moreover, for the sake of procedural efficiency, the President accepted the affidavits of two witnesses and two experts proposed by the Commission and the representatives in this case, but rendered in the case of *Fernández Ortega et al. v. Mexico*.⁷ Regarding the above, the parties had an opportunity to submit their observations. The President also convened the Commission, the representatives and the State to a public hearing to receive the testimony of one of

"me'paa" (http://www.inali.gob.mx/clin-inali/html/v_tlapaneco.html#4). Nevertheless, the Court uses both the abovementioned forms interchangeably, as used by the parties throughout this case.

⁵ On October 5, 2009, the State appointed Alejandro Carlos Espinosa as Judge *Ad hoc*.

⁶ Cf. *Case of Rosendo Cantú et al. v. Mexico. Summons to a Public Hearing*, Order of the President of the Inter-American Court of Human Rights on April 23, 2010, Operative Paragraph 1.

⁷ Cf. *Case of Rosendo Cantú et al. v. Mexico. Summons to a Public Hearing*, *supra* note 6, Operative Paragraph 1.

the alleged victims and one testimony proposed by both the Commission and the representatives. The opinion of an expert witness proposed by the representatives was also heard together with the final oral arguments of the parties on the preliminary objection and the merits, reparations and costs.⁸ Given the circumstances of this case, during the public hearing Mrs. Rosendo Cantú was able to give her testimony in private.⁹

8. The public hearing took place on May 27, 2010, during the Court's 87th Regular Period of Sessions.¹⁰

9. In addition, the Court received eleven *amicus curiae* briefs from the following persons and institutions: i) three students of the Graduate Studies Department of the Law School of the *Universidad Autónoma de México* (UNAM for its Spanish acronym), concerning the right of access to justice of the indigenous population in the state of Guerrero, the military criminal jurisdiction and possible reparations;¹¹ ii) the General Council of Spanish Lawyers and the Foundation of the General Council of Spanish Lawyers, on rape as torture, the military justice system and the appropriate medical treatment for women who are victim of violence;¹² iii) the Faculty at the Law School of the University of the Andes, concerning the importance of the context in this case;¹³ iv) the organizations Bar Human Rights Committee and Solicitor's International Human Rights Group, regarding rape as torture and the investigation standards in rape cases;¹⁴

⁸ Cf. *Case of Rosendo Cantú et al. v. Mexico. Summons to a Public Hearing*, supra note 6, Operative Paragraph 5.

⁹ Cf. *Case of Rosendo Cantú et al. v. Mexico. Summons to a Public Hearing*, supra note 6, Considering Clause 13.

¹⁰ The following persons appeared at this hearing: a) for the Inter-American Commission: María Silvia Guillén, Commissioner; Elizabeth Abi-Mershed, Deputy Executive Secretary, and Lilly Ching and Fiorella Melzi, legal advisors; b) For the representatives: Abel Barrera Hernández, Vidulfo Rosales Sierra, Alejandro Ramos Gallegos, Jorge Santiago Aguirre Espinosa, Alejandra González Marín, Cristina Hardaga Fernández, Mario Ernesto Patrón Sánchez, and Stephanie Erin Brewer, for Tlachinollan, and Alejandra Nuño, Gisela De León, Agustín Martín and Luis Carlos Buob of CEJIL and c) for the State: Armando Vivanco Castellanos, Deputy Director General of Cases, Democracy, and Human Rights of the General Office of Human Rights and Democracy of the Secretariat of Foreign Relations; José Antonio Guevara Bermúdez, Head of the Unit of Promotion and Defense of Human Rights of the Ministry of the Interior, Faustino Esmir Balanzar Sagrero, Director of Health Services for the Secretariat of Health of the State of Guerrero; Guadalupe Salas and Villaseñor, Deputy Director of Cultural Promotion of Non-violence Against Women of the Attorney General's Office of the Republic; Rogelio Rodríguez Correa, Deputy Director for International Affairs of the General Office for Human Rights of the Secretariat of National Defense; Carlos Mercado Casillas, Deputy Director General of the Promotion of Human Rights of Women and the Strengthening of the Social Fabric of the National Commission to Prevent and Eradicate Violence against Women of the Secretariat of the Interior; María de la Luz Reyes Ríos, Director General of the Ombudsman Service of the General Secretariat of the government of the state of Guerrero; José Ignacio Martín del Campo Covarrubias, Director of International Litigation on matters relating to human rights of the Secretariat for Foreign Affairs; Katya Vera Morales, Head of International Litigation on matters relating to human rights of the Secretariat for Foreign Affairs; Luis Manuel Jardón Piña, Head of the Litigation Department of the Legal Office of the Foreign Ministry; Zadalinda González and Reynero, Agent of the State; Carlos Garduño Salinas, Deputy Director of Investigation of Cases at the Secretariat of the Interior and Rafael Barceló Durazo, Diplomatic Attaché for Political Matters and Human Rights of the Mexican Embassy in Costa Rica.

¹¹ The original brief was received by the Secretariat of the Court on April 30, 2010, and is signed by Miguel Ángel Antemate Mendoza, Julio César Hernández Salmorán and Carlos Alejandro Martiarena Leonar. A copy of the brief was received on April 28, 2010.

¹² The original brief was received by the Secretariat of the Court on June 1, 2010, and is signed by Carlos Carnicer Díez and José María Prat Sabat, President and Benefactor, respectively, of the Foundation of the General Council of Spanish Lawyers.

¹³ The original brief was received by the Secretariat of the Court on June 11, 2010, and is signed by Cesar Rodriguez Garavito, Yukyan Lam and Sebastian Boada, Director, Professor and student, respectively, of the Global Justice and Human Rights Program of the University of the Andes. A copy of the brief was received on June 9, 2010.

¹⁴ The original brief was received in English by the Secretariat of the Court on June 17, 2010, and is signed by Philip Haywood, Brony Poynor and Ajanta Kaza of the organization Bar Human Rights Committee and David Palmer and Ana Paula de Souza of the organization Solicitors' International Human Rights Group. A copy

v) the Washington Office on Latin America (hereinafter, "WOLA"), regarding the militarization of the state of Guerrero and human rights abuses committed by Mexican soldiers;¹⁵ vi) the organization Lawyer's Rights Watch Canada, regarding military justice in the State and indigenous people's access to justice;¹⁶ vii) the organization Women's Link Worldwide, concerning rape as a form of torture and standards of protection for minors who are victims of rape;¹⁷ viii) the *Programa de Litigio Internacional del Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer* [International Litigation Program of the Committee for Latin America and the Caribbean for the Defense of the Rights of Women] (CLADEM for its Spanish acronym), regarding, *inter alia*, the rape and the prohibition of torture, discrimination against indigenous people in southern Mexico, and standards of proof and reparations for cases of rape and torture against indigenous women;¹⁸ ix) James C. Hopkins, Associate Professor at the University of Arizona, regarding the State's obligation to consult with indigenous people in cases of military occupation and the State's responsibility in this case for its failure to comply with its international obligations¹⁹ and x) *Fundar, Centro de Análisis e Investigación A.C.*, [FUNDAR, Center for Analysis and Investigation] which submitted two briefs, one on the indigenous rights recognized by the State and the other on the alleged absence of remedies for rejecting the jurisdiction of ordinary courts in favor of the military justice system.²⁰ These briefs were sent promptly to the parties for any relevant observations.

10. On June 28, 2010, the Commission, the representatives and the State submitted their final written arguments. Accordingly, the Court granted a period until July 16, 2010, for the parties to make observations to the documents presented by the State and the parties along with their final written arguments. The Commission, the State and the representatives submitted their observations on July 13, 15 and 16, 2010, respectively.

III PRELIMINARY OBJECTION

11. In response to the application, the State filed the objection arguing the "lack of jurisdiction of the [Inter-American Court] to examine violations of the Convention of Belém do Pará." Subsequently, at the public hearing, the State "withdr[ew] the preliminary objection filed in the answer to the application and the brief of the representatives."

12. The Commission and the representatives asked the Court to dismiss the preliminary objection filed by Mexico and affirmed the Court's jurisdiction to rule on the alleged violations of Article 7 of the Convention of Belém do Pará.

of the brief was received on June 10, 2010. On June 18, 2010, the Secretariat of the Court requested the submission of the *amicus curiae* in Spanish, a requirement that was met on June 28, 2010.

¹⁵ The brief was received by the Secretariat of the Court on June 10, 2010, and is signed by Maureen C. Meyer, Coordinator of the Program for Mexico and Central America of the Washington Office on Latin America.

¹⁶ The original brief was received by the Secretariat of the Court on June 15, 2010, and is signed by Cara E.I. Gibbons, Director of the organization Lawyers' Rights Watch Canada. A copy of the brief was received on June 10, 2010.

¹⁷ The original brief was received by the Secretariat of the Court on June 11, 2010, and is signed by Andrea Parra and Keina Yoshida, attorneys of Women's Link Worldwide.

¹⁸ The original brief was received by the Secretariat of the Court on June 11, 2010, and is signed by Norma Enriquez Riascos, Regional Coordinator of CLADEM, Valeria Pandjarian, member of the Litigation Program of CLADEM, Ángela García Reyes, of CLADEM Mexico and María Celina Berterame, of CLADEM Argentina. A copy of the brief was received on June 10, 2010.

¹⁹ The brief, in English and Spanish, was received by the Secretariat of the Court on June 11 and 12, 2010, respectively, and is signed by James C. Hopkins, Associate Professor of the Indigenous Peoples Law and Politics Program, of Rogers College of Law of the University of Arizona.

²⁰ The original briefs were received by the Secretariat of the Court on June 11, 2010, and are signed by Miguel A. Pulido Jiménez, Executive Director of *FUNDAR, Centro de Análisis e Investigación, A.C.*

13. The Court takes note of the withdrawal of the preliminary objection initially filed by the State regarding its jurisdiction with respect to Article 7 of the Convention of Belém do Pará, a matter ruled on prior to this case.²¹ Furthermore, it accepts said withdrawal in the terms expressed by Mexico and consequently will proceed to analyze the alleged violations of this treaty in the corresponding chapters of this Judgment.

IV JURISDICTION

14. Given that Mexico has been a State Party to the American Convention since March 24, 1981, and accepted the compulsory jurisdiction of the Court on December 16, 1998, the Court has jurisdiction to hear this case under Article 62(3) of the Convention. In addition, the State ratified the Convention Against Torture on June 22, 1987 and the Convention of Belém do Pará on November 12, 1998.

V PROVISIONAL MEASURES

15. On December 18, 2009, in the context of a proceeding on provisional measures ordered by the Court in the case of *Fernandez Ortega et al. v. Mexico*,²² the representatives requested the extension of these measures in favor of Mrs. Rosendo Cantú and her daughter Yenys Bernardino Rosendo. On December 23, 2009, the President of the Court at the time, in consultation with the other judges of this Court, issued a resolution dismissing the request for extension and requested that the State provide information regarding the alleged situation of extreme gravity and urgency.²³ On February 2, 2010, the Court ordered the State to adopt the necessary measures to protect the life and integrity of the alleged victim in this case.²⁴ At the time of rendering this Judgment, the provisional measures ordered by the Court remain in force and its issuance does not preclude their continuation.

VI PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

16. During the public hearing, the State made a partial acknowledgement of its international responsibility in these terms:

the Mexican State acknowledges before the Court: first, that the absence of specialized medical care for [...] Mrs. Rosendo Cantú when she filed criminal charges constitutes a flagrant violation of Article 8(1) of the American Convention; second, that the lack of specialized care to [...] Mrs. Rosendo Cantú, given that she was a minor when the criminal charges were filed, constitutes non-compliance by the State with its duty to protect the rights of the child, enshrined in Article

²¹ Cf. *González et al. ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, paras. 31 and 77.

²² On April 9, 2009, the then President of the Court, in consultation with the other Judges, issued an Order for urgent measures requiring the State to take the necessary steps to protect the life and personal integrity of the alleged victims in the case of *Fernández Ortega et al. v. Mexico, inter alia*. This Order was later ratified by the Court on April 30, 2009. Cf. *Matter of Fernández Ortega et al. Provisional Measures regarding Mexico*. Order of the President of the Inter-American Court of Human Rights on April 9, 2009, and *Matter of Fernández Ortega et al. Provisional Measures regarding Mexico*. Order of the Inter-American Court of Human Rights on April 30, 2009.

²³ Cf. *Case Fernández Ortega et al. Request for extension of Provisional Measures regarding the United Mexican States*. Order of the President of the Inter-American Court of Human Rights on December 23, 2009, Operative Paragraphs 1 and 2.

²⁴ Cf. *Case of Rosendo Cantú et al. Provisional Measures regarding the United Mexican States*. Order of the Inter-American Court of Human Rights on February 2, 2010, Operative Paragraph 1.

19 of the American Convention on Human Rights; third, that there have been delays and a lack of due diligence in the investigations and, consequently, there have been violations of Articles 8(1) and 25 of the American Convention; and fourth, that given the delay in the investigations there has been a violation of Article 5(1) of said legal instrument regarding the psychological integrity of [...] Mrs. Rosendo Cantú. These facts and their impact on compliance with the obligations derived from the American Convention are the only responsibilities acknowledged by the State.

17. Notwithstanding this acknowledgement of international responsibility, the State asked the Court to assess and rule, "in its analysis of the State's obligations under Articles 8(1) and 25 of the Convention," on the following aspects: i) the actions of the investigative authorities within the existing legal context; ii) interventions with a gender perspective and respect for judicial guarantees; iii) the invitation extended to the victim to participate in the investigations and the weight of her statement within the investigative procedures; iv) the State's procedural handling of the investigation; v) the recent actions taken by the Military Prosecutor's Office and vi) the alleged claim filed by Mrs. Rosendo Cantú before the municipal authorities and medical personnel. In addition, the State indicated that it would not "submit any arguments concerning the use of the military justice system in relation to jurisdictional competencies in this case, because the [Court has already made a final ruling on this aspect]." Finally, it asked the Court to "dismiss any violation of Articles 5(1) and 11 of the American Convention, as well as Articles 1, 6 and 8 of the Convention Against Torture."

18. In its final written arguments, the State, *inter alia*, reiterated its acknowledgement of international responsibility regarding "the delay in providing specialized and medical care for Mrs. Rosendo Cantú, as a woman and minor, as well as in the delay in the investigation of the facts of the case, [which] constitute omissions attributable to the State of Mexico in violation of Articles 8(1) and 25 of the American Convention, in relation to Articles 5(1) and 19." The State responded in the following terms:

Lack of timely and specialized medical care

The State acknowledges before [the] Court [...] the delay in the medical care and specialized medical evaluation of Mrs. Rosendo Cantú, in connection with the criminal charges of rape filed before the Public Prosecutor's Office in the city of Ayutla de los Libres, Guerrero.

[T]he State acknowledges that [...] it was not until March 19, 2002, that Mrs. Rosendo Cantú was evaluated by a forensic physician assigned to the local Public Prosecutor's office and in the presence of an attorney of her choice.

[T]he responsibility of the Mexican State for failure to provide timely and specialized medical care should be applied exclusively to the days immediately following the filing of the criminal complaint."

Lack of specialized attention to Mrs. Rosendo Cantú as a woman and a minor at the time the criminal complaint was filed

[T]he State recognized that the investigative authorities failed to provide Mrs. Rosendo Cantú with the specialized medical care she required as a minor [...], which constituted non-compliance with the duty to protect the rights of the child recognized in Article 19 of the American Convention [...] and in light of other instruments [...] such as [...] the Convention on the Rights of the Child.

Delay in the conduct of the investigations

[T]he State acknowledges its responsibility [...], for the delay in the opening of the investigation of the facts in the complaint filed by Mrs. Rosendo Cantú on March 8, 2010. Although the investigations have indeed taken eight years, the relevant authorities have still been unable to arrive at the historical truth of the facts and have not determined those responsible."

Impact on the mental integrity of Mrs. Rosendo Cantú resulting from the delay in the conduct of the investigations

[T]he State acknowledges that the delay in its investigation of the facts and the lack of substantive results after eight years of investigation have damaged the psychological integrity of Ms. [...]Mrs. Rosendo Cantú.

19. The Commission “appreciated the State’s partial acknowledgement of international responsibility [...] and consider[ed] it a positive step towards compliance with its international obligations.” However, it noted “that several of the arguments submitted by the State [...] contradict the facts supposedly acknowledged” and “that, given the terms of the acknowledgement, the State has not fully assumed the legal implications regarding the facts or the importance of the reparations requested by the parties.” Consequently, the Court found it necessary to “determine in its Judgment, the matters still in dispute, namely, those facts directly or indirectly refuted by the State, the assessment and legal consequences of both the facts acknowledged as well as those proven by the evidence submitted by the parties during the proceedings and also the reparations deemed pertinent.”

20. The representatives pointed out that “the State’s acknowledgment of responsibility [...] is limited on the one hand, and confusing on the other.” They emphasized that the acknowledgment does not include the submission of the investigation into the sexual assault against Mrs. Rosendo Cantú to the military jurisdiction, despite the fact that the State “recognizes it was recently condemned [...] for similar facts” and that “the preliminary investigation was re-submitted to the military jurisdiction when the case was already being considered by [the] Court,” following notification of the Judgment in the case of *Radilla Pacheco*. Furthermore, regarding the violation of Article 5 of the Convention, the representatives indicated that it only includes the suffering caused by the delay in the investigations, “although in this case there were violations of the utmost gravity of the victim’s right to personal integrity” and emphasized that this excludes “the violation of the family’s right to personal integrity” due to the judicial delays. Therefore, the representatives concluded that the State’s acknowledgement of international responsibility is contradictory and that “instead of attempting to rectify the damage caused to the victim’s dignity, it appears to be aimed at making the Court lenient in its Judgment.”

21. Under the provisions of Articles 56(2) and 58 of the Rules of Procedure, and in exercise of its powers of international judicial protection of human rights, the Court can rule whether an acknowledgement of international responsibility made by a respondent State offers sufficient grounds, under the terms of the American Convention, to continue examining the merits and determining possible reparations and costs.²⁵

22. Given that the proceedings before this Court concern the protection of human rights, a matter of international public order that transcends the intentions of the parties, the Court must ensure that acts of acquiescence are acceptable for the purposes of the Inter-American System. In this task, the Court does not merely verify the formal conditions, but must also relate these to the nature and severity of the alleged violations; the requirements and interest of justice; the particular circumstances of the case, and the attitude and position of the parties.²⁶

23. Regarding the facts, the Court notes that the State partially acknowledged, in a sufficiently clear and specific manner, its international responsibility for the delay in providing specialized medical care to Mrs. Rosendo Cantú; the lack of specialized care considering that she was a minor; the delay in the investigation of the facts of the case, and the impact that this delay had on the alleged victim’s personal integrity. Based on those facts, the State acknowledged its international responsibility for the violations of the rights to a fair trial and judicial protection established in Articles 8(1) and 25 of the

²⁵ Cf. *Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 105; *Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, para. 17, and *Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 17.

²⁶ Cf. *Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 24; *Case of Chitay Nech et al.*, *supra* note 17, para. 18 and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 25, para. 17.

American Convention, as well as the right to psychological integrity established in Article 5(1) thereof, and the rights of the child, recognized in Article 19 of said treaty, to the detriment of Mrs. Rosendo Cantú. Finally, regarding the claims for reparations, based on its acknowledgement of responsibility, the State called on the Court to order such measures in accordance with international law and its case law.

24. The Court decides to accept the State's acknowledgment of responsibility and considers it as a partial admission of the facts and partial acceptance of the claims of law in the Commission's application and in the representatives' answer to the application. Regarding the possible reparations, the Court will examine the matter and rule in Chapter XI of this Judgment.

25. The Court welcomes the acknowledgment made by the State and considers it constitutes a positive contribution to the conduct of this process, to upholding the principles that inspire the American Convention and to the conduct required of States in such matters, by virtue of the obligations they assume as Parties to international human rights instruments.²⁷

26. Finally, the Court notes that a dispute remains between the parties regarding the facts and claims related to the alleged violations of the rights to personal integrity, to a fair trial, to privacy, to equal protection and to judicial protection, established in Articles 5, 8, 11, 24 and 25 of the American Convention, respectively, in relation to the general obligation to respect and guarantee the rights established in Article 1(1); to the obligation to adopt domestic legal effects established in Article 2 of this international instrument, as well as those obligations arising from Articles 1, 6 and 8 of the Convention against Torture and Article 7 of the Convention of Belém do Pará. Based on the foregoing, the Court deems it necessary to deliver a Judgment so to determining the facts and all substantive elements of the matter, as well as their possible consequences as regards reparations.

VII EVIDENCE

27. Based on the provisions of Articles 46, 47, 49 and 50 of the Court's Rules of Procedure, and on its case law regarding evidence and its assessment,²⁸ the Court will now examine and assess the documentary evidence submitted by the parties at different stages of the proceedings, together with the statements, testimony and expert reports provided by affidavit and at the public hearing. To this end, the Court will adhere to the principles of sound judgment within the corresponding legal context.²⁹

A. Documentary, testimonial, and expert evidence

28. The Court received affidavits rendered by the following witnesses and expert witnesses:³⁰

²⁷ Cf. *Case of Trujillo Oroza v. Bolivia. Merits*. Judgment of January 26, 2000. Series C No. 64, para. 42; *Case of González et al. ("Cotton Field")*, *supra* note 21, para. 26 and *Case of the Dos Erres Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, para. 38.

²⁸ Cf. *The "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 50; *Case of Chitay Nech et al.*, *supra* note 25, para. 47 and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 25, para. 53.

²⁹ Cf. *The "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Chitay Nech et al.*, *supra* note 25, para. 47 and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 25, para. 53.

³⁰ Mexico did not offer witnesses or experts; therefore the President understood that the State tacitly relinquished offering any evidence. Cf. *Case of Rosendo Cantú et al. v. Mexico. Summons to a Public Hearing*, *supra* note 6, Considering Clause 4.

1. *Obtilia Eugenio Manuel*, member of OPIM, witness proposed by the Commission. She testified on: i) access to justice for indigenous women who are victims of violence in the Municipality of Ayutla, and ii) the search for justice for Mrs. Rosendo Cantú.
2. *Victoriano Rosendo Morales*, father of Mrs. Rosendo Cantú, witness proposed by the representatives. He testified on: i) the impact that the alleged rape of his daughter at the hands of soldiers had on his life and on the lives of his family; ii) the alleged impunity that continues in this case; iii) the alleged consequences derived from this act on the lives Mrs. Rosendo Cantú and her family and iv) the measures the State should adopt to repair the alleged damage.
3. *María Cantú García*, Mrs. Rosendo Cantú's mother, witness proposed by the representatives. She testified on: i) the impact that the alleged rape of her daughter at the hands of soldiers had on her life and on the lives of her family; ii) the alleged impunity that continues in this case; iii) the alleged consequences derived from this act on the lives of her daughter and her family and iv) the measures the State should adopt to repair the alleged damage.
4. *Jan Perlin*, a lawyer and former Director of the Diagnostic Project on Access to Justice for Indigenous Peoples in Mexico, of the Office of the High Commissioner for Human Rights of the United Nations, expert witness proposed by the Commission. She provided an expert report on: i) the situation of access to justice for indigenous peoples in Mexico, and ii) the improvements required in this regard.
5. *Paloma Bonfil Sánchez*, an ethno-historian, researcher and consultant on gender and indigenous women, expert witness proposed by the Commission. She provided an opinion on alleged discrimination against indigenous women in Mexico.
6. *Federico Andreu Guzmán*, a lawyer and General Counsel for the International Commission of Jurists, expert witness proposed by the Commission. He provided an opinion on the use of the military justice system to investigate and prosecute crimes unrelated to military matters, and in particular, human rights violations.
7. *Marcos Arana Cedeño*, a medical specialist in public health and integrated care for women, witness proposed by the Commission. He offered his expert opinion on: i) the alleged obstacles faced by indigenous women seeking access to health care in Mexico and ii) the minimum requirements to be followed by health care professionals in collecting evidence in cases of sexual violence.
8. *Clemencia Correa González*, a professor and expert in the treatment of political violence with emphasis on gender violence; expert witness proposed by the representatives. She gave her expert opinion on: i) the alleged consequences of the sexual torture suffered by the victim, Mrs. Rosendo Cantú; ii) the alleged personal, family, and community/social impact suffered by Mrs. Rosendo Cantú and her family as a result of the alleged rape and the alleged failure to obtain medical care and the impunity of the case; iii) the presumed repercussions of the alleged human rights violations and how the alleged impunity has impacted the social fabric of the community and iv) the measures necessary to redress the damage caused.

9. *Héctor Ortiz Elizondo*, a legal anthropologist, expert witness proposed by the representatives. He rendered his expert opinion on: i) the perception of indigenous communities regarding sexual violence and discrimination against women; ii) the presumed cultural impact on the indigenous community of the alleged rape of the victim by soldiers in a context of alleged militarization and repression, as well as the supposed impunity in this case and iii) the possible measures of reparation required.

29. Furthermore, in the interests of procedural economy, the testimony and expert reports rendered by affidavit in the case of *Fernández Ortega et al. v. Mexico* were incorporated into this case. These included the following witnesses and experts:³¹

1. *Cuauhtémoc Ramírez Rodríguez*, a board member of the OPIM, witness proposed by the Commission and the representatives. He testified on: i) the circumstances surrounding the alleged rape in which Mrs. Fernández Ortega was allegedly a victim; ii) the alleged use of rape as a form of harassment practiced by the Army against the social movements in Guerrero; iii) the supposed effects that Mrs. Fernández Ortega's alleged rape had on the work of the OPIM and iv) the alleged threats and harassment against those involved in the pursuit of justice in the case.

2. *María Isabel Camila Gutiérrez Moreno*, editor and correspondent for the *El Sur* newspaper, witness proposed by the representatives. She testified on: i) the alleged context of militarization in the indigenous areas, particularly in Ayutla, state of Guerrero and ii) the documentation, newspaper articles and investigations she had prepared as a journalist regarding the alleged rapes of indigenous women in the area of Ayutla.

3. *Rodolfo Stavenhagen*, an anthropologist and sociologist, former United Nations Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, expert witness proposed by the Commission. He provided an opinion on: i) the situation of the indigenous population in the state of Guerrero, ii) the conduct of the Mexican Armed Forces towards the indigenous population and iii) the effects on Mexican indigenous peoples of their alleged limited access to justice and supposed impunity for human rights violations.

4. *Miguel Carbonell Sánchez*, a lawyer and expert in Mexican constitutional law, researcher and coordinator of the Academic Extension Unit and Editorial Projects of the Institute of Legal Research of the UNAM, expert witness proposed by the representatives. He provided an expert report on: i) the use of military courts in Mexico with regard to human rights violations and the measures the State must adopt to avoid the recurrence of this alleged practice and ii) the measures required to ensure that victims of human rights violations have access to an effective remedy for obtaining legal protection when the military criminal justice system exercises jurisdiction over their cases.

30. Regarding the evidence given during the public hearing, the Court heard the testimony of the alleged victim, the testimony of a witness and the testimony of an expert:

1. *Valentina Mrs. Rosendo Cantú*, alleged victim, proposed by the Commission and the representatives. She testified on: i) the events which allegedly occurred on February 16, 2002; ii) the steps taken to clarify the historical truth of the facts

³¹ Regarding these statements and expert opinions, the President decided that the Court would only consider those aspects exclusively related to this case. Cf. *Case of Rosendo Cantú et al. v. Mexico. Summons to a Public Hearing*, *supra* note 6, Considering paras. 27 and 29.

and to identify, prosecute and punish those responsible; iii) the response and attitude of the authorities regarding these steps; iv) the alleged obstacles encountered in the pursuit of justice; v) the alleged obstacles faced in attempts to obtain medical care; vi) the presumed consequences of the human rights violations alleged in this case on her personal life and that of her family and vii) the measures that the State should adopt to redress the violations committed.

2. *Hipólito Lugo Cortés*, Inspector General of the Commission for the Defense of Human Rights of Guerrero (CODDEHUM-GRO, for its Spanish acronym), witness proposed by the Commission and the representatives. He testified on: i) the complaints received by CODDEHUM-GRO regarding alleged military abuses against indigenous people of Guerrero; ii) the alleged lack of access to medical care by indigenous women; iii) the investigation conducted by CODDEHUM-GRO in the case of Mrs. Rosendo Cantú and iv) the assistance provided to the alleged victim in filing the criminal complaint before the State authorities, particularly before the Local Public Prosecutor's Office.

3. *Roxana Arroyo Vargas*³², a professor and expert on gender issues and women's human rights, proposed by the representatives. She rendered her expert report on: i) the alleged discrimination suffered by women who are victims of violence; ii) the lack of access to justice suffered by indigenous women victims of violence and iii) the possible measures required to obtain adequate reparations in this case.

B. Assessment of the documentary evidence

31. In this case, as in others,³³ the Court accepts the evidentiary value of the documents forwarded by the parties, which were not disputed or challenged, or their authenticity questioned.

32. At the same time, the Court will examine, in the first place, the observations made by Mexico regarding certain documents offered in the application and in the brief of pleadings and motions. It will then rule on those documents provided by the representatives and the State, subsequent to their briefs of pleadings and motions and the answer brief to the application, respectively.

33. The State objected to certain texts³⁴ and newspaper articles³⁵ submitted as documentary evidence by the Commission and by the representatives. It asked the

³² Following the submission of the final list of deponents, witnesses and experts, on May 4, 2010, the representatives requested the substitution of the expert Facio Montero, who "was not able to participate in the hearing due to *force majeure*," for the expert Roxana Arroyo Vargas, to provide her expert opinion. Given that the Commission and the State agreed to this request by the representatives and considered the proposed expert to be potentially useful, the Court accepted the proposed substitution and summoned this expert to the public hearing to render her testimony for the same purposes as specified for the expert Facio Montero. *Cf. Case of Rosendo Cantú et al. v. Mexico*. Order of the Inter-American Court of Human Rights of May 19, 2010, Operative Paragraph 2.

³³ *Cf. Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Chitay Nech et al.*, *supra* note 25, para. 50 and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 25, para. 56.

³⁴ The publications mentioned by the State are the following: Inter-American Commission on Human Rights. Access to Justice for Women Victims of Violence in the Americas, OAS/Ser.L/V/II, document 68, of January 20, 2007 (File of attachments to the application, volume I, Attachment 1, pages 3 to 155); Office of the High Commissioner for Human Rights in Mexico. Report on the Human Rights Situation in Mexico, 2003 (File of attachments to the application, volume I, Attachment 2, pages 158 to 326); Global Exchange, *Centro de Investigaciones Económicas y Políticas de Acción Comunitaria*, A.C. (CIEPAC) and CENCOS. *Siempre cerca, siempre lejos: Las fuerzas armadas en México*, [Always close, always far: The Armed Forces in Mexico], 2000 (File of attachments to the brief of pleadings and motions, volume I, attachment 1, pages 5031 to 5040); Rosalva Aída Hernández Castillo. *The Dirty War Against Women [La Guerra Sucia contra las Mujeres]*. March 8, 2009, in News Services, Alternative Solidarity Information (File of attachments to the brief of pleadings and motions, volume I, Attachment 6, pages 5262 to 5265); International Peace Brigades. *Silenced: Violence Against Human Rights Defenders in Southern Mexico [Silenciados: Violencia contra defensores de derechos*

Court not to admit these documents because “their contents are not related to the purpose [*litis*] of this case” and “their inclusion is intended to provide context to the facts of this case.”

34. Regarding investigative articles or texts, the Court has already indicated that these are written documents containing the authors’ voluntary statements for public distribution. In this regard, the assessment of their content is not subject to the formalities required for testimonial evidence. However, their probative value depends on

humanos en el sur de Mexico], Newsletter of the Mexico Project, Special Edition on Ayutla, May 2009 (File of attachments to the brief of pleadings and motions, volume I, attachment 7, pages 5267 to 5278); Amnesty International. Promoting the Rights of Indigenous Peoples in Mexico. Organization of the Indigenous Me’phaa People. Human Rights Defenders, October 2008 (File of attachments to the brief of pleadings and motions, volume I, attachment 8, pages 5280 to 5283); United Nations Development Programs. Report on Human Development in 2004, cited in the Report of the Civil Society Organizations on the Situation of Economic, Social and Cultural Rights in Mexico (ESCR). Alternative Report IV Periodic Report of the State of Mexico on the application of the International Covenant on Economic, Social and Cultural Rights, April 2006 (File of attachments to the brief of pleadings and motions, volume I, attachment 13, pages 5298 to 5309 and 18, pages 5393 to 5405); National Network of Civil Human Rights Organizations. All Rights for Everyone. [*Todos los derechos para todos.*] The human rights situation in Mexico, followed the recommendations of the Report of the Inter-American Commission on Human Rights on Mexico, September 30, 1999 (case file of as to the brief of pleadings and motions, volume I, Attachment 14, page 5311 to 5329); National Institute of Statistics and Geography (INEGI) in collaboration with UNIFEM. Women in Guerrero: Statistics on Gender Inequality and Violence Against Women [*Las mujeres en Guerrero: Estadísticas sobre desigualdad de género and violencia contra las mujeres*] (File of attachments to the brief of pleadings and motions, volume I, Attachment 15, pages 5331 to 5369 and Attachment 19, pages 5407 to 5445); Centro de Derechos Humanos Fr. Francisco de Vitoria. Annual Report on the Situation of ESCR in Mexico 2007-2008. March 2009 (File of attachments to the brief of pleadings and motions, volume I, Attachment 16, pages 5372 to 5382); National Women’s Institute, UNFPA, the PAHO/WHO, UNDP, UNICEF, UNIFEM and INEGI. The Gender Approach in the Production of Health Statistics, Chapter V: Health and Morbidity [*El enfoque de género en la producción de las estadísticas de salud, Capítulo V: Salud and morbilidad*] (File of attachments to the brief of pleadings and motions, volume I, Attachment 17, pages 5384 to 5392); Valdéz-Santiago, Rosario et al. Health Systems to Address the Violence Against Indigenous Women in the Main Ethnic Groups of Mexico (File of attachments to the brief of pleadings and motions, volume I, Attachment 21, pages 5450 to 5457); National Institute of Public Health. Survey of Health and Indigenous Women’s Rights. ENSADEMI 2008. Chapter 7 (File of attachments to the brief of pleadings and motions, volume I, Attachment 22, pages 5459 to 5467) and PRODESCA, Guerrero Network of Civil Human Rights Organizations and the National Network of Civil Human Rights Organizations, All Rights for Everyone. Report on the Human Rights Situation and Violence Against Women in the State of Guerrero. Chilpancingo, Guerrero, November 2006 (File of attachments to the brief of pleadings and motions, volume IV, attachment 202, pages 7193 to 7227).

³⁵ The newspaper articles mentioned by the State are the following: Newspaper *La Jornada. El Sur*. More rapes and homicides if the Army continues in the Mountains [*Más violaciones y homicidios si el Ejército sigue en la Montaña*], May 12, 1999 (File of attachments to the brief of pleadings and motions, volume I, Attachment 2, page 5042 and Attachment 10, page 5289); notes attached to the case file CODDEHUM-VG/065/2002-II, corresponding to the investigation carried out by the Commission for the Defense of Human Rights in the state of Guerrero (File of attachments to the brief of pleadings and motions, volume I, Attachment 4, pages 5232 to 5258); *Periódico La Jornada*. “Between 1994 and 2006 there were 60 cases of aggression, according to Amnesty International. CMDPDH: *Propicia el fuero military violencia sexual contra las indígenas*,” June 29, 2007 (File of attachments to the brief of pleadings and motions, volume I, Attachment 5, page 5260); Newspaper *La Jornada*. A Critic of 11 years of Military and Police Assault. The government is furious with us because we organized: OPIM [*Reprocha 11 años de agresiones militares and policíacas. El gobierno se encabronó con nosotros porque nos organizamos: OPIM*], June 27, 2007 (File of attachments to the brief of pleadings and motions, volume I, Attachment 9, pages 5285 and 5286); Newspaper *El Porvenir*. The Sedena denies that military justice gives members concessions [*Niega la Sedena que justicia militar haga concesiones a efectivos*], July 23, 2009 (File of attachments to the brief of pleadings and motions, volume I, Attachment 11, page 5291); July 23, 2009 (File of attachments to the brief of pleadings and motions, volume I, Attachment 11, page 5291); Newspaper *La Jornada*. “Complaints against the Army ‘are not many [*Las quejas contra el Ejército ‘no son muchas*”], February 23, 2009 (File of attachments to the brief of pleadings and motions, volume I, Attachment 12, pages 5293 to 5296); CIMAC News. High Vulnerability and Human Rights Violations. Indigenous women, a life full of grievances [*Alta vulnerabilidad and violación a sus derechos humanos. Mujeres indígenas, es su vida suma de agravios*], March 31, 2008 (File of attachments to the brief of pleadings and motions, volume I, Attachment 20, pages 5447 and 5448); Newspaper *El Sur*. Barranca Bejuco: Indigenous women live in fear of military aggression [*Barranca Bejuco: indígenas viven con miedo a una agresión militar*], March 5, 2002 (File of attachments to the brief of pleadings and motions, volume II, Attachment 32, pages 5513 and 5514), and Newspaper *El Sur*. CODDEHUM charges torture and violation of the young tlapaneacan woman, Valentina Rosendo [*Condena la CODDEHUM tortura y violación [“de la joven tlapaneaca Valentina Rosendo,”*] March 12, 2002, to the file of the complaint CODDEHUM-VG/065/2002-II (File of attachments to the brief of pleadings and motions, volume II, attachment 74, page 5790).

their corroboration with aspects of this case.³⁶ Consequently, given the general nature of the State's challenge, the Court decides to admit them and will assess them as appropriate, taking into account the body of evidence, the State's observations and the rules of sound judgment.

35. As to the newspaper articles submitted by the representatives, the Court considers they may be assessed when they refer to well-known public facts or statements made by State officials³⁷ or when they corroborate aspects of the case.³⁸ The Court has confirmed that in some of those documents it is not possible to determine the date of publication. However, none of the parties has objected to these documents on those grounds nor have they questioned their authenticity. Therefore, the Court decides to admit those documents that are complete, or at least those whose source and date of publication can be verified, and shall assess them taking in to account the body of evidence, the State's observations and the rules of sound judgment.

36. The Court also admits other documents into the body of the evidence, in application of Article 47(1) of the Rules of Procedure, upon considering them useful for the resolution of this case.³⁹

37. Furthermore, with regard to the documents provided by the representatives and the State following the submission of the pleadings and motions brief and the answer brief, respectively, the Court deems it pertinent to recall that Article 46 of the Rules of Procedure, which regulates the admission of evidence, establishes that:

1. Items of evidence tendered by the parties shall be admissible only if they are offered in the application of the Commission, in the pleadings, motions and evidence of the alleged victims, in the answer to the application and observations to the pleadings and motions filed by the State or, when appropriate, in the document setting out the preliminary objections and the answer thereto.

[...]

³⁶ Cf. *Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 72.

³⁷ For purposes of this Judgment, the Court will use the terms officials, employees and public servants interchangeably.

³⁸ Cf. *Case of Velásquez Rodríguez. Merits*, supra note 33, para. 146; *Case of Chitay Nech et al.*, supra note 25, para. 55 and *Case of Manuel Cepeda Vargas*, supra note 25, para. 60.

³⁹ UN. Office of the High Commissioner for Human Rights, Professional Training Series, No. 8, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment, New York and Geneva, 2001 (<http://www.ohchr.org/Documents/Publications/training8Rev1sp.pdf>); WHO, Guidelines for Medical-Legal Care for Victims of Sexual Violence, Geneva, 2003 (http://www.who.int/violence_injury_prevention/resources/publications/med_leg_guidelines/en/); Criminal Code of the state of Guerrero, published in the Official Gazette on November 14, 1986, (<http://www.guerrero.gob.mx/pics/legislacion/183/CPEG.pdf>); Code of Criminal Law of the state of Guerrero, published in the Official Gazette on November 14, 1986 (<http://www.guerrero.gob.mx/pics/legislacion/183/CPEG.pdf>); Civil Code of the Free and Sovereign State of Guerrero, published in the Official Gazette on January 2, 1993 (<http://www.guerrero.gob.mx/?P=leyesdetalle&key=19&tipo=2&mode=1&file=190>); Code of Criminal Procedure of the state of Guerrero, published in the Official Gazette on February 5, 1993 (<http://www.guerrero.gob.mx/?P=leyesdetalle&key=19&tipo=2&mode=1&file=185>); Federal Criminal Code of Mexico, published in the Official Gazette of the Federation on August 14, 1931, (<http://www.diputados.gob.mx/LeyesBiblio/pdf/9.pdf>); Federal Code of Criminal Procedure, published in the Official Gazette of the Federation on August 30, 1934 (<http://www.diputados.gob.mx/LeyesBiblio/pdf/7.pdf>), and the Mexican Code of Military Justice, published in the Official Gazette of the Federation on August 31, 1933 (<http://www.diputados.gob.mx/LeyesBiblio/pdf/4.pdf>); National Commission on Human Rights Law, published in the Official Gazette of the Federation on June 29, 1992 (<http://www.cndh.org.mx/normat/leycndh/LEYCNDH2010.pdf>); and the Law for the Protection and Development of Minors in the state of Guerrero, Number 415, published in the Official Gazette on January 15, 2002 (<http://www.guerrero.gob.mx/pics/legislacion/66/LPDMEG415.pdf>).

3. Should any of the parties allege *force majeure*, serious impediment, or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.

38. On December 4, 2009, the representatives submitted as evidence based on supervening facts “recent information on the criminal investigation underway into the facts of the case.” They indicated that, on October 30, 2009, the Office of the Attorney General for Justice of the state of Guerrero (hereinafter, “Guerrero Attorney General’s Office”) notified the representatives that it had waived jurisdiction in favor of the Office of the Attorney General for Military Justice (hereinafter, “Military Attorney General’s Office”), “because those allegedly responsible for the facts [...] are members of the Mexican Army.”⁴⁰

39. In its answer to the application submitted on February 17, 2010, the State confirmed that it had declined jurisdiction in favor of the Military Prosecutor’s Office, stated the legal grounds for this action and indicated that it was in line with current law. Furthermore, in its final written arguments, it explained that “at present, the Military Prosecutor is the only competent authority under the current Mexican legal system, and will continue to be so until such time as there is a legislative reform in this regard.”

40. For its part, the Commission referred to the observations made in its Merits Report and in the application concerning the military criminal justice system and emphasized that “the intervention of the military criminal justice system in the investigation of a complaint of rape [allegedly] perpetrated against a civilian” cannot be justified.

41. The Court notes that the fact reported does indeed form part of the purpose of this case and admits, under the terms of Article 46(3) of the Rules of Procedure, the copy of note No. 344/2009 of October 29, 2009, relating to Preliminary Investigation FEIDS VI/002/2009, provided by the representatives, and will consider the information contained therein, as appropriate.

42. Also, during the public hearing, the State submitted a copy of volumes VIII, IX, and X of the case file of Preliminary Investigation No. SC/180/2009/II-E of the Military Prosecutor’s Office.⁴¹ At the end of the hearing, the State submitted numerous documents relating to “public, institutional and legislative policy measures” it had adopted.⁴²

43. The representatives noted that these documents, which are “described in subparagraphs 2 to 30 of the ‘Record of Documents Received,’ as well as all the procedures carried out under the military jurisdiction prior to February 17, 2010,” should have been presented by the State along with its answer to the application. Accordingly, they requested the Court to “reject [the aforementioned documents], given that none [of them] may be considered supervening evidence.”

44. As to the documents provided by the State during the public hearing concerning its different actions and policies on violence against women, the Court notes that they were not forwarded at the appropriate time; that is, in the answer to the application. Moreover, Mexico failed to justify their belated presentation by alleging *force majeure*, serious impediment or supervening events; in other words, it did not offer any of the reasons set out in the Rules of Procedure allowing evidence to be submitted after to the answer brief to the application. Nevertheless, since these documents are pertinent and

⁴⁰ Cf. Brief of December 4, 2009, and copy of the notification of Order No. 344/2009 of October 29, 2009, issued in Preliminary Investigation FEIDS VI/003/2009 (Merits file, volume I, page 337 to 339).

⁴¹ Cf. Record of receipt of documents of May 27, 2010, (Merits file, volume VII, pages 1496 to 1498).

⁴² Cf. Record of receipt of documents, *supra* note 41.

necessary for determining the facts of this case and the possible consequences, the Court decides to admit them in accordance with Article 47 of the Rules of Procedure. With regard to the copies of Preliminary Investigation SC/180/2009/II-E of the Military Prosecutor's Office, the Court notes that the actions taken by the State prior to the date on which the answer to the application was forwarded to the Court has already been incorporated into the case file (*supra* para. 5). Regarding the actions related to the preliminary investigation carried out after February 17, 2010, the Court notes that they do indeed form part of the object of this case and could not have been provided previously. Therefore, the Court admits these documents as evidence on supervening events, under the terms of Article 46(3) of the Rules of Procedure.

45. In addition, both the State and the representatives submitted documents with their final written arguments. Mexico provided, *inter alia*, up-to-date copies of the actions taken by the Military Prosecutor's Office in the Preliminary Investigation SC/180/2009/II-E, and a copy of the State's Official Standard NOM-046-SSA2-2005 "Domestic Violence, Sexual Violence and Violence against Women. Criteria for Prevention and Attention."⁴³ On their part, the representatives submitted documents related to costs and expenses.

46. In relation to the documents presented by the State on domestic standards, the representatives argued that Mexico "has [not] alleged grounds of '*force majeure*' or any 'serious impediment' that prevented it from introducing this documentation at the proper procedural stage" and they asked the Court not to admit it. Likewise, they argued that "[t]he standards referred to are general regulations regarding public policies related to equality and nondiscrimination, access to health care, rights of the child and of women," which "were not applicable to the case [because] they are not pertinent to the examination of State's conduct." Regarding the Preliminary Investigation SC/180/2009/II-E of the Military Prosecutor's Office, they argued that, "the documentation referred to is evidence of the continuing violation of the victim's right to a fair trial and judicial protection, demonstrating not only that the military courts are not competent, but also that they are biased, inadequate and ineffective." Consequently, they asked the Court to disregard the documents presented by the State prior to the presentation of its answer brief to the application and that the documents submitted subsequently to that brief be considered as "additional evidence" of the State's responsibility in the case.

47. Regarding the documents of the Preliminary Investigation SC/180/2009/II-E of the Military Prosecutor's Office, submitted by the State with its final written arguments, the Court notes that these correspond to actions carried out as of May 26, 2010, that is, after the date of presentation of the answer brief, and therefore could not be presented beforehand. Thus, these documents will be considered as evidence of supervening facts under the terms of Article 46(3) of the Rules of Procedure and admitted where appropriate. Furthermore, as regards Mexican Official Standard NOM-046-SSA2-2005, the Court recalls that this document was among others submitted by the State during the hearing⁴⁴ and the Court has already ruled on its admission (*supra* para. 44). Regarding the other documents provided by the State with its final written arguments, given their relevance and usefulness in clarifying the facts of this case and its possible consequences, the Court decides to admit these, in accordance with Article 47 of the Rules of Procedure. The Court will take into consideration the observations of the parties with regard to these documents, together with the body of evidence, in application of the rules of sound judgment.

⁴³ Mexican Official Standard NOM-046-SSA2-2005 "Domestic Violence, Sexual Violence and Violence against Women. Criteria for Prevention and Attention," published in the Official Gazette of the Federation on April 16, 2009. *Cf.* Record of receipt of documents, *supra* note 41, numeral 31.

⁴⁴ Record of receipt of documents, *supra* note 41, numeral 31.

48. As to the documents submitted by the representatives in their final written arguments, the State noted that the representatives “seek to rectify an omission made almost nine months ago in their brief of final arguments, which was submitted belatedly and in violation of the rules of this proceeding, namely, information related to the cost of processing the case since 2008.” The State also made substantive observations on these documents (*infra* para. 283).

49. As to the documents cited in the previous paragraph, which were submitted by the representatives regarding costs and expenses, the Court will only consider those forwarded with the final written arguments referring to new costs and expenses incurred in the proceedings before this Court, in other words, those incurred after the brief of pleadings and motions (*infra* para. 285).

C. Assessment of the statement of the alleged victim and of the testimonial and expert evidence

50. Regarding the statements of the alleged victim, the witnesses and the expert opinions provided during the public hearing and through affidavits, the Court considers these pertinent only insofar as they fulfill the purpose defined by the President in the order requiring them (*supra* para. 28, 29 and 30), in conjunction with the other elements of evidence, taking into account the observations made by the parties.⁴⁵

51. The Court notes that the State submitted its observations on the affidavits on March 13, 2010, that is two days late. However, given that the delay was minor and that accepting said observations does not create a procedural imbalance to the detriment of the parties and does not affect the legal certainty, the Court admits the State’s brief.

52. The State did not challenge the testimony of the alleged victim, but pointed out that this testimony alone does not constitute conclusive evidence; rather, it must be considered as part of all the evidence in the proceeding because the victim has a direct interest in the outcome of the litigation. In accordance with its case law, the Court considers that the testimony rendered by alleged victims cannot be assessed in isolation, but rather together with all the evidence in the proceeding,⁴⁶ since it is useful to the extent that it can provide additional information on the alleged violations and their consequences. Taking this into account, the Court admits the testimony of Mrs. Rosendo Cantú, noting that its evidentiary value will be considered only insofar as it relates to the purpose defined by the President (*supra* para. 30), together with the entire body of evidence, the State’s observations and the rules of sound judgment.

53. Regarding the statements of the witnesses and expert witnesses, the State indicated in general terms that none was admitted for the purpose of proving that military personnel sexually abused Mrs. Rosendo Cantú. It noted that “[t]he testimonies, statements and expert opinions stating that Ms. [...]Mrs. Rosendo Cantú was raped by State agents should be dismissed because [the] Court did not admit them for that purpose in the *sub judice* proceeding. Furthermore, the deponents were not directly aware of the facts in any of those cases. The knowledge is indirect and is only limited to presuming the existence of the facts indicated by [...] Mrs. Rosendo Cantú.”

54. In particular, with regard to the testimony of Mrs. Eugenia Manuel, the State noted that, “she makes reference to facts that are not part of the *litis* of this case and attempts to connect two different proceedings before t[his] Court.” The State also contradicted the comments of the witness, “in the sense that there was an unjustified

⁴⁵ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Chitay Nech et al.*, *supra* note 25, para. 56 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 64.

⁴⁶ Cf. *Case of Loayza Tamayo*, *supra* note 45, para. 43; *Case of Chitay Nech et al.*, *supra* note 25, para. 56 and *Case Manuel Cepeda Vargas*, *supra* note 25, para. 65.

delay by the State agents of the Public Prosecutor's Office at the time when the claim was filed."

55. Regarding the testimony by Mr. Rosendo Morales, the State asked the Court to annul the content "referring to the events which he claimed had recently occurred to his granddaughter and daughter, since these are related to the implementation of provisional measures ordered by the Court." Likewise, the State asked the Court not to consider "the events he discusses in his testimony, but did not witness."

56. Regarding the testimony of Mrs. Cantú García, the State also requested that the Court set aside "events that do not have a direct bearing on the [*litis*] of the case and that she did not witness.

57. The State asked that the Court dismiss outright the testimony of Mrs. Gutiérrez Moreno "for contextualizing the way in which the facts alleged by the petitioners occurred, in contravention of the system of individual petitions" and for not referring solely to events and circumstances witnessed by her.

58. Regarding the testimony of Mr. Ramírez Rodríguez, the State affirmed, "it should be dismissed outright because it sought for the Court to analyze the alleged context in which the alleged events occurred, in violation of the system of individual petitions." In addition, the State affirmed that the witness "was not clear on the facts of this case and confused the conduct of the investigations with the case of [...] Fernández Ortega" and therefore does not meet the "requirements for the testimony to have the full probative value."

59. The Court notes that the State challenged some of the testimonial statements, mainly on the basis that the witnesses refer to facts that are outside the scope of this case, or that there is evidence contradicting their statements or that they had not witnessed the events. These observations refer to the merits of the dispute; therefore, in the corresponding section of the Judgment, the Court will assess these witness statements insofar as they relate to the purpose defined by the President of the Court (*supra* para. 28 and 29), taking into account the body of evidence, the State's observations and the rules of sound judgment.

60. Regarding the expert opinions, the State asked the Court to dismiss any reference to the alleged rape of Mrs. Rosendo Cantú made by Correa González, Ortiz Elizondo and Arroyo Vargas during the public hearing and via affidavit, given that their opinions are outside the purpose for which they were summoned and are facts that they cannot directly attest to.

61. Moreover, the State requested that the Court dismiss the expert opinion of Mrs. Perlin, "given that the expertise and objectivity with which it was rendered may be compromised given that she 'currently practices law in the state of New York' and has never conducted a field study in the state of Guerrero." Furthermore, the State argued that eight pages of her expert opinion "are based entirely on the [Diagnostic Report on Access to Justice by Indigenous Peoples of Mexico: Case Study of Oaxaca], attempting to [...] associate it [...] in an unjustified manner with the case before us" and that "the lack of objectivity of the expert opinion [] is further accentuated because this expert witness makes several references to the brief of pleadings [and] motions" in this case.

62. Concerning the expert opinion of Mrs. Bonfil Sánchez, the State argued that her statements lack evidence regarding the existence of a "set of social, bureaucratic and normative practices that should be revised because they constitute discriminatory actions, by commission or omission, against the dignity, identity, integrity and security of indigenous women of the country," as well as "various cases [...] before the Court [...], and before national court[s]." It requested, therefore, that these statements be

dismissed and emphasized that it is not appropriate for an expert witness to give an opinion regarding reparation measures.

63. Regarding the expert report of Mr. Arana Cedeño, the State considered that it is “based on investigations and experiences in the state of Chiapas,” and thus it would be “inappropriate to transfer the situation existing in [Chiapas] to that in the state of Guerrero.” Moreover, the State requested that the Court “dismiss the evidence due to the inconsistency between the expert report presented and the purpose [...] defined by [...] this Court.”

64. The State also objected to the expert report of Mr. Ortiz Elizondo in relation to the section on reparation and compensation measures, given that the Court “is the only body authorized to rule on reparations and the nature of such measures, not the experts.”

65. Concerning the expert opinion of Mrs. Correa González, apart from the points mentioned previously (*supra* para. 60), the State objected to the reference to reparation measures and to the specific reference to those responsible for the crime of rape, “which has not yet been proven.”

66. Regarding the expert opinion of Mr. Stavenhagen, the State argued that the testimony consists solely of the expert’s personal opinions, and therefore asked the Court assess it as such.

67. Finally, the State requested that the Court refrain from considering the expert testimony of Messrs. Carbonell Sánchez and Andreu Guzmán because the arguments set forth in their statements have already been assessed by the Court in its Judgment in the case of *Radilla Pacheco*.

68. The Court considers it pertinent to point out that, unlike the witnesses, who must avoid giving personal opinions, the expert witnesses provide technical or personal opinions related to their specialized knowledge or experience. Moreover, expert witnesses may refer both to specific points of the *litis* and to any other relevant point of the litigation, provided that they restrict their comments to the purpose for which they were summoned⁴⁷ and that their conclusions are sufficiently substantiated. In the first place, the Court notes that the expert opinions of Messrs. Carbonell Sánchez, Perlin, Andreu Guzmán, Correa González, Ortiz Elizondo, Bonfil Sánchez, Arroyo Vargas and Arana Cedeño in general refer to the purpose for which they were ordered (*supra* para. 28, 29, and 30). Also, with specific regard to the expert opinion of Messrs. Andreu Guzmán and Carbonell Sánchez, the Court notes that the State’s observations refer to the merits of the case, and will therefore be considered, where appropriate, in the corresponding section of the Judgment. With regard to the expert opinion of Mrs. Perlin, the State challenged both her qualifications as an expert and the content of her opinion. As to the former, from the evidence attached, the Court notes that this expert witness has broad international experience on issues of access to and administration of justice and has directed a project in Mexico that specifically assesses the issue that is the subject of her opinion as an official of the United Nations Office of the High Commissioner for Human Rights in Mexico; indeed, the State’s local and federal authorities collaborated on this project.⁴⁸ Finally, the fact that the study on access to justice for indigenous peoples which she directed refers to another state is not a circumstance that of itself, or in the absence of any other grounds, would disqualify her expert opinion. Therefore, the Court decides to admit these expert opinions and will

⁴⁷ Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 42; and *Case of Radilla Pacheco*, *supra* note 36, para. 97 and *Case of Chitay Nech et al.*, *supra* note 25, para. 57.

⁴⁸ Cf. *Curriculum vitae* of expert witness Perlin (File of attachments to the application, volume I, Attachment 26, pages 689 to 696).

assess them along with the rest of the body of evidence, taking into account the State's observations and the rules of sound judgment.

VIII

ARTICLES 5 (RIGHT TO PERSONAL INTEGRITY)⁴⁹ AND 11 (RIGHT TO PRIVACY)⁵⁰, IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS),⁵¹ OF THE AMERICAN CONVENTION AND 1, 2, AND 6 OF THE INTER-AMERICAN CONVENTION AGAINST TORTURE⁵² AND 7 OF THE CONVENTION OF BELÉM DO PARÁ.⁵³

69. In order to analyze the alleged violations of the rights established in Articles 5 and 11 of the American Convention and the alleged non-compliance with the obligations enshrined in other related Inter-American treaties, the Court will establish: a) the facts of the case related to the alleged rape; b) the arguments of the parties in this respect and will examine: c) whether the body of evidence submitted can establish the international responsibility of the State; d) the possible legal characterization of the facts related to the rape, and e) the alleged impairment of personal integrity related to the pursuit of justice.

A. Facts related to the alleged rape of Mrs. Rosendo Cantú

⁴⁹ Article 5 of the American Convention establishes that:

1. Every person has the right to have his physical, mental and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

⁵⁰ Article 11 of the Convention establishes, *inter alia*, that:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence or of unlawful attacks on his honor or reputation.

⁵¹ Article 1(1) establishes that: "[t]he 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."

⁵² The Inter-American Convention Against Torture establishes, *inter alia*, that:

Article 1

The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 2

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

⁵³ Article 7(a) and (b) of the Convention of Belém do Pará, establishes that:

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 [, and]
- b. apply due diligence to prevent, investigate and impose penalties for violence against women[.]

70. The facts of this case occurred in the context of a significant military presence in the state of Guerrero,⁵⁴ aimed at suppressing unlawful activities such as organized crime. It has been reported that fundamental rights were violated during the repression of these activities.⁵⁵ In the state of Guerrero, a sizeable percentage of the population belongs to indigenous communities that maintain their traditions and cultural identity and live in municipalities afflicted by social exclusion and extreme poverty.⁵⁶ In general, the indigenous populations live in a situation of vulnerability and this is reflected in a number of ways, such as in the administration of justice and health care services, and in particular because they do not speak Spanish and have no interpreters, because they lack the financial resources to find a lawyer, to travel to health care centers or to the courts and also because they are often victims of abusive practices or practices that violate due process.⁵⁷ This has created a situation in which members of the indigenous communities do not use the courts or the public agencies for the protection of human rights because they distrust them or fear reprisals.⁵⁸ In the case of indigenous women the situation is even worse because filing complaints concerning certain acts has become a challenge for them with many obstacles, such as rejection from their community and other "harmful traditional practices."⁵⁹

71. Among the forms of violence that affect women in the state of Guerrero is the "institutional violence by the Military."⁶⁰ The presence of the Army carrying out police work in the state of Guerrero has been a controversial issue because it conflicts with individual and community rights and freedoms and has placed the population, particularly the women, in a situation of extreme vulnerability.⁶¹ According to the Secretariat for Women's Affairs of the state of Guerrero in this setting, "[i]ndigenous

⁵⁴ Cf. *Report 2003*, United Nations Office of the High Commissioner for Human Rights in Mexico, *supra* note 34, page 293; Report on Violence Against Women in the Municipalities of the Mountain Region of Guerrero, Secretariat for Women's Affairs in the state of Guerrero and others (File of attachments presented by the State during the public hearing, volume VI, attachment 13, page 19709), and affidavit rendered by the expert witness Stavenhagen on March 29, 2010, (Merits file, volume II, page 1178), and press release No. 026 issued by the Secretariat of National Defense on March 7, 2002 (File of attachments to the answer to the application, volume I, page 7617).

⁵⁵ Cf. *Report 2003*, United Nations Office of the High Commissioner for Human Rights in Mexico, *supra* note 34, page 293; *Report*, Secretariat for Women's Affairs of the state of Guerrero and others, *supra* note 54, pages 19716 and 19717; *Always Close, Always Far: The Armed Forces in Mexico [Siempre cerca, siempre lejos: Las fuerzas armadas en Mexico]*, Global Exchange, CIEPAC and CENCOS, *supra* note 34, pages 5033, 5034, and 5036 to 5039, and affidavit made before a notary public by expert witness Rodolfo Stavenhagen, *supra* note 54, page 1178.

⁵⁶ Cf. Reference Model on Cases of Gender Violence for the state of Guerrero [*Modelo de Referencia de Casos de Violencia de Género para el Estado de Guerrero*], Secretariat of Women's Affairs for the state of Guerrero, December 2008 (file of attachments presented by the State at the public hearing, volume V, Attachment 8, pages 19249 and 19250); *Report*, Secretariat for Women's Affairs of the state of Guerrero and others, *supra* note 54, page 19696; and affidavit rendered by expert witness Rodolfo Stavenhagen, *supra* note 54, page 1178.

⁵⁷ Cf. Reference Model 2008. Secretariat of the Women's Affairs by the state of Guerrero, *supra* note 56, page 19249, and Development of Networks for the Detection, Support, and Reference of Cases of Violence Against Indigenous Women in Guerrero [*Desarrollo de Redes de detección, apoyo y referencia de casos de violencia contra las mujeres indígenas de Guerrero*], Secretariat for Women's Affairs of the state of Guerrero and National Network of Shelters, December 2008 (File of attachments submitted by the State at the public hearing, volume V, attachment 7, pages 19081 to 19090).

⁵⁸ Cf. *Report 2003*, United Nations Office of the High Commissioner for Human Rights in Mexico, *supra* note 34, pages 293 and 294; affidavit rendered by expert Rodolfo Stavenhagen, *supra* note 54, page 1179, and affidavit rendered by expert Bonfil Sánchez, *supra* note 54, pages 1413 and 1416.

⁵⁹ Cf. Network Development 2008, Secretariat for Women's Affairs of the state of Guerrero and National Network of Shelters, *supra* note 57, page 19087, and affidavit rendered by expert witness Rodolfo Stavenhagen, *supra* note 54, page 1179 to 1181.

⁶⁰ Cf. *Report*, Secretariat for Women's Affairs of the state of Guerrero and others, *supra* 54, page 19715, and *Report 2003*, United Nations Office of the High Commissioner in Mexico, *supra* note 34, page 293.

⁶¹ Cf. *Report*, Secretariat for Women's Affairs of the state of Guerrero and others, *supra* note 54, page 19716.

women continue to suffer the consequences of a patriarchal structure that is blind to gender equity, particularly within institutions such as the Armed Forces or the police, whose members are trained to defend the nation and to combat or attack criminals, but who are not sensitive to the human rights of the community and of women.”⁶² In this context, between 1997 and 2004, six indigenous women filed complaints of rape attributed to members of the Army in the state of Guerrero. All these cases were heard in the military courts,⁶³ and there is no evidence that any of those responsible have been punished.

72. Mrs. Rosendo Cantú is an indigenous woman and a member of the Me´phaa indigenous group,⁶⁴ originally from the community of Caxitepec, in the state of Guerrero.⁶⁵ At the time of the events, she was 17 years old⁶⁶ and married to Mr. Fidel Bernardino Sierra.⁶⁷ They lived approximately one-hour’s walking distance from Barranca Bejuco,⁶⁸ with their daughter, Yenys Bernardino Rosendo, who was born November 23, 2001.⁶⁹ The community of Barranca Bejuco is located in an isolated mountainous area and therefore access is difficult.⁷⁰

73. Mrs. Rosendo Cantú testified that on February 16, 2002, at approximately three in the afternoon, she was at a stream near her home where she had gone to wash clothing. When she went to bathe, eight soldiers, accompanied by a civilian they had detained, approached her and surrounded her. Two of them questioned her about “the hooded men” [“los encapuchados”] and they showed her a picture of a person and a list of names of other people while one of them threatened her with a weapon. She indicated that “because she feared they would do something to her” she responded that she did not know these people. The soldier who was aiming at her hit her in the stomach with the weapon, causing her to fall to the ground and lose consciousness for a moment. She narrated that when she regained consciousness, she sat up and one of the soldiers seized her by the hair and insisted on the information required, telling her that if she did not answer they would kill her along with all the people in Barranca Bejuco. She stated that, afterwards, “using [...] violence they scratched her face,” they took off her skirt and her underwear and pushed her to the ground, and one of them sexually assaulted her.

⁶² Network Development 2008, Secretariat for Women’s Affairs of the state of Guerrero and National Network of Shelters, *supra* note 57, page 19086.

⁶³ *Cf.* Report, Secretariat for Women’s Affairs of the state of Guerrero and others, Mexico, *supra* note 54, pages 19716 and 19717, and affidavit rendered before a notary public by expert witness Stavenhagen, *supra* note 54, page 1180.

⁶⁴ *Cf.* Affidavit rendered by Mrs. Rosendo Cantú at the public hearing on May 27, 2010; complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the NHRC on February 27, 2002 (File of attachments to the answer to the application, volume I, attachment 1, page 7556).

⁶⁵ *Cf.* Complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction of Allende Judicial District, Ayutla de los Libres, Guerrero, on March 8, 2002 (File of attachments to the application, volume V, Attachment 1, pages 9262 and 9268 to 9270), and birth certificate of Mrs. Rosendo Cantú (File of attachments to the brief of motions and pleadings, volume I, Attachment 23, page 5469).

⁶⁶ *Cf.* Birth certificate of Mrs. Rosendo Cantú, *supra* note 65, page 5469.

⁶⁷ *Cf.* Marriage Certificate of Mr. Bernardino Sierra and Mrs. Rosendo Cantú of July 31, 2001 (File of attachments to the brief of pleadings and motions, volume II, attachment 27, page 5501). In 2005, Mr. Bernardino Sierra abandoned his family and moved to another city. *Cf.* Statement by Mrs. Correa González rendered before a notary public on May 6, 2010 (Merits file, volume III, page 1148), and statement of Mrs. Alejandra Gonzalez Marin rendered before a notary public on October 22, 2009 (File of attachments to the brief of pleadings and motions, volume I, attachment 26, pages 5481 and 5482).

⁶⁸ *Cf.* Complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, *supra* note 65, page 9268.

⁶⁹ *Cf.* Birth Certificate of Yenys Bernardino Rosendo (File of attachments to brief of motions and pleadings, volume II, attachment 27, page 5469).

⁷⁰ *Cf.* Final written arguments of the State (Merits file, volume IV, page 2004).

When he was finished the other soldier who had questioned her proceeded to sexually assault her as well.⁷¹

74. Upon arriving at her home, Mrs. Rosendo Cantú told her sister-in-law, Mrs. Estela Sierra Morales, what had happened and then later repeated it to her husband, Mr. Fidel Bernardino Sierra, when he arrived home after work.⁷² He then went to Barranca Bejuco to file a complaint with the authorities of the community.⁷³

75. On February 18, 2002, Mrs. Rosendo Cantú, accompanied by her husband, went to a health care clinic in the community of Caxitepec for treatment for the injuries she had received, but there is no indication that she told the doctor who treated her that she had been raped.⁷⁴ The doctor gave her pain and anti-inflammatory medications.⁷⁵ On February 26, 2002, they walked for eight hours to Ayutla de los Libres to consult a doctor at the hospital.⁷⁶ There she was treated in the General Consultation Service for a trauma to her abdomen," and she reported that "10 days ago a piece of wood [had fallen] on [her] stomach, causing the pain [there]," without stating she had been raped.

⁷¹ Cf. Brief of complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the NHRC, *supra* note 64, pages 7556 to 7561; communication of Mrs. Rosendo Cantú and Mr. Bernardino Sierra addressed to the Constitutional Governor of Guerrero on March 11, 2002 (File of attachments to the application, volume I, attachment 6, pages 343 to 345); statement by Mrs. Rosendo Cantú before the Public Prosecutors of the 35th Military Zone on March 6, 2002 (File of attachments to the answer to the application, volume II, attachment 1, pages 7824 to 7829), complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, *supra* note 65, pages 9268 and 9269, and statement of Mrs. Rosendo Cantú before the Inspector General of the CODDEHUM on March 8, 2002 (File of attachments to the answer to the application, volume I, pages 7588 and 7589).

⁷² Cf. Statement of Mr. Bernardino Sierra before the Public Prosecutor of the Common Jurisdiction Specialized in Sexual Offenses and Domestic Violence, on April 22, 2002 (File of attachments to the application, volume I, attachment 10, page 357bis); statement of Mr. Bernardino Sierra rendered before the Chief Agent of the Office of the Public Prosecutor of the Common Jurisdiction of Morelos Judiciary District, Specialized in Sexual Offenses and Domestic Violence, on May 9, 2002 (File of attachments to the brief of pleadings and motions, volume II, attachment 56, page 5739).

⁷³ At this time, he described the events to Mr. Encarnación Sierra Morales, and subsequently both went to the Municipal Delegate of the Barranca Bejuco community, Mr. Ezequiel Sierra Morales, to tell him what had occurred and to proceed with the complaint. Mr. Ezequiel Sierra Morales summoned the indigenous community of Barranca Bejuco to tell them about the events. Mr. Bernardino Sierra stated: "We found the delegate in his home [and] I told him about what had happened to my wife [...] and he showed concern and we went to the delegation together with Encarnación Morales Sierra, and the delegate began to speak [...] so that the people of the village would come together [...] people were at the delegation at that time, and [...] and he reported what had happened to my wife," statement of Mr. Bernardino Sierra before the Public Prosecutor of the Common Jurisdiction, *supra* note 72, page 5739.

⁷⁴ Cf. Clinical history of the family Bernardino Rosendo, clinical report on Mrs. Rosendo Cantú of February 18, 2002 (File of attachments to the answer to the application, volume II, page 7756).

⁷⁵ Cf. Clinical history of the family Bernardino Rosendo, *supra* note 74, page 7756; Mrs. Rosendo Cantú noted in her communication addressed to the Constitutional Governor of Guerrero that "[her] husband explained to the doctor that the soldiers had hit [her] and asked for assistance," communication addressed to the Constitutional Governor, *supra* note 71, page 345.

⁷⁶ Cf. Communication addressed to the Constitutional Governor of the state of Guerrero, *supra* note 71, page 343 to 345 and statement rendered by Mrs. Rosendo Cantú at the public hearing, *supra* note 64.

During this consultation, "laboratory tests" were ordered,⁷⁷ but consisted only of a general urine test.⁷⁸

76. On February 27, 2002, Mrs. Rosendo Cantú and her husband filed a complaint "against members of the Mexican Army [...] for violating human rights" before the National Human Rights Commission⁷⁹ (hereinafter, "the National Commission" or "NHRC"). On March 7, 2002, the Director General of the National Commission informed the alleged victim of the admission of the complaint, and therefore the start of the Preliminary Investigations and corresponding proceedings.⁸⁰ On March 11, 2002, Mrs. Rosendo Cantú and her husband presented a petition for intervention to the Constitutional Governor of Guerrero, in which, in addition to requesting justice, they asked for corrective actions to be taken in the health care services "to which they [are] entitled at the Caxitepec clinic."⁸¹

77. On March 7, 2002, the Mexican League for the Defense of Human Rights filed a complaint with the CODDEHUM-GRO, in relation to the case of Mrs. Rosendo Cantú, for "alleged violations [...], consisting of torture, injuries and rape by members of the army."⁸² That same day, the Secretary of National Defense issued a press release stating that "members of the Mexican Army and Armed Forces, engaged in a permanent campaign against drug trafficking in the state of Guerrero, did not carry out an operation on that date in the area of the community of Barranca [...] Bejuco."⁸³ On March 8, 2002, the Inspector General of the Human Rights Commission of Guerrero, who took the statements of Mrs. Rosendo Cantú and her husband, also confirmed that there was no criminal complaint regarding the rape⁸⁴ of Mrs. Rosendo Cantú in the records of the Public Prosecutor's Agency in Allende. That same day the agent of the Allende Public Prosecutor's Office received the communication dated March 7, 2002, from the Inspector General to open the preliminary investigation, in which he stated "that Mrs. Rosendo Cantú [...] was the victim of acts of torture and rape on [...] February 16, 2002, in accordance with the complaint presented before the NHRC."⁸⁵

⁷⁷ Cf. Medical report issued by a physician at the General Hospital of Ayutla on February 26, 2002, (File of attachments to the answer to the application, volume I, attachment 1, page 7624); Evidence provided by a social worker of the General Hospital of Ayutla on February 27, 2002, (File of attachments to the answer to the application, volume I, attachment 1, page 7625); note of the Director of the General Hospital of Ayutla, submitted to the Inspector General of the CODDEHUM on March 12, 2002, (File of attachments to the answer to the application, volume I, attachment 1, page 7623); sworn statement of the general physician who treated Mrs. Rosendo Cantú on February 26, 2002 at the General Hospital of Ayutla, rendered on March 7, 2002 before the Military Prosecutor's Office assigned to the 35th Military zone (File of attachments to the brief of pleadings and motions, volume II, attachment 42, page 5692).

⁷⁸ Cf. Results of the general urine test provided by the clinical laboratory of the General Hospital of Ayutla on February 27, 2002 (File of attachments to the answer to the application, volume I, attachment 1, page 7626).

⁷⁹ Cf. Complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the NHRC, *supra* note 64, pages 7556 to 7561.

⁸⁰ Cf. Communication of admission of application issued by the Director General of the NHRC on March 7, 2002 (File of attachments to the answer to the application, volume I, attachment 1, page 7581).

⁸¹ Cf. Communication addressed to the Constitutional Governor of Guerrero, *supra* note 71, page 345.

⁸² Cf. Record of receipt of complaint by President of the Mexican League for the Defense of Human Rights of March 7, 2002 (File of attachments to the answer to the application, volume I, attachment 1, page 7583).

⁸³ Cf. Press Release No. 026 issued by the Secretariat of National Defense, *supra* note 54.

⁸⁴ Cf. Procedures conducted by the Inspector General of CODDEHUM on March 8, 2002 (File of attachments to the application, volume I, attachment 1, pages 7587 to 7591).

⁸⁵ Cf. Order No. 722/2002 issued by the CODDEHUM on March 7, 2002, received by the Clerk of the Public Prosecutor of the Common Jurisdiction on March 8, 2002 (File of attachments to the answer to the application, volume I, attachment 1, page 5767).

78. On March 8, 2002, Mrs. Rosendo Cantú, accompanied by Mr. Lugo Cortés and others, filed a complaint for the crime of rape⁸⁶ at the Allende Public Prosecutor's Office. That same day the Public Prosecutor initiated Preliminary Investigation ALLE/SC/02/62/2002 "for the crime of [...] rape."⁸⁷ Initially, "they were reluctant to receive the complaint, arguing [...] that the lawyer responsible for receiving complaints related to sexual violence [...] was there outside normal business hours [...] and that she had been instructed by her superior not to receive complaints." Consequently, the Inspector General of CODDEHUM "had to insist that [...] it was necessary to receive the complaint," a procedure which was finally performed by "an agent of the Public Prosecutor's Office who was not a member of the Me'paa, [who] did not speak their language [without the assistance of an] expert translator,"⁸⁸ and that Mrs. Rosendo Cantú's husband had to assist with the translation of the complaint even though he could not communicate in Spanish.⁸⁹ In addition, the Inspector General requested that "she undergo a medical gynecological exam by a female doctor," as requested by the victim.⁹⁰ Given that the agent of the Public Prosecutor only had a male forensic expert available, who was currently outside the district, requested that the Director of Expert Services of Chilpancingo, Guerrero, "assign [an] expert in gynecology, preferably female as requested by the victim, to conduct the physical examination and issue the respective report."⁹¹

79. On March 12, 2002, Mrs. Rosendo Cantú went to the Ayutla General Hospital for a gynecological examination accompanied by an agent of the Human Rights Commission of Guerrero. The [female] doctor requested several laboratory tests.⁹² On March 15, 2002, the General Office for Expert Services reported to an agent of the Public Prosecutor's Office, responding to the request made on March 12, 2002, that they did not have personnel specialized in gynecology, only "medical experts in legal medicine (general medicine)."⁹³ On March 19, 2002, Mrs. Rosendo Cantú received a gynecological evaluation at the facilities of the Public Prosecutor in Tlapa de Comonfort, carried out by a medical examiner assigned to the same local Public Prosecutor's office.⁹⁴

⁸⁶ Cf. Complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, *supra* note 65, page 9262.

⁸⁷ Cf. Complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, *supra* note 65, page 9262, and information card issued by the Public Prosecutor of the Allende Judicial District, addressed to the President of the CODDEHUM on March 11, 2002, (File of attachments to the answer to the application, volume 1, attachment 1, page 7658).

⁸⁸ Sworn statement rendered by Mr. Lugo Cortés at the public hearing on May 27, 2010.

⁸⁹ Sworn statement rendered by Mr. Lugo Cortés at the public hearing, *supra* note 88.

⁹⁰ Cf. Certificate of procedures issued by the CODDEHUM on March 8, 2002 (File of attachments to the answer to the application, volume 1, attachment 1, pages 7604 and 7607), and sworn statement rendered by Mr. Lugo Cortés at the public hearing, *supra* note 88.

⁹¹ Order No. 235 issued by the Public Prosecutor of the Common Jurisdiction, addressed to the Director of Investigation Services of Chilpancingo on March 8, 2002 (File of attachments to the brief of pleadings and motions, volume I, page 5069); complaint filed by Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, *supra* note 65, pages 9262 and 9271, and certificate of procedures issued by the CODDEHUM, *supra* note 90, page 7607.

⁹² Cf. Medical report of March 12, 2002, sent by a female doctor of the Emergency Services of the General Hospital of Ayutla (File of attachments to the brief of pleadings and motions, volume I, attachment 3, page 5118). The doctor requested the following laboratory tests: "EGO," pregnancy test, HIV test and cultures of cervical secretions. However, there is only evidence of the urine studies, a "VDRL" and a pregnancy test.

⁹³ Cf. Order No. PGJE/DGSP/ND/XXVIII-2/207/2002 issued by the General Office of Investigation Services on March 15, 2002 (File of attachments to the application, volume I, attachment 7, page 348).

⁹⁴ Cf. Order No. 130/2002 issued by medical examiner assigned to the Judicial District of Morelos on 19 March 2002 (File of attachments to the answer to the application, volume V, attachment 1, page 9297).

B. Arguments of the parties

80. The Commission indicated that rape committed by members of the State's security forces against members of the civilian population constitutes a grave violation of the human rights protected in Articles 5 and 11 of the American Convention. In cases involving the rape of indigenous women, the pain and humiliation is exacerbated because of their condition as indigenous people, since "they do not know the language of their attackers or of the intervening authorities and also because they face the rejection of their community." [The Commission] considered it proven that Mrs. Rosendo Cantú "was a victim of rape by members of the Armed Forces of the Mexican Army," based on the following evidence: i) Mrs. Rosendo Cantú's statement before the civil authorities; ii) the statement of Mrs. Estela Bernardino Sierra; iii) the results of the expert evidence indicating that Mrs. Rosendo Cantú showed signs of physical violence; iv) the undisputed fact that the military was present in the area at the time of the events, and vi) reports by United Nations agencies stating that they had received information on complaints of sexual abuse committed against indigenous women in Guerrero. [The Commission] also emphasized that, "at the domestic level, increased sexual abuse of women for political purposes has been documented, particularly in areas where there is intense militarization, such as in the states of Chiapas, Oaxaca, Veracruz and Guerrero."

81. The Commission added that, "in addition to affecting the victim's physical, mental and moral integrity and undermining her dignity, rape invades one of the most intimate spheres of an individual's life, invading her physical and sexual space and depriving her of the ability to make autonomous decisions concerning her own body." Consequently, it requested that the Court declare the State responsible for the violation of Article 5(1) and Article 11 of the American Convention, to the detriment of Mrs. Rosendo Cantú, in relation to Article 1(1) thereof. Finally, it asked the Court to declare that the abuse of Mrs. Rosendo Cantú's physical, mental and moral integrity committed by State agents constitutes torture, because these acts are consistent with the legal definition of this offense: i) it was an act that inflicted anguish and physical and mental suffering, ii) it was committed for a purpose, and iii) by a public official. The rape "had gender-specific causes and consequences [given that] it was used [...] as a form of submission and humiliation and a method of destroying the women's autonomy." Furthermore, the Commission considered that the investigation the State should conduct into acts that violate Article 5(1) of the Convention is also regulated by Articles 1, 6 and 8 of the Convention against Torture.

82. The representatives argued that the rape of Mrs. Rosendo Cantú by members of the Mexican Military has been clearly proven and that the State failed to conduct an impartial, serious and effective investigation of the facts. In addition to the sexual abuse committed by two soldiers against Mrs. Rosendo Cantú, "she was the victim of another type of sexual abuse committed by the other soldiers present at the scene of the incident [...] because they remained to observe what happened." In this case, the rape constituted a form of violence against women and as a consequence, an extreme form of discrimination aggravated by her condition as an indigenous minor in a situation of poverty, "making her the victim of a convergence of discriminations." Accordingly, they requested that the Court declare the State responsible for the violation of Articles 5 and 24 of the Convention, as well as Article 7(a) of the Convention of Belém do Pará, all in relation to Article 1(1) of the American Convention.

83. The representatives agreed with the Commission that the alleged rape suffered by Mrs. Rosendo Cantú constitutes "an act of torture," given that the three elements converge: i) it was an intentional act, ii) it caused severe suffering and iii) it was committed with an end or purpose. Therefore, the representatives asked the Court to declare the State responsible for the violation of Article 5(2) of the American Convention and Articles 1, 6 and 8 of the Convention Against Torture. They further noted that the irregularities of the investigation and the continued impunity in this case demonstrate

the State's failure to comply with its duty to guarantee the victim's right to a serious and effective investigation against acts of torture, thereby violating Articles 5(2) of the American Convention, 7(b) of the Convention of Belém do Pará and 1, 6 and 8 of the Convention Against Torture.

84. The representatives added that, "the rape of [the alleged victim] constituted one of the most aggressive invasions of a woman's privacy." The State agents who raped her invaded her body in the most arbitrary way, affecting her most intimate space, thereby "denying her right [...] to choose with whom and how to establish personal relationships, because they forced her to have sexual relations [...] violently and against her will." In addition, it was intended to humiliate and demonstrate control over her, her husband and all indigenous men and/or members of organized groups," thereby affecting her honor and reputation. They pointed out that "it is clear that the harm done to the reputation of [the alleged victim] also has discriminatory roots and is based on gender stereotypes, since it is aimed at diminishing her value as a woman due to the aggression to which she was subjected." They added that the rape affected her self-esteem and her reputation, particularly after she filed the complaint, and as a direct consequence of the impunity in which the case remains, violates her rights to honor and dignity. Based on the foregoing, they asked the Court to declare the State responsible for the violation of Article 11(1) of the Convention and Article 7 of the Convention of Belém do Pará, to the detriment of Mrs. Rosendo Cantú.

85. The State regretted the consequences that rape causes for both the victims and their close family members. However, it stated that there is no proof of "the crime nor the perpetrators, and therefore the State cannot acknowledge and accept that the rights to personal integrity and privacy [...] have been violated, to the detriment of Mrs. Rosendo Cantú." The determination of the existence of rape is beyond this Court's competence, since this corresponds to the domestic investigation bodies. Despite the efforts made in this case, the investigating authorities did not establish that she had been raped. Similarly, the State considered that, based on what the Commission and the petitioners have stated, "it cannot be implied or inferred that there were sufficient elements to corroborate the existence of a situation of real and imminent risk to the life or safety of Mrs. Rosendo Cantú at the time of the events which she denounced," or that "the motive for the alleged conduct was to send a message to [her] and her community."

86. In particular, regarding the evidence of the reported rape, the State pointed out that: i) the statement of the alleged victim does not, in itself, constitute conclusive proof, rather it should be assessed jointly with other evidentiary means which have not been provided in this case; ii) the statement of Mrs. Estela Bernardino Sierra lacks evidentiary value because she was not present at the time of the events; iii) the expert evidence, which showed signs of violence, in no way prove the connection between army soldiers and the alleged victim; iv) the presence of soldiers in the area during the period in which the events took place was associated with duties related to the prevention and fight against drug trafficking, and v) the reports from multilateral organisms cited by the Commission referring to complaints of sexual abuse by indigenous women in the state of Guerrero, were not identified and consequently cannot serve as persuasive evidence before the Court. There is no conclusive evidence of rape and the burden of proof falls on the party making the allegation. The reversal of the burden of proof only occurs when there are two assumptions which are not present in this case, namely: i) that a systematic pattern of violations exists and is convincingly proven and ii) that it is proven that the victim is in the custody of the State. Finally, it emphasized the observation contained in the NHRC report, that "there were no conclusive elements to legally confirm the alleged rape by members of the military" in the facts reported.

87. Despite the foregoing, as regards the definition of rape as a form of torture, the State argued that since it has not been determined who was responsible for the facts it cannot be "affirmed that State agents were involved." It added that, "an attempt is

being made to confuse the Court by indicating that rape, in itself, constitutes torture." In order to classify an act of rape as torture, a detailed analysis must be made of the circumstances in which it occurred to determine the purpose, the degree of severity and the consequences. Given that "in this case, the objective and subjective elements that are determinants of torture are not present," the State asked the Court to declare the non-existence of violations of Articles 5 of the American Convention and 1, 6 and 8 of the Convention Against Torture, in relation to Articles 1(1) and 2 of the American Convention.

88. Finally, regarding the alleged violation of the right to honor and dignity, the State stressed that, "during the investigation of the events reported by Mrs. Rosendo Cantú, no evidence was found that revealed or suggested acts of public disrespect, persecution, discrimination, false accusations or threats committed by State agents against the alleged victim or her family." On the contrary, it noted that the alleged victim and her family "have available all the remedies established in domestic law to denounce possible accusations or threats; also, [the State] has implemented all the necessary measures for the protection of her and her family, such as the provisional measures that are in force." Similarly, it referred to the existence of State laws that protect the right to privacy. Based on the foregoing, the State asked the Court to dismiss the alleged violations of the right to personal integrity and privacy to the detriment of Mrs. Rosendo Cantú.

C. Evidence of the rape of Mrs. Rosendo Cantú

i) Testimony of Mrs. Rosendo Cantú

89. First, the Court considers it evident that rape is a specific form of violence which, in general, occurs in the absence of persons other than the victim and the aggressor or aggressors. Given the nature of this type of violence, one cannot expect graphic or documentary evidence and therefore the victim's testimony constitutes fundamental evidence of the act.

90. The alleged victim recounted and denounced the facts on several occasions, both at the domestic level and in the proceedings before the Inter-American System. *Inter alia*, on February 26, 2002, Mrs. Rosendo Cantú and Mr. Bernardino Sierra filed a complaint before the NHRC (*supra* para. 76); on March 6, 2002, Mrs. Rosendo Cantú rendered a statement before the Military Prosecutor's Office, as part of the Preliminary Investigation 35ZM/05/2002 (*infra* para. 147); on March 8, 2002, she made a statement before the Human Rights Commission of Guerrero and before the Common Public Prosecutor's Office of the Allende Judicial District (*supra* para. 77); on March 11, 2002, Mrs. Rosendo Cantú and her husband presented a request for intervention to the Constitutional Governor of Guerrero (*supra* para. 76), and on August 14, 2009, she expanded her ministerial statement within the Preliminary Investigation FEIDSVI/002/2009.⁹⁵ Finally, on May 27, 2010, she rendered a statement before this Court,⁹⁶ in which she stated:

On February 16, 2002, at a stream located about five minutes walking distance from my home [...] I was [...] washing, and was almost finished [...] when I heard footsteps and turned to see, and it was eight soldiers and one of them, angrily, asked me where "the hooded men" ["los encapuchados"] were, and I fearfully answered that I didn't know, that I knew no one. [...] Two soldiers came towards me and the [other] six soldiers surrounded me, and I remained in the middle with the two soldiers. One of [them] pointed his weapon at my chest, and he threatened to shoot me if I did not tell him anything; one of the soldiers took out a photograph of a person, and he asked me again if I [...] knew the person in the picture, and I answered no; that same

⁹⁵ Cf. Presentation and ratification of the brief of Mrs. Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction, assigned to the Special Prosecutor's Office for Sexual Offenses on August 14, 2009 (File of attachments to the answer to the application, volume V, pages 9735 to 9737).

⁹⁶ Statement by Mrs. Rosendo Cantú rendered during the public hearing, *supra* note 64.

soldier took out a list of names of eleven people, and he asked me if I knew those names. I answered no, [...] he said how is it possible that you don't know them, aren't you from Barranca Bejuco, I answered no that I was from Caxitepec, and that I had just been married to a man from Barranca Bejuco, and that same soldier that was pointing at me, hit me in the stomach with his weapon. I fell on the rock where I was washing, I fainted and when I regained consciousness, I sat up [...] and another soldier who was showing me the list of people, angrily [pulled] my hair [...] how come you are not from Barranca, [...] and I answered that I wasn't [...], if you don't say anything we are going to kill everyone in Bejuco, and well, I didn't want to say anything because [...] I was very afraid that they would kill me and then that soldier grabbed me forcefully, scratched my face, and pressured me to say where the hooded men were, and that is when one of the soldiers abused me, he got on top of me [...] against my will [...] he abused me and the six soldiers that were there mocked me and laughed at what their friends were doing, and that is where the two soldiers abused me against my will, and I could not escape because the six soldiers had surrounded me, [...] and I asked for help, and well, no one could hear me because it's a place where there are no people, [...] very solitary and when they finished abusing me, I escaped almost naked, I arrived at my house I told my sister-in-law [...] what had happened to me [...] and I was crying, I had my stomach punched, and my face was bleeding from the scratch they gave me [...] and then my husband arrived, [...] [he] had been working during that time [...] and I told him I had been sexually abused by the soldiers.

91. Of the various statements made by Mrs. Rosendo Cantú, with the exception of a few inaccuracies⁹⁷, the Court notes the consistency with which she recounted the facts of the rape. The Court considers that it is not unusual that in the retelling of acts of this nature the account may contain some aspects that could be considered, *a priori*, as inconsistencies. Accordingly, the Court considers that the facts narrated by Mrs. Rosendo Cantú refer to a traumatic moment she suffered and the impact, upon recalling it, can lead to some inaccuracies; these statements were rendered at different times between 2002 and 2010. The Court also takes into account the fact that at the time of the events of this case, Mrs. Rosendo Cantú was a minor.⁹⁸

92. This is not the first time that an international human rights court notes possible differences in the statements of individuals recounting the sexual abuse they have suffered.⁹⁹ Nevertheless, from a reading of those statements, the Court considers that the differences in her account are not substantive and consistently convey the following facts: i) on February 16, 2002, she was alone at a stream in an isolated area near her home where she went to wash clothing; ii) at approximately three in the afternoon, eight armed members of the Army approached her and encircled her; iii) two of them, while threatening her with weapons, asked her for information regarding people whose names were included in a list and regarding another whose photo they showed her; iv) she told them she did not know those people; v) the soldiers threatened to kill her and everyone in her community; vi) she was hit in the abdomen with a weapon, causing her to fall to the ground and lose consciousness and subsequently they seized her by the hair and scratched her face, and vii) in that situation of forceful coercion, alone and surrounded by eight armed soldiers, she was raped consecutively by the two soldiers who had questioned her while the other soldiers watched the rape take place.

93. Furthermore, given the specific circumstances of Mrs. Rosendo Cantú's situation, the Court has no reason to doubt her credibility. The alleged victim is an indigenous woman, and at the time she was a minor living in an isolated mountainous area, who had to walk several hours to receive medical care for the physical assault she suffered and then to file a complaint of rape before various authorities that spoke a language she

⁹⁷ In the various accounts given by Mrs. Rosendo Cantú there are some differences with respect to the exact duration of the sexual penetration, specific details regarding the interrogation conducted by two of the soldiers or the duration of her period of unconsciousness.

⁹⁸ According to Article 1 of the Convention on the Rights of the Child, "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." The Civil Code of the Free and Sovereign state of Guerrero establishes in Article 35 that "the person who has not reached eighteen years of age is a minor."

⁹⁹ Cf. ECHR, *Case of Aydin v. Turkey* (GC), Judgment of 25 September 1997, App. No. 57/1996/676/866, paras. 72 and 73.

did not understand. She also knew that these facts would likely have negative repercussions in her social and cultural environment, such as the possible rejection by her community. Moreover, she pressed charges and was persistent with her claim, fully aware of the continuing presence of soldiers near her home and the fact that she had filed serious criminal charges against two of them.

94. The Court also notes that the victim had reported the facts to the NHRC. Similarly, apart from the various complaints to the corresponding authorities, the alleged victim herself and her husband informed the Constitutional Governor of Guerrero of the facts, seeking his intervention (*supra* para. 76). These complaints correspond to the attempts made by the alleged victim to report what happened to her to the various authorities and, in the Court's view, strengthen the credibility of Mrs. Rosendo Cantú's testimony.

95. Nevertheless, the Court notes that the first time Mrs. Rosendo Cantú attended a health center after the incident, on February 18, 2002, (*supra* para. 75), she told the doctor that she had been hit with military weapons and when asked if she had been raped, she said no.¹⁰⁰ Moreover, on February 26, 2002, she went to the Ayutla General Hospital where she did not mention that she had been raped, but instead told the doctor that "ten days [ago], a piece of wood fell on [her] abdomen, pain [there]."¹⁰¹ The Court considers that the fact that she did not indicate that she had been raped in the two initial medical consultations should be understood in the context of the circumstances of the case and the victim. First, sexual assault is a type of crime that victims are reluctant to report. This is the case in indigenous communities, given the particular cultural and social circumstances that the victim must face (*supra* para. 70), as well as fear in cases such as these.¹⁰² Also, at the time the events, Mrs. Rosendo Cantú was a minor who suffered a traumatic incident during which, in addition to being physically and sexually assaulted, death threats were made against her community by the soldiers who attacked her. Thus, in the Court's opinion, the fact that she did not tell either the first or the second doctor that she had been raped does not discredit her statements regarding the existence of the rape. Finally, this omission may be due to her lack of security or sufficient trust to talk about what happened.

96. The Court further notes that there are other convincing elements in the body of evidence in this case.

ii) Military presence in the area on the day of the incident

97. In the first place, the Court considers it proven that there was a military presence in the area at the time of the incident. At the public hearing and in its final written arguments the State acknowledged "the presence of soldiers in the area" during the

¹⁰⁰ Cf. Clinical records of the Bernardino Rosendo family, *supra* note 74, page 7756; testimony of the doctor who treated Mrs. Rosendo Cantú on February 18, 2010, before the Investigation Officer of the Special Military Prosecutor on May 31, 2010 (File of attachments to the State's final written arguments, volume I, page 21916); testimony of the doctor who treated Mrs. Rosendo Cantú rendered before CODDEHUM on March 22, 2002 (File of attachments to the application, volume I, pages 7731 and 7732).

¹⁰¹ Cf. Medical report issued by the doctor at the Ayutla General Hospital on February 26, 2002, *supra* note 77, page 7624.

¹⁰² Cf. The psychiatric assessment of Mrs. Rosendo Cantú, carried out on March 11, 2002, as part of the case file opened by the NHRC, states that "Mrs. [Rosendo Cantú] expressed that she is very fearful when people like the [psychiatrist] look for her to speak to her, because she thinks they are going to take her to jail, even though she cannot explain why," (File of attachments to the answer to the application, volume I, page 7694).

period in which the events took place, who were assigned “the tasks of preventing and combating drug trafficking [...] in the area”¹⁰³ (*supra* para. 86).

98. Furthermore, the case file before the Court contains cartography reports, presented during the Preliminary Investigation SC/180/2009-II-E, from which it is clear that the “Ríos” Operations Base of the Mexican Army’s 41st Infantry Battalion was located near Mexcaltepec, approximately nine kilometers from Barranca Bejuco.¹⁰⁴ The Court also considers it proven, based on statements made by infantry soldiers on March 9 and 11, 2002, as part of Preliminary Investigation 35ZM/05/2002, that on February 16, 2002, a group of soldiers carried out an operation to destroy poppy plantations [drugs] in the area near the “river valley that leads to the community of Caxitepec,”¹⁰⁵ returning to their base between four and five in the afternoon,¹⁰⁶ in other words, one hour after the incident.

iii) Other elements of proof

99. Furthermore, the Court considers that the credibility of Mrs. Rosendo Cantú’s story is supported by a medical psychiatric report from March 11, 2002,¹⁰⁷ which was incorporated into the case file 2002/597-4 of the NHRC of December 11, 2002.¹⁰⁸ This psychiatric report states, among other information, that Mrs. Rosendo Cantú suffered “acute post-traumatic stress” and a “major depressive episode” as a “consequence of traumatic life experiences” and indicated that she was “exposed to a traumatic experience even though there is no physical evidence to show that this experience constituted rape.”¹⁰⁹ Moreover, the report concluded that, “she was exposed to a traumatic event where her physical integrity was threatened,” which she “persistently re-experiences since she constantly relives the feeling that they are raping her.”¹¹⁰

100. In addition, the Court has the testimony of Mrs. Estela Bernardino Sierra and Mr. Fidel Bernardino Sierra, who, although they were not direct witnesses to the incident, were indeed present soon after the events took place. In her statement, the first witness

¹⁰³ The State indicated that “the military presence in the area is a fact that has been fully explained in the matter *sub judice*. It has to do with tasks of prevention and the fight against drug trafficking in the area and is convincingly confirmed in the military reports included in the case file,” (Merits file, volume IV, page 1969).

¹⁰⁴ *Cf.* Report by cartography expert presented on May 14, 2010, in the Preliminary Investigation SC/180/2009/II-E, volume X of the military case file presented by the State at the public hearing (Case file of documents presented during the public hearing, volume I, page 18114) and report of cartography expert presented on June 14, 2010, during the Preliminary Investigation SC/180/2009/II-E, volume XIV of the military case file presented by the State with its final written arguments (File of attachments to the final written arguments of the State, volume II, pages 21989 to 22010).

¹⁰⁵ *Cf.* Statement of five infantry soldiers and an infantry sergeant rendered before the Military Prosecutor on March 9 and 11, 2002 (File of attachments to the answer to the application, volume XVI, pages 14373 to 14375, 14392 to 14395, 14477 to 14479, 14505 to 14509, 14521 to 14524, 14514 to 14516 and 14498 to 14500). See also: Cartography expert report presented on June 14, 2010, *supra* note 104, pages 22009 and 22010.

¹⁰⁶ *Cf.* Statement of six infantry soldiers and one infantry corporal before the Military Prosecutor on March 9 and 11, 2002 (File of attachments to the answer to the application, volume XVI, pages 14380 to 14384, 14432 to 14434, 14447 to 14449, 14521 to 14524, 14536 to 14538, 14543 to 14546 and 14565 to 14567).

¹⁰⁷ *Cf.* Psychiatric report in the case of Mrs. Rosendo Cantú of March 11, 2002 in case file No. 2002/597-4 of the NHRC (File of attachments to the answer to the application, volume I, pages 7673, 7688, 7689, 7690, 7691, 7694 y 7696).

¹⁰⁸ *Cf.* Official letter of conclusions of the NHRC, case file No. 2002/597-4, of December 11, 2002, addressed to Mrs. Rosendo Cantú (File of attachments to the answer to the application, volume I, attachment 1, pages 7792 and 7793).

¹⁰⁹ *Cf.* Psychiatric report of March 11, 2002, *supra* note 107, pages 7694 and 7695.

¹¹⁰ *Cf.* Psychiatric report of March 11, 2002, *supra* note 107, page 7694.

recalls that when she first saw the alleged victim after the event, the victim was crying, half naked, with blood on her face and told her that she had been raped by soldiers. Mr. Fidel Bernardino Sierra also refers to this information in similar terms.¹¹¹

101. In addition to the foregoing, the Court has information on specific medical examinations performed on Mrs. Rosendo Cantú following the rape. On March 6, 2002, the Military Prosecutor's Office completed a "record of injuries," indicating that Mrs. Rosendo Cantú, "had a scratch, approximately two centimeters from the right eye on the cheekbone, approximately one centimeter in size, as the only injury visible to the naked eye."¹¹² The certification of injuries prepared for the alleged victim by the Human Rights Commission of the state of Guerrero on March 8, 2002, determined that she had "a bruised area on the lower part of her eyelid, of irregular shape and purplish in color, [approximately] one centimeter in size; regarding the blow the complainant states she received in her abdomen, there are no discernable marks, yet she indicates that she feels pain when she walks."¹¹³ Similarly, the certificate of the gynecological examination carried out on Mrs. Rosendo Cantú on March 19, 2002, that is, more than one month after the incident occurred, states that she "presented traces of physical violence [,] non-recent scars of 5mm in diameter under her right lower eyelid and at slight touching she complains of medium intensity pain in the hypogastrium region."¹¹⁴ This data coincides with Mrs. Rosendo Cantú's version the assault she suffered.

102. In this case, the Court notes that, in addition to Mrs. Rosendo Cantú's statements, the body of evidence includes circumstantial evidence regarding the alleged facts. The Court has established as legitimate the use of circumstantial evidence, evidence and presumptions to reach a Judgment "when consistent conclusions regarding the facts can be inferred."¹¹⁵ In this regard, the Court has indicated that, in principle, the burden of proof regarding the facts of the complaint falls upon the plaintiff; nevertheless, the Court has emphasized that, unlike domestic criminal law, in proceedings involving human rights violations, the State's defense cannot rest on the plaintiff's inability to present evidence, when it is the State that controls the means to clarify events that have occurred within its territory.¹¹⁶

¹¹¹ Cf. Mrs. Bernardino Sierra stated: "I don't recall the exact time but [...] it was after two when [Rosendo Cantú] arrived at the house [...] crying, and [...] with her hair all tangled up, [...] she was also naked from the waist down [without] underwear or a skirt, [...] and she had also been battered because she had blood under her eye [and she] was barefoot. [S]he told me that they had raped her but she did not tell me how many did it [...] but that there were eight soldiers, and that they also had another person whose hands were tied," sworn statement of Mrs. Estela Bernardino Sierra before the Public Prosecutor of the Common Jurisdiction, *supra* note 72, page 358. For his part, Mr. Bernardino Sierra stated: "I went to my house [...] where I found my wife crying, and when I asked the reason [...] she told me that she had been raped by two [soldiers] when she was washing clothes on the banks of the stream, about 200 meters from my house, and she told me in detail how the events unfolded," sworn statement of Mr. Bernardino Sierra before the CODDEHUM on March 8, 2002 (File of attachments to the brief of pleadings and motions, volume II, attachments 40 and 57, page 5687 and 5743). Also cf. sworn statement by Mr. Bernardino Sierra before an agent of Public Prosecutor of the Common Jurisdiction, *supra* note 72, page 5739.

¹¹² Certificate of injuries issued by the Agent of the Military Prosecutor's Office assigned to the 35th Military Zone on March 6, 2002 (File of attachments to the answer to the application, volume II, attachment 1, page 7830).

¹¹³ Certificate of injury of Mrs. Rosendo Cantú, procedure signed by the Inspector General of CODDEHUM on March 8, 2002, case file No. CODDEHUM-VG/065/2002-II (File of attachments to the answer to the application, volume I, attachment 1, page 7598).

¹¹⁴ Cf. Medical gynecological certificate of March 19, 2002, sent by the medical examiner of the Office of the State Attorney General, via Order No. 130/80/02/62/2002 (File of attachments to the application, volume I, attachment 17, page 490).

¹¹⁵ Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 33, para. 130; *Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200, para. 127 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 66.

¹¹⁶ Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 33, para. 135; *Case of Escher et al.*, *supra* note 115, para. 127 and *Case of Radilla Pacheco*, *supra* note 36, para. 89.

103. From the case file it is clear that, once the facts were made known to the authorities, the victim did not receive any psychological care that would have made it possible to obtain additional information to clarify the facts, nor were certain examinations carried out, including forensic tests to ascertain the truth of what had occurred (*infra* para. 179). In this regard, it is worth noting that the State acknowledged that from the time the complaint was filed, on March 8, 2002, there was a delay in providing specialized medical care to Mrs. Rosendo Cantú, as more than one month had elapsed since the time of the events until she was examined by a medical officer assigned to the agency of the Common Public Prosecutor's Office March 19, 2002. The State did not report to this Court on the progress made in the investigation initiated by the authorities that would invalidate the evidence pointing to the existence of rape by the soldiers. On the contrary, the Court notes that the State bases its defense on a lack of knowledge as to whether the rape occurred and by whom it was committed, although it is attributable to its own authorities. From the moment that the State became aware that a rape had been committed against an individual who is a member of a particularly vulnerable group, given her status as an indigenous person and a minor, it had the obligation to conduct a serious and effective investigation to confirm the truth of the matter and to determine who was responsible.

104. Given that more than eight years have passed since these events occurred and the State has not provided any evidence in the proceedings of this case to contradict the fact that the rape of Mrs. Rosendo Cantú took place, the Court considers it reasonable to give credit to the evidence and the presumptions arising from the case file (*supra* para. 102) regarding the soldiers' rape of Mrs. Rosendo Cantú. To conclude otherwise would imply that the Court allows the State to shield itself behind its negligence and ineffective criminal investigation, to evade its responsibility for the violation of Article 5 of the Convention.¹¹⁷

105. As this Court has stated since its first contentious case, in an international tribunal the criteria for the assessment of evidence are less formal than in the domestic legal systems.¹¹⁸ As an international court, it has special features and characteristics that do not automatically apply to all the procedural elements of domestic courts. International protection of human rights should not be confused with criminal justice.¹¹⁹ For the effects and purposes of the Judgment of this Court, the elements of proof arising from evidence are sufficient to arrive at the aforementioned conclusions. The standards or requirements of proof are not those of a criminal court, given that it is not up to this Court to determine individual responsibilities or to assess the evidence under that criteria.

106. Accordingly, the Court considers it proven that Mrs. Rosendo Cantú was a victim of acts that constitute rape, committed by two soldiers in the presence of six others at a stream near her home where she went to wash clothes (*supra* para. 73).

D. Legal assessment of the facts related to the rape

107. Given that the Court has established that Mrs. Rosendo Cantú was the victim of an act of sexual violence committed by State agents, it must now determine the legal definition of this act.

¹¹⁷ Cf. *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009, Series C No. 196, para. 97.

¹¹⁸ Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 33, para. 135 and *Case of Escher et al.*, *supra* note 115, para. 128.

¹¹⁹ Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 33, para. 135 and *Case of Escher et al.*, *supra* note 115, para. 134.

108. The Court recalls that, according to the Convention of Belém do Pará, violence against women constitutes not only a violation of human rights, but is also “an offense against human dignity and a manifestation of the historically unequal power relations between women and men” that “pervades every sector of society, regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundation.”¹²⁰

109. In accordance with international case law and taking into account the provisions of the Convention, the Court has previously considered that sexual violence involves acts of a sexual nature, committed against a person without their consent, and that in addition to the physical invasion of the human body, they may include acts which do not involve penetration or even any physical contact.¹²¹ In particular, rape constitutes a paradigmatic form of violence against women, and its consequences go far beyond the victim herself.

110. The Court will consider whether the facts of this case are subsumed in the definition of torture, as argued by the Commission and the representatives. To this end, the Court recalls that in the case of *Bueno Alves v. Argentina*,¹²² based on the definition established in the Convention Against Torture, the Court considered that mistreatment which meets the following conditions constitutes an act of torture: i) intentional, ii) causes severe physical or mental suffering and iii) is committed with an objective or purpose

i) Intentionality

111. Regarding the existence of an intentional act, the evidence in the case file confirms that the mistreatment was deliberately inflicted on the victim. Indeed, the Court considers it proven that one of the attackers hit Mrs. Rosendo Cantú in the abdomen with his weapon, causing her to fall to the ground and strike her head on a rock. She was then seized by the hair, her face was scratched and, while having a weapon pointed at her, she was forcibly sexually assaulted by two soldiers while the other six watched the rape.

ii) Severe physical or mental suffering

112. In order to assess the severity of a victim’s suffering, the Court must take into account the specific circumstances of each case. In doing so, it must consider various aspects of the treatment such as the duration, the method used or the way in which the suffering was inflicted, the potential physical and mental effects and also the status of the person who endured the suffering, including age, gender and health condition, among other personal circumstances.¹²³

113. As to the physical suffering, the Court recalls that two medical certificates were issued 12 and 23 days after the incident which provide evidence of physical injuries (*supra* para. 101). The Court also has testimonial evidence indicating that after the

¹²⁰ Convention of Belém do Pará. Preamble.

¹²¹ Cf. *Case of Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs*. Judgment November 25, 2006. Series C No. 160, para. 306. Also ICTR, *Case of Prosecutor v. Jean-Paul Akayesu*. Judgment of September 2, 1998. Case No. ICTR-96-4-T, para. 688.

¹²² Cf. *Case of Bueno Alves v. Argentina. Merits, Reparations and Costs*. Judgment of May 11, 2007, Series C No. 164, para. 79.

¹²³ Cf. *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 74 and *Case of Bueno Alves*, *supra* note 122, para. 83.

incident Mrs. Rosendo Cantú was injured, with physical pain, for which she sought the assistance of two doctors (*supra* para. 100).¹²⁴

114. Aside from the foregoing, the Court has established that an act of torture may be perpetrated both through acts of physical violence and acts that cause acute mental or moral suffering to the victim.¹²⁵ In addition, this Court has recognized that rape is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage, leaving the victim “physically and emotionally humiliated,” a situation that, unlike other traumatic experiences, is difficult to overcome with the passage of time.¹²⁶ This reveals that severe suffering of the victim is inherent to rape, even when there is no evidence of physical injuries or disease. Indeed, the after-effects of rape do not always involve physical injuries or disease. Women victims of rape also experience severe trauma and psychological and social consequences.

115. In this case, Mrs. Rosendo Cantú was subjected to an act of violence and physical control by the soldiers who intentionally perpetrated the sexual assault against her. Her vulnerability and the coercion that the soldiers exercised over her was reinforced by the participation of the other six soldiers, who were also armed, exacerbating the context of the sexual violence perpetrated against her. It is evident to the Court that the suffering endured by Mrs. Rosendo Cantú, while being forced into sexual acts against her will, with six other people observing, was of the greatest intensity, particular considering that she was a minor. The psychological and moral suffering was aggravated by the circumstances in which the rape took place, inasmuch as she could not rule out the possibility that the violence against her could be further increased by the soldiers who witnessed the rape, since that it was possible that they would also rape her.

116. In this regard, the expert witness Correa González mentioned that Mrs. Rosendo Cantú felt powerless, unable to react and humiliated in the face of the aggression and rape by the soldiers, feelings that were aggravated by the presence of the other soldiers witnessing the event. Furthermore, she expressed that she felt desperation and anguish during the rape. She indicated, “seeing how she was left —beaten, without clothing, raped— [...] was such a traumatic experience that she was unable to accept what had occurred.” In addition, in the days after the rape, she felt shame and physical and emotional impotence. The expert also referred to the psychological and psychosomatic effects as a consequence of the rape.¹²⁷

iii) Purpose

117. In general terms, the Court considers that rape, like torture, pursues the objective of intimidating, degrading, humiliating, punishing or controlling the victim.¹²⁸ The rape of Mrs. Rosendo Cantú took place in the context of a situation in which the soldiers were questioning the victim without obtaining the information they sought (*supra* para. 73). Without denying the possibility that there were also other objectives,

¹²⁴ Cf. Statements rendered by Mrs. Bernardino Morales and Mr. Bernardino Morales, *supra* note 111, coincide that when they saw the alleged victim for the first time after the events, she was crying, half naked, with scratches on her face.

¹²⁵ Cf. *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 100 and *Case of Maritza Urrutia v. Guatemala. Merits, Reparations and Costs*. Judgment of November 27, 2003. Series C No. 103, para. 91.

¹²⁶ Cf. *Case of the Miguel Castro-Castro Prison*, *supra* note 121, para. 311. Cf. Also ECHR, *Case of Aydin v. Turkey* (GC), *supra* note 99, para. 83.

¹²⁷ Cf. Affidavit rendered by expert witness Correa González (Merits file, volume III, pages 1249, 1250, 1252, and 1254).

¹²⁸ Cf. ICTR, *Prosecutor v. Jean-Paul Akayesu*, *supra* note 121, para. 597, and CAT, *Case V.L. v. Switzerland*, Decision of January 22, 2007, U.N. Doc. CAT/C/37/D/262/2005, para. 8.10.

the Court considers it proven that in this case the rape had the specific purpose of punishing the victim because she failed to provide the required information.

118. The Court also considers that rape may constitute torture even when it consists of a single act or takes place outside State facilities.¹²⁹ This is so because the objective and subjective elements that define an act as torture do not refer to the accumulation of acts or to the place where the act is committed, but rather to the intention, the severity of the suffering and the purpose of the act, stipulations that have been met in this case. Based on the foregoing, the Court concludes that the rape in this case entailed a violation of Mrs. Rosendo Cantú's personal integrity, constituting an act of torture in accordance with Article 5(2) of the American Convention and Article 2 of the Convention Against Torture.

119. As to the alleged violation of Article 11 of the American Convention, based on these same facts, the Court has specified that, even though this provision is entitled "Right to Privacy," its contents include, *inter alia*, the protection of privacy.¹³⁰ Moreover, the concept of privacy is a wide-ranging term, which cannot be exhaustively defined.¹³¹ It does, however, include sexual life,¹³² and the right to establish and develop relationships with other human beings.¹³³ The Court considers that the rape of Mrs. Rosendo Cantú violated essential aspects and values of her private life, represented an intrusion in her sexual life and negated her right to decide freely with whom to have intimate relations, causing her to lose full control over this most personal and intimate decision and her basic bodily functions.¹³⁴

120. As this Court has previously indicated, the Committee for the Elimination of Discrimination against Women has maintained that the definition of discrimination against women "includes gender-based violence, meaning violence that is directed against a woman because [i] she is a woman or [ii] that affects women disproportionately." Furthermore, it has also indicated that "[v]iolence against women is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on the basis of equality with men."¹³⁵

121. Based on the foregoing, the Court concludes that the State is responsible for violating the rights to personal integrity and to privacy and personal dignity enshrined in Articles 5(2), 11(1) and 11(2) of the American Convention, in relation to Article 1(1) thereof, and Articles 1, 2 and 6 of the Convention Against Torture, and for failing to comply with the obligation enshrined in Article 7(a) of the Convention of Belém do Pará, to the detriment of Mrs. Rosendo Cantú.

122. Furthermore, the Court considers it unnecessary to rule on other allegations based on the same facts and decides to examine the possible violations of the procedural

¹²⁹ Cf. CAT, *Case V.L. v. Switzerland*, *supra* note 128, para. 8.10.

¹³⁰ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2006, Series C No. 148, para. 193; *Case of Tristán Donoso v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193, para. 55 and *Case of Escher et al.*, *supra* note 115, para. 113.

¹³¹ Cf. ECHR, *Case of Niemietz v. Germany*, Judgment of December 16, 1992, App. No. 13710/88, para. 29 and *Case of Peck v. United Kingdom*, Judgment of 28 January 2003, App. No. 44647/98, para. 57.

¹³² Cf. ECHR, *Case of Dudgeon v. the United Kingdom*, Judgment of October 22, 1981, App. No. 7525/76, para. 41, and ECHR, *Case of X and Y v. the Netherlands*, Judgment of 26 March 1985, App. No. 8978/80, para. 22.

¹³³ Cf. ECHR, *Case of Niemietz v. Germany*, *supra* note 131, para. 29 and ECHR, *Case of Peck v. United Kingdom*, *supra* note 131, para. 57.

¹³⁴ Cf. ECHR, *Case of M.C. v. Bulgaria*, Judgment of December 4, 2003, App. No. 39272/98, para. 150 and ICTY, *Case of Mucic et al. "Celebici Camp"*. Judgment of November 16, 1998. Case No. IT-96-21-T, para. 492.

¹³⁵ Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra* note 21, para. 395.

obligations derived from the provisions mentioned in Chapter IX of this Judgment, which correspond to Articles 8 and 25 of the American Convention.

E. Personal integrity of Mrs. Rosendo Cantú and her family

i) Personal integrity of Mrs. Rosendo Cantú

123. The Commission pointed out, that despite the cultural, economic, social and language barriers she faced, Mrs. Rosendo Cantú filed a complaint informing the authorities that she had been the victim of a rape. Since she filed her complaint eight years ago, she has faced a judicial system that has not worked for her, as an indigenous person, a woman and a minor. The failure to investigate the facts and the subsequent impunity for the crime have accentuated the discrimination, subordination and racism against the victim. The State's response to Mrs. Rosendo Cantú has caused her emotional harm and constitutes a humiliation and degradation, which violates her right to personal integrity and privacy. Moreover, impunity in cases of gender-based violence entails a particular level of violence, danger, fear and restriction of the victim's activities. In addition, [the Commission] stated that the "life of Mrs. Rosendo [Cantú] fell apart after the rape. The subsequent denial of justice, the treatment [...] she received [and] the lack of measures of support and investigation resulted in her re-victimization." Based on the foregoing, it asked the Court to declare the State responsible for the violation of Article 5(1) and 11, to the detriment of Mrs. Rosendo Cantú, in relation to Article 1(1) thereof.

124. For their part, the representatives alleged the violation of the right to personal integrity to the detriment of Mrs. Rosendo Cantú caused by the lack of an adequate investigation and the continuing impunity in this case. They explained that she has filed complaints at all levels of government - communal, municipal, state and federal - in the pursuit of justice, without those responsible being either prosecuted or punished. All of this has caused her to feel impotent, frustrated, anguished and desperate, in light of the State's indifference, thereby aggravating her suffering after the rape. They argued that for Mrs. Rosendo Cantú, filing the complaints had entailed cutting through all the barriers suffered by indigenous women with the only hope of obtaining justice, but in doing so she encountered a discriminatory and re-victimizing system of justice, since she was "subjected to intimidating and aggressive procedures that caused additional harm to her psychological integrity." The presence of soldiers in the area after she had filed her complaint caused her intense fear and prompted the community to stop providing the support it had initially offered her. Moreover, the impunity has created a sense of despair in her, and this has led to a resurgence of the symptoms that resulted from the rape as the date of the court appearances nears. Similarly, the investigation of the events by those responsible caused her to feel indignation, fear and a lack of confidence. Finally, Mrs. Rosendo Cantú was a victim of discrimination and violence since she was prevented from accessing justice in conditions of equality. Consequently, the representatives asked the Court to declare the State responsible for violating the victim's right to personal integrity for the suffering caused as a consequence of the absolute impunity surrounding the aggression she suffered, taking into account the indigenous worldview and the effects of these events on her community.

125. The representatives also indicated that the State had violated her right to personal integrity because of the lack of appropriate medical care on equal terms and the health related problems she experienced as a result of the rape by the soldiers. The State had an obligation to adopt positive measures to guarantee the victim's right to personal integrity, taking into account that she had been subjected to sexual violence which affected her health. The State prevented her access to primary health care services immediately after the sexual assault when she was denied medical care immediately after the incident on two separate occasions. In addition, they were unable to offer her treatment by doctors specialized in gynecology, and after the rape, Mrs. Rosendo Cantú suffered severe physical pain while facing the risk of a possible

pregnancy or infection with a sexually transmitted disease. This lack of care produced additional trauma to her mental integrity, causing her to feel debased and anguished. Furthermore, she did not receive adequate or quality treatment when she had access to medical services because her status as an indigenous minor and victim of a rape was not taken into account. She had to go to a private clinic in the city of Chilpancingo to receive specialized gynecological care, thereby denying her health services that were free of charge, adequate and accessible. The representatives further argued that Mrs. Rosendo Cantú did not receive the psychological care that could have helped her cope with the effects of the rape and the damage caused to her health,¹³⁶ given that “the medical care that [should be] provided to a woman who is the victim of sexual violence and torture [...] should consist [...] of comprehensive care, capable of detecting and mitigating the consequences of the aggression.” Based on all these considerations, they asked the Court to declare the State responsible for the violation of the rights contained in Article 5, in relation to Articles 1(1), 5, 19 and 24 of the American Convention, 1, 6 and 8, of the Convention Against Torture and 7 of the Convention of Belém do Pará.

126. In the public hearing and in its final written arguments, the State acknowledged that the ministerial investigation had taken eight years, and that to date the authorities had been unable to arrive at the truth of the matter or to identify those responsible; however, this acknowledgment must be assessed in light of the complexity of the case and the conduct of the parties. It also pointed out “that the delay in providing specialized medical care to Mrs. Rosendo Cantú, in her condition as a woman and a minor, as well as the delay in conducting the investigation into the facts of the case, are omissions attributable to the State which imply violations to Articles 8(1) and 25 of the Convention [...], in connection with Articles 5(1) and 19 of the same instrument, to the detriment of Mrs. Rosendo Cantú.” The State also recognized that the lack of substantive results after eight years since the investigations began has had an impact on her psychological integrity. Nevertheless, the State argued that there was no violation of the right to personal integrity in connection with the right to health care, due to the alleged lack of primary medical care when Mrs. Rosendo Cantú initially sought medical treatment. On the contrary, she received primary medical care immediately from the health system in the state of Guerrero, when she reported abdominal pain. Thus, the “medical and health personnel were at the service of the alleged victim at all times, to assess and diagnose her, and where applicable, provide the appropriate medication in accordance with existing health standards in the state.”

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127. The Court accepted the State’s acknowledgment of international responsibility regarding the violation of the right to personal integrity, to the detriment of Mrs. Rosendo Cantú, since the complaint was filed before the Common Public Prosecutor’s Office, in relation to the acknowledged violations of Articles 8(1), 25 and 19 of the American Convention (*supra* paras. 21 to 25).

128. Likewise, the Court notes that the testimony provided by Mrs. Rosendo Cantú reveals the effects on her personal integrity of the treatment she received when she filed the complaint before the authorities,¹³⁷ the obstacles she faced in the pursuit of justice and the feelings of fear owing to the military presence.¹³⁸

¹³⁶ Cf. Histopathological report presented by the Cuauhtémoc Laboratory of Chilpancingo on September 21, 2002 (File of attachments to the brief of pleadings and motions, volume II, attachment 52, page 5729).

¹³⁷ Rosendo Cantú stated: “When I went to file a complaint at the offices of the Public Prosecutor in Ayutla [...] they did not want to let me in because they said that there was no one to take my statement and there was also an attorney there who told us that the workday was over, [...] and that is when the state Human Rights Commission had to get involved to file a complaint. And when I entered they knew that I did not speak Spanish well, and they did not give me a translator, and when I finally spoke and gave my statement, they told me, ‘How did you know they were soldiers who raped you? Because they don’t do that,

129. Notwithstanding the State's acknowledgment of responsibility, the representatives argued that the impact on Mrs. Rosendo Cantú's personal integrity began earlier, "when she was prevented from accessing primary health care services [...] immediately after the rape," the first time on February 18, 2002, "with the argument that there was no technical equipment and the doctor was afraid of the soldiers" and again on February 25, 2002, "when she went to the Ayutla General Hospital because she did not have a doctor's appointment." For its part, the State challenged this argument stating that Mrs. Rosendo Cantú "received medical care [...] immediately when she went to the health care system in the state of Guerrero."

130. The evidence in the case file shows that Mrs. Rosendo Cantú went to the Caxitepec clinic on February 18, 2002, and to the Ayutla Hospital on February 26. From the respective medical report it is clear that on February 18, 2002, Mrs. Rosendo Cantú told the doctor at the Caxitepec clinic that she "received blows with military weapons" and on two occasions in response to the doctor's question of whether she had been raped, she responded no. Thus the doctor treated the abdominal pain, prescribing pain and anti-inflammatory medication.¹³⁹ The Court does not have sufficient evidence to conclude that Mrs. Rosendo Cantú was not treated by the doctor because of his fear of the soldiers,¹⁴⁰ as reported by the representatives, but confirms that the doctor at the health center in Caxitepec did offer the primary medical assistance requested.¹⁴¹ Likewise, in the medical consultation at the Ayutla General Hospital on February 26, 2002, Mrs. Rosendo Cantú told the doctor that "ten days ago a piece of wood [had fallen] on her abdomen, causing pain," without it being clear to the Court that she had reported the rape. For this reason, she was only treated for the pain mentioned, and the doctor requested a urine test and gave the patient pain medication.¹⁴² Lastly, the Court

they are good.' And, they also told me, 'how did they say that to you if you said you don't speak Spanish, and how do you know it was soldiers who raped you.' [...] Then we left, I thought I was only going to file a complaint and they were going to catch the soldiers who raped me, but that did not happen," statement of Rosendo Cantú rendered at the public hearing, *supra* note 64.

¹³⁸ Rosendo Cantú stated: "although [...] they told me that I was going to speak to the military justice [system], how could I go there if they never believed me [...] I was so scared because of the fear, so how could I go to the military justice system if they were the ones that abused me?" statement of Mrs. Rosendo Cantú rendered at the public hearing, *supra* note 96. She also stated: "I have a justified fear that the [...] investigation will be [...] illegally handed over to the Military Prosecutor, which will seriously affect my individual guarantees," petition for amparo filed by Mrs. Rosendo Cantú before First District Judge of the Twenty-first Circuit in the state of Guerrero on June 6, 2002 (File of attachments to the application, attachment 20, volume I, page 506). She also indicated: "I did not want to go out because of the terrible memory the soldiers left me with [...] I was very scared [...] [I] did not want to leave my community, I didn't leave because I wanted to leave, rather I left because of the fear that there were many soldiers," statement of Mrs. Rosendo Cantú rendered during the public hearing, *supra* note 64.

¹³⁹ Cf. Clinical history of the Bernardino Rosendo family, *supra* note 74, page 7756, and statement of the doctor assigned to the Rural Health Center for Dispersed Populations with headquarters in Caxitepec, on March 22, 2002, before the Inspector General of the CODDEHUM (File of attachments to the answer to the application, volume I, attachment 1, pages 7731 and 7732).

¹⁴⁰ Complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the NHRC, *supra* note 64, pages 7555 to 7561; statement of Mrs. Rosendo Cantú in the case file of the complaint CODDEHUM-VG/065/2002-II (File of attachments to the brief of pleadings and motions, volume I, attachment 3, pages 5044 to 5230), and statement of Rosendo Cantú during the public hearing, *supra* note 96. There is evidence in the case file that the doctor who saw her on that occasion, testified before the CODDEHUM that "he never said he would not see her because he was afraid of the soldiers who had beaten her [but rather] that the attention given to her was normal, just like with any other person from [the] community," *supra* note 139, page 7732.

¹⁴¹ Cf. Letter of Conclusions of the NHRC, case file 2002/597-4, issued on December 11, 2002, *supra* 108, pages 7792, 7794 and 7796).

¹⁴² In its Letter of Conclusions, the NHRC established that "when [Mrs. Rosendo Cantú] went to the health clinic, she did not mention that she had suffered any sexual aggression, but rather that she felt pain because a piece of wood had fallen on her abdomen; and thus no gynecological exam was carried out for the alleged sexual abuse, which [Mrs. Rosendo Cantú] accepted, given that she did not tell the doctors for fear of not being treated," Letter of Conclusions of the NHRC, case file 2002/597-4, issued on December 11, 2002, *supra* note 108.

does not have sufficient evidence to ascertain whether Mrs. Rosendo Cantú was denied medical attention because she did not have an appointment when she went to the Ayutla General Hospital on February 25, 2002.¹⁴³

131. Taking into account the State's acknowledgment of responsibility and the effects associated, *inter alia*, with the filing of the complaint and the obstacles faced in the pursuit of justice, the Court declares that Mexico violated the right to personal integrity of Mrs. Rosendo Cantú enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) thereof.

132. At the same time, the Court deems it unnecessary to rule on other arguments based on the same facts and decides to examine a possible violation to the rights of the child derived from Article 19 of the Convention in Chapter X of this Judgment (*infra* paras. 197 to 202).

ii) Personal integrity of the family of Mrs. Rosendo Cantú

133. The Commission pointed out that, as a result of these events, Mrs. Rosendo Cantú was abandoned by her husband and was forced to move to Chilpancingo with her daughter, as a consequence of being rejected by her community. This forced move has meant that "her daughter has not been able to grow up and live in a communitarian context and [that she had] to attend a school [...] where Spanish, not Tlapaneco, is spoken." The Commission also stated that "Mrs. Rosendo Cantú's daughter's "right to personal integrity was affected by the events related to the complaint, as well as the actions and omission of the authorities in the investigation of the torture complaint," and that she has "not been able to grow up and live in a communitarian context or with the peace that the victim desires for herself and for [her daughter]." Therefore, the Commission requested that the Court declare the State responsible for the violation of Article 5(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of Yenys Bernardino Rosendo.

134. The representatives pointed out that, as a consequence of the rape suffered by Mrs. Rosendo Cantú, her daughter has been a victim of severe emotional trauma that she has been unable to overcome. They emphasized that she has lived in circumstances where rape is used to send a message of domination and power long established in gender stereotypes. As a result of the events, "she was raised in a home afflicted by gender violence, without having the opportunity to develop in a healthy and complete manner [...] she [suffered] the trauma of her mother's rape, because [Mrs. Rosendo Cantú's] anguish and pain prevented her from adequately breastfeeding her and providing the appropriate care. [In addition] she experienced her father's aggression toward her mother, which produced great feelings of insecurity." They added that "she developed within the context of her mother's frustration and desperation seeking help for the aggression she endured," and when her mother did not find it, she was obliged to move to the city of Chilpancingo, which "instigated a profound sense of being uprooted from their community, their family group and the loss of their culture," creating feelings of confusion and abandonment. Similarly, she has suffered from her mother's absence given the impunity of the case, which has required Mrs. Rosendo Cantú to dedicate part of her time to the pursuit of justice. This "has not allowed [her daughter] to have a full life or proper development in her early childhood."

¹⁴³ The representatives provided as evidence a letter from Mrs. Rosendo Cantú and her husband addressed to the Governor of Guerrero and the statement of Mr. Ezequiel Sierra Morales before the Military Prosecutor on March 6, 2002 (Merits file, volume I, page 216). None of these documents state that she was not treated on February 25, 2002, because she did not have an appointment at the Ayutla Hospital. *Cf.* Communication addressed to the Constitutional Governor of Guerrero, *supra* note 71, pages 343 to 345, and statement of Mr. Bernardino Sierra, *supra* note 72, pages 5688 to 5690.

135. The representatives also alleged the violation of the mental integrity of the father, the mother and the siblings of Mrs. Rosendo Cantú for the rape suffered and the impunity of the case. Though they indicated that the suffering of the family should be assumed, they also indicated that Mr. Victoriano Rosendo Morales and Mrs. María Cantú García have had to live with the pain of knowing that their daughter was raped by soldiers and that they were prevented from being close to her when the rape occurred. This has caused them severe anguish given their uncertainty over their daughter's well-being and also because she had to move to another area in search of security. In addition, they have suffered from the stigmatization of the community where they reside. They indicated that Mrs. Rosendo Cantú's siblings have helped her seek justice and that "even though they have not been identified as victims in these proceedings," the events also impacted them, aggravated by the impunity of the case. Based on the foregoing, they requested the Court to declare the State responsible for the violation of the right Mrs. Rosendo Cantú's family to personal integrity.

136. The State expressed regret for the consequences that a rape may have for close relatives; nevertheless, among other arguments, it stated that there was no proof regarding the crime or those responsible, and therefore it could not recognize or accept that the rights to personal integrity and privacy of Mrs. Rosendo Cantú's family had been violated (*supra* paras. 85 and 88). Therefore, Mexico asked the Court to declare that a violation of the rights to personal integrity and privacy to the detriment of the victim's family could not be attributed to the State.

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137. The Court has stated on other occasions that the families of victims of human rights violations may also be victims. It has considered that the right of a victim's family to psychological and moral integrity has been violated because of the additional pain they suffer as a result of the particular circumstances of the violations perpetrated against their loved ones and because of the subsequent actions or omissions by State officials regarding the events.¹⁴⁴

138. In the case of Yenys Bernardino Rosendo, who was a only few months old at the time of the events, the Court considers that one of the harms suffered was the exile she had to face with her mother, the distance from her community and her indigenous culture and the breakup of her family. The expert Correa González reported that "the child has suffered in [eight] years, at least one drastic change from the country to the city and three other moves within the city, which translates into changes of schools, neighborhoods, friends and everyday living, affecting her sense of identity."¹⁴⁵ These moves meant that the child was raised far from her close-knit maternal family, to the point that she insists that she "doesn't want to be in the city, but with her grandparents in Caxitepec."¹⁴⁶ The psychologist González Marín added that the child "has grown up in a violent context, which has resulted in feelings of insecurity and vulnerability." Furthermore, changes of residence "have caused confusion [and] she constantly asks her mother why they have been away from the community." The changes of residence have also meant that her education outside her community and has been exclusively in

¹⁴⁴ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of Radilla Pacheco*, *supra* note 36, para. 161 and *Case of Chitay Nech et al.*, *supra* note 25, para. 220.

¹⁴⁵ Statement by Mrs. Correa González rendered before a notary public, *supra* note 127, page 1261. Cf. Sworn statement of psychologist Alejandra González Marín on October 22, 2009 (File of attachments to the brief of pleadings and motions, volume I, page 5482).

¹⁴⁶ Sworn statement of psychologist González Marín, *supra* note 145, page 5482. Cf. Statement by Mrs. Correa González rendered before a notary public, *supra* note 127, pages 1261 and 1262.

Spanish.¹⁴⁷ Finally, according to the expert Correa, the circumstances in which her childhood is unfolding could leave her with emotional scars in the future.¹⁴⁸

139. Based on the foregoing, the Court concludes that the rape of Mrs. Rosendo Cantú, the consequences of the rape and the impunity in this case have caused emotional trauma to Yenys Bernardino Rosendo, in violation of the rights recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof.

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140. Regarding the alleged violation of the right to personal integrity of the victim's other family members, the Court points out that, according to its case law, the alleged victims should be named in the application and in the Commission's report, pursuant to Article 50 of the American Convention. Moreover, in compliance with Article 33(1) of the Rules of Procedure, it is up to the Commission, and not the Court, to identify in detail and at the appropriate procedural moment, the alleged victims in the case before the Court.¹⁴⁹ Accordingly, taking into account its constant case law, the Court regards as presumed victims the persons named in the Commission's application brief. In this case, with regard to Mrs. Rosendo Cantú's family, the Commission identified only Yenys Bernardino Rosendo as an alleged victim.¹⁵⁰ Consequently, the Court will not refer to the alleged violations of the parents and siblings of Mrs. Rosendo Cantú.

IX

ARTICLES 8 (RIGHT TO A FAIR TRIAL)¹⁵¹ AND 25 (RIGHT TO JUDICIAL PROTECTION),¹⁵² IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) AND 2 (DOMESTIC LEGAL EFFECTS)¹⁵³ OF THE AMERICAN CONVENTION, ARTICLE 7 OF THE CONVENTION OF BELÉM DO PARÁ AND ARTICLES 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE

¹⁴⁷ Cf. Sworn statement of psychologist González Marín, *supra* note 145, page 5481.

¹⁴⁸ Cf. Statement by Mrs. Correa González rendered before a notary public, *supra* note 127, page 1261.

¹⁴⁹ Cf. *Case of the Ituango Massacres*, *supra* note 130, para. 98; *Case of the Dos Erres Massacre*, *supra* note 27, para. 20 and *Case of Chitay Nech et al.*, *supra* note 25, para. 44.

¹⁵⁰ Also in the Merits Report No. 36/09, the Commission established the State's responsibility for the violation of Article 5(1) to the detriment of Yenys Bernardino Rosendo, *supra* note 3, page 404.

¹⁵¹ Article 8(1) of the American Convention establishes that:

1. 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.

¹⁵² Article 25 of the American Convention establishes that:

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

¹⁵³ Article 2 of the American Convention establishes that:

1. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

141. In order to examine the alleged violations of Articles 8 and 25 of the American Convention and the alleged failure to comply with related obligations under other Inter-American treaties, the Court will establish a) the facts of this case in relation to the preliminary inquiries; it will then set out the arguments of the parties and the findings of the Court regarding: b) the intervention of the military jurisdiction; c) the alleged lack of due diligence in the processing of the complaint and the investigation of the rape; d) the State's request concerning specific aspects of the investigations, and e) the alleged threats and harassment against persons involved in the case.

A. Facts relating to the criminal investigation

Preliminary Investigation ALLE/SC/02/62/2002 and MOR/AEDS/025/2002: Civil Public Prosecutor's Office

142. On March 8, 2002, following the complaint filed by Mrs. Rosendo Cantú, the Allende Local Public Prosecutor opened Preliminary Investigation ALLE/SC/02/62/2002 for the crime of rape and offenses arising from it (*supra* para. 78).¹⁵⁴ On March 18, 2002, the Allende Local Public Prosecutor's Office attempted to decline its jurisdiction in favor of the Morelos Public Prosecutor's Office.¹⁵⁵ On March 28, 2002, the Preliminary Investigation was returned by the Guerrero Attorney General's Office¹⁵⁶ so that the investigations could continue. On April 5, 2002, an on-site inspection of the crime scene was conducted,¹⁵⁷ and subsequently, the Allende Local Public Prosecutor's Office sent the Preliminary Investigation to the Guerrero Attorney General's Office,¹⁵⁸ considering that it did not have jurisdiction to continue with the investigation on territorial grounds.

143. On April 15, 2002, the Agent of the Morelos Public Prosecutor's Office specializing in Sexual Offenses and Domestic Violence (hereinafter, "Morelos Public Prosecutor") received the Preliminary Investigation ALLE/SC/02/62/2002 from the Office of the Guerrero Attorney General and assigned it as Preliminary Investigation MOR/AEDS/025/2002.¹⁵⁹ The Morelos Public Prosecutor's Office continued the investigation, carrying out some procedures¹⁶⁰ until May 16, 2002, when it declared that

¹⁵⁴ Cf. Complaint filed by Rosendo Cantú before the Public Prosecutor of the Common Jurisdiction of the Allende Judicial District, *supra* note 65, pages 9268 to 9270.

¹⁵⁵ Cf. Order No. 279 of the Public Prosecutor of the Common Jurisdiction of the Allende Judicial District of March 18, 2002 (File of attachments to the answer to the application, volume V, page 9261).

¹⁵⁶ Cf. Order PGJE/DGAP/2247/2002 of the Office of the Guerrero Attorney General of March 28, 2002 (File of attachments to the answer to the application, volume V, page 9278).

¹⁵⁷ Cf. Certificate of site inspection issued by the Public Prosecutor of the Common Jurisdiction of the Allende Judicial District on April 5, 2002 (File of attachments to the answer to the application, volume V, pages 9283 to 9285).

¹⁵⁸ Cf. Decision issued by the Public Prosecutor of the Common Jurisdiction of the Allende Judicial District on April 5, 2002 (File of attachments to the answer to the application, volume V, page 9286).

¹⁵⁹ Cf. Decision of the Office of the Public Prosecutor Specialized in Sexual Offenses and Domestic Violence of Morelos, of April 15, 2002 (File of attachments of answer to the application, volume V, pages 9254 and 9255).

¹⁶⁰ Cf. Statement of Mr. Encarnación Sierra Morales rendered before the Morelos Public Prosecutor of the Common Jurisdiction Specialized in Sexual Offenses and Domestic Violence, of April 17, 2002 (case file attachments to the brief of pleadings and motions, volume II, attachment 55, pages 5734 to 5736); statement of Mr. Ezequiel Sierra Morales rendered before the Public Prosecutor of the Common Jurisdiction Specialized in Sexual Offenses and Domestic Violence of Morelos (File of attachments to the brief of pleadings and motions, volume II, attachment 58, pages 5746 to 5749) and statement of Mr. Fidel Bernardino Sierra, *supra* note 72, pages 5738 to 5740.

it did not have jurisdiction over this subject-matter to continue with the Preliminary Investigation and forwarded it to the military jurisdiction.¹⁶¹

ii) Preliminary Investigation 35ZM/05/2002, SC/169/2002/I, SC/169/2002/I-V, and SC/169/2002/I-V-XIV - Military Prosecutor's Office

144. Prior to the start the investigation in the civilian jurisdiction, the Preliminary Investigation 35ZM/05/2002 was opened on March 5, 2002, following reports of the crime published in a newspaper article on March 1, 2002, in the *Diario El Sur*,¹⁶² communicated to the Commander of the 41st Battalion of the Infantry via the radiogram 7018 of March 3, 2002.¹⁶³ On May 21, 2002, the Military Prosecutor's Office, based on Article 57 section II paragraph (a) of the Code of Military Justice (hereinafter, "Article 57(ii)(a)"), "accept[ed] the lack of subject-matter jurisdiction" and validated all the measures taken in Preliminary Investigation MOR/AEDS/025/2002, adding them to Preliminary Investigation 35ZM/05/2002.¹⁶⁴

145. On June 7, 2002, Mrs. Rosendo Cantú filed an appeal against the rejection of jurisdiction of the civil courts in favor of the military jurisdiction,¹⁶⁵ which was stopped by the Guerrero First District Judge on August 30, 2002.¹⁶⁶ That order was contested by Mrs. Rosendo Cantú in an appeal on September 17, 2002,¹⁶⁷ and confirmed on November 12, 2002, by a judgment of the Guerrero First Collegiate Tribunal of the Twentieth Circuit.¹⁶⁸ On November 28, Mrs. Rosendo Cantú presented a brief in which she asked that the Military Prosecutor's Office "abstain from continuing" the case.¹⁶⁹ This request was rejected on January 20, 2003,¹⁷⁰ through an order by the Military Attorney General's Office, which was contested by Mrs. Rosendo Cantú in a second appeal petition, presented on February 11, 2003.¹⁷¹ The second appeal petition was also rejected on April 29, 2003.¹⁷²

¹⁶¹ Cf. Decision to decline jurisdiction and Order No. 244 to forward case file to the Public Prosecutor Specialized in Sexual Offenses, both of May 16, 2002 (File of attachments to the answer to the application, volume V, pages 9334, 9345, and 9346).

¹⁶² Cf. Decision of the Military Prosecutor's Office assigned to the 35th Military Zone of March 5, 2002 (File of attachments to the brief of pleadings and motions, volume II, pages 5909 and 5910), and News Article "To the NHRC, complaints for rape and beating of a young tlapanecan woman" ["A la CNDH, quejas por violación and golpes a una joven tlapaneca"], *Diario el Sur*, of March 1, 2002 (File of attachments to the brief of pleadings and motions, volume II, page 5912).

¹⁶³ Cf. Radiogram 7018 of the Commander of the 35th Military Zone of March 3, 2002 (File of attachments to the brief of pleadings and motions, volume II, attachment 112, page 5919).

¹⁶⁴ Cf. Decision issued by the Military Prosecutor's Office of May 21, 2002 (File of attachments to the brief of pleadings and motions, volume II, attachment 105, pages 5876 to 5879).

¹⁶⁵ Cf. Petition for relief [amparo] filed by Rosendo Cantú on June 6, 2002, *supra* note 138, pages 500 to 527.

¹⁶⁶ Cf. Order of the First District Judge of the state of Guerrero, Petition for Appeal No. 603/2002-III, of August 30, 2002 (File of attachments to the answer to the application, volume VIII, pages 11258 to 11290).

¹⁶⁷ Cf. Appeal for review filed by Rosendo Cantú against the Order of Petition for Relief No. 603/2002-III, of September 17, 2002 (File of attachments to the answer to the application, volume XIII, pages 12853 to 12875).

¹⁶⁸ Cf. Judgment of the First Collegiate Tribunal of the Twentieth Circuit, Petition for Relief of Criminal Review 184/2002, of November 12, 2002 (File of attachments to the answer to the application, volume XIII, pages 12886 to 12948).

¹⁶⁹ Cf. Brief of Rosendo Cantú of November 28, 2002, challenging jurisdiction (File of attachments to the answer to the application, volume XXII, pages 16762 to 16778).

¹⁷⁰ Cf. Order No. AP-I-3577 issued by the Military Prosecutor's Office of January 20, 2003 (File of attachments to the application, volume I, pages 550 to 587).

¹⁷¹ Cf. Petition for relief filed by Rosendo Cantú on February 11, 2003 (File of attachments to the answer to the application, volume XI, pages 11945 to 12007).

146. On June 11, 2002, the Office of the Attorney General for Military Justice (hereinafter, "the Military Attorney General's Office") ordered the Military Prosecutor's Office, attached to the 35th Military Zone, to forward Preliminary Investigation 35ZM/05/2002, and appointed the First Agency of the Military Prosecutor's Office assigned to the Preliminary Investigations Department to continue with the investigations.¹⁷³ The Preliminary Investigation was assigned under the case file SC/169/2002/I.¹⁷⁴ The Preliminary Investigation was subsequently forwarded to the Fifth Agency and then to the Fourteenth Agency, both assigned to the same Section of the Military Attorney General's Office, which were assigned on September 1 and November 25, 2003, as Preliminary Investigations, SC/169/2002/I-V¹⁷⁵ and SC/169/2002/I -V-XIV,¹⁷⁶ respectively.

147. As part of the aforementioned Preliminary Investigations, the statement of Mrs. Rosendo Cantú was received and a "statement of injuries" was issued. In addition, the Military Prosecutor's Office conducted an on-site visit to the crime scene,¹⁷⁷ held a lineup procedure in Mrs. Rosendo Cantú's home with 28 members of the Rios Operations Base,¹⁷⁸ carried out a photo identification of members of the Hernández Operations Base¹⁷⁹ and took the statements of various persons, including military personnel.¹⁸⁰ Finally, on February 26, 2004, the Fourteenth Agency of the Military Prosecutor's Office submitted the records of the Preliminary Investigation to the consideration of the Military Attorney General's Office "given that for the moment, there is no proof of the commission of an illegal act on the part of military personnel."¹⁸¹ The Military Attorney

¹⁷² Cf. Judgment of the Fifth Judge of District "B" of Criminal Matters of the Federal District, of April 29, 2003 (File of attachments to the answer to the application, volume XII, pages 12414 to 12438).

¹⁷³ Cf. Radiogram No. AP-S-16391 of the Attorney General of Military Justice of June 11, 2002 (File of attachments to the answer to the application, volume VIII, page 10866) and Order No. 0631 of the Military Prosecutor's Office of June 12, 2002 (File of attachments to the answer to the application, volume VIII, page 10867).

¹⁷⁴ Cf. Decision of the Investigative Agent of the Military Prosecutor's Office of June 17, 2002 (File of attachments to the answer to the application, volume VIII, page 10868).

¹⁷⁵ Cf. Decision of the Fifth Investigative Agent of the Military Prosecutor's Office of September 1, 2003 (File of attachments to the answer to the application, volume X, page 11850 and 11851).

¹⁷⁶ Cf. Decision of the Fourteenth Investigative Agent of the Military Prosecutor's Office of November 25, 2003 (File of attachments to the answer to the application, volume X, page 10852 a 10854).

¹⁷⁷ Cf. Record of the Agent of the Military Prosecutor's Office of March 6, 2002 (File of attachments to the answer to the application, volume II, pages 7825 to 7831), and Decision of the Agent of the Military Prosecutor's Office of March 7, 2002 (File of attachments to the brief of pleadings and motions, volume II, attachment 118, pages 5934 to 5936).

¹⁷⁸ Cf. Record of the Agent of the Military Prosecutor's Office assigned to the 35th Military Zone of March 15, 2002 (File of attachments to the answer to the application, volume II, pages 8201 to 8206).

¹⁷⁹ Cf. Record of the Agent of the Military Prosecutor's Office assigned to the 35th Military Zone of March 16, 2002 (File of attachments to the answer to the application, volume II, pages 8210 to 8211).

¹⁸⁰ Cf. Ministerial statements of Messrs. Ezequiel Sierra Morales, Godoy Aviles and of members of the Mexican Army (File of attachments to the answer to the application, volume II, pages 7825 to 7828, and case file of attachments to the brief of pleadings and motions, volume II, attachments 41 and 42, pages 5689 to 5694; attachments 119 and 126, pages 5938 to 6201; volume III, attachments 148 and 149, pages 6760 to 6786; attachments 152 and 154, pages 6793 to 6819 and attachment 161, pages 6838 to 6953).

¹⁸¹ Cf. Decision to consider the record of the Fourteenth Investigative Agent of the Military Prosecutor's Office assigned to the Office of Preliminary Investigations of the Attorney General of Military Justice of February 26, 2004 (File of attachments received during the public hearing, volume II, pages 17631 to 17644).

General ruled to file the Preliminary Investigation SC/169/2002/I-V-XIV on March 12, 2004.¹⁸²

iii) Preliminary Investigation MOR/AEDS/025/2002 – Civil Public Prosecutor's Office

148. On October 16, 2007, the Public Prosecutor's Office attached to the Office of Preliminary Investigations of the Guerrero Attorney General's Office, in compliance with the agreements reached by the State on October 12 during the proceedings before the Commission, asked the Military Attorney General's Office to send it Preliminary Investigation MOR/AEDS/025/2002 for its continuation.¹⁸³ On January 11, 2008, the Attorney General's Office acknowledged receipt of Preliminary Investigation SC/169/2002/I-V-XIV, which contained the case file MOR/AEDS/025/2002. In that same order, the corresponding investigations were resumed.¹⁸⁴

149. On May 16, 2008, in fulfilment of the cooperation agreement of April 25, 2008, for the completion of the procedures pending in this case,¹⁸⁵ the Guerrero Attorney General sent a request to the Attorney General for collaboration with the procedures to expand the statement of Mrs. Rosendo Cantú and assist with the artist's portrait (identikit) those responsible.¹⁸⁶ On August 27, 2008, the Attorney General complied with the request¹⁸⁷ through the Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking of the Federal Public Prosecutor's Office (hereinafter, "Special Prosecutor's Office").

150. The Special Prosecutor's Office summoned Mrs. Rosendo Cantú to appear on September 10, 2008, to complete the procedures agreed on September 2.¹⁸⁸ In view of the intervention of the Special Prosecutor's Office, on September 10, 2008, Mrs. Rosendo Cantú presented a brief addressed to the agent of the Prosecutor's Office requesting that it "determine the jurisdiction for investigating the unlawful act of which [she] had been a victim before her appearance in court for any procedure," since the Preliminary Investigation was being conducted by the Guerrero Office of the Attorney General while the Special Prosecutor's Office was attached to the Office of the Attorney

¹⁸² Cf. Brief of observations on the merits of the State in the processing of the case before the Commission of June 6, 2007 (File of attachments to the application, attachment 3, volume I, page 4390).

¹⁸³ Cf. Official letter No. PGJE/DGCAP/6030/2007 of the General Office of Investigatory Services of the Guerrero Attorney General of October 16, 2007 (File of attachments to the answer to the application, volume XV, page 13785).

¹⁸⁴ Cf. Decision to receive and resume of the Agent of the Public Prosecutor of the Common Jurisdiction assigned to the General Office of Investigatory Services of January 11, 2008 (File of attachments to the answer to the application, volume XV, page 13789).

¹⁸⁵ Cf. Official letter No. DDHH-CIDH-2323/08 of the Undersecretary for Multilateral Affairs and Human Rights of the Secretariat of Foreign Affairs on May 13, 2008 (File of attachments to the answer to the application, volume X, page 11925).

¹⁸⁶ Cf. Official letter No. PGJE/DGCAP/3965/2008 of the General Office of Control of Investigatory Services of the Office of the Guerrero Attorney General of May 16, 2008 (File of attachments to the answer to the application, volume V, page 9393).

¹⁸⁷ Cf. Decision of the Agent of the Federal Public Prosecutor's Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking, August 27, 2008 (File of attachments to the answer to the application, volume V, pages 9384 to 9388).

¹⁸⁸ Cf. Decision of the Agent of the Federal Public Prosecutor's Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking, September 2, 2008 (File of attachments to the answer to the application, volume V, pages 9401 to 9404).

General of the Republic.¹⁸⁹ Furthermore, on that same day the representatives of Mrs. Rosendo Cantú communicated with the Director of Preliminary Investigations of the Special Prosecutor's Office and confirmed that, "Mrs. Rosendo Cantú would appear before [that] ministerial authority [...] on September 15, 2008."¹⁹⁰

151. On September 15, 2008, the alleged victim appeared in person and stated that she would not participate in any procedures pending until "it is determined who has jurisdiction to hear [her] matter."¹⁹¹ On December 2, 2008, the Morelos Public Prosecutor forwarded the Preliminary Investigation to the Office of the Special Prosecutor for the Investigation of Sexual Offenses and Domestic Violence (hereinafter, "Office of the Special Prosecutor for Sexual Offenses"), "considering that [the] offense is of a sexual nature committed against a woman."¹⁹²

iv) Preliminary Investigation FEIDSVI/002/2009 – Public Prosecutor's Office

152. On January 9, 2009, the agent of the Public Prosecutor's Office assigned to the Guerrero Special Prosecutor for Sexual Offences, ordered the opening of Preliminary Investigation FEIDSVI/002/2009.¹⁹³ On April 3, 2009,¹⁹⁴ it ordered notification of the decision of February 5, 2009, of the Attorney General's Office of the Republic¹⁹⁵ in answer to Mrs. Rosendo Cantú's brief (*supra* para. 150), reiterating that this federal authority had intervened "solely and exclusively in an auxiliary capacity for the execution of procedures."¹⁹⁶

153. On March 19, 2009, the Special Prosecutor for Sexual Offenses summoned Mrs. Rosendo Cantú to be heard by this body.¹⁹⁷ On April 21, 2009, the victim was summoned yet again, and then on April 29th, she sent a written brief requesting that an agent of the Public Prosecutor's Office justify her absence in court that same day and

¹⁸⁹ Cf. Brief of Mrs. Rosendo Cantú addressed to the Agent of the Federal Public Prosecutor's Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking of September 10, 2008 (File of attachments to the answer to the application, volume V, pages 9442 to 9444).

¹⁹⁰ Cf. Certificate of the Agent of the Federal Public Prosecutor's Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking of September 10, 2008 (File of attachments to the answer to the application, volume V, page 9433).

¹⁹¹ Cf. Ministerial statement rendered by Mrs. Rosendo Cantú before the Agent of the Federal Public Prosecutor's Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking, of September 15, 2008 (File of attachments to the answer to the application, volume V, pages 9453 to 9456).

¹⁹² Cf. Decision to decline jurisdiction of the Agent of the Public Prosecutor of the Common Jurisdiction, assigned to the General Office of Control of Investigatory Services of December 2, 2008 (File of attachments to the answer to the application, volume X, pages 11934 and 11938).

¹⁹³ Cf. Decision to open file and record of the Agent of the Public Prosecutor's Office of the Common Jurisdiction, assigned to the Special Prosecutor's Office for the Investigation of Sexual Offenses of January 9, 2009 (File of attachments to the answer to the application, volume V, pages 9349 and 9350).

¹⁹⁴ Cf. Certification of the Agent of the Public Prosecutor's Office of the Common Jurisdiction, assigned to the Special Prosecutor's Office for the Investigation of Sexual Offenses of April 3, 2009 (File of attachments to the answer to the application, volume V, pages 9490 and 9491).

¹⁹⁵ Cf. Decision of the Agent of the Federal Public Prosecutor's Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking, of February 5, 2009 (File of attachments to the answer to the application, volume V, pages 9481 to 9488).

¹⁹⁶ Cf. Decision of the Agent of the Federal Public Prosecutor's Office, *supra* note 195, pages 9473 to 9488.

¹⁹⁷ Cf. Official letters No. 062/2009 and 063/2009 of the Agent of the Public Prosecutor's Office of the Common Jurisdiction, assigned to the Special Prosecutor's Office for the Investigation of Sexual Offenses and Domestic Violence on March 19, 2009 (File of attachments to the answer to the application, volume V, pages 9378 and 9379).

requested an answer to her brief of September 10, 2008¹⁹⁸ (*supra* para. 150). On May 5, 2009, Mrs. Rosendo Cantú was summoned a third time through an official letter where she was notified again of the agreement of the Federal Special Prosecutor of February 5, 2009¹⁹⁹ (*supra* para. 152). Mrs. Rosendo Cantú reiterated her petition on May 7, 2009.²⁰⁰ On June 1, 2009, the Agent of the Public Prosecutor of the Special Prosecutor for Sexual Offenses reiterated what was stated in the brief of February 5, 2009, (*supra* para. 152) and requested that Mrs. Rosendo Cantú appear in court on June 4, 2009 to take part in the relevant proceedings.²⁰¹ On that date, a representative of Mrs. Rosendo Cantú appeared in court and stated that she was unable to appear given the weather and because of several acts of intimidation that forced her to leave Chilpancingo. Moreover, she requested that the “notifications be made with advance notice so that [she could] establish contact with [Mrs. Rosendo Cantú],” and ensure her appearance at the proceedings when summoned, and that as her representative, she would be willing to appear before the Attorney General [of Guerrero], “in order to avoid delaying the investigations.”²⁰² On August 5, 2009, the Agent of the Federal Public Prosecutor’s Office of the Special Prosecutor’s Office summoned Mrs. Rosendo Cantú to take part in several procedures on August 14, 2009.²⁰³ On that day she went to that office, expanded her statement, provided physical descriptions of her alleged attackers so that an artist’s portrait could be prepared and identified two possible attackers from an album of photographs.²⁰⁴

154. On October 29, 2009, the Special Prosecutor for the Investigation of Sexual Offenses forwarded Preliminary Investigation FEIDSVI/002/2009 to the Military Attorney General “taking into consideration that the complaint filed by the injured party [...] indicated that [...] those who sexually assaulted her were members of the military.”²⁰⁵

v) Preliminary Investigation SC/180/2009/II and SC/180/2009/II-E – Military Prosecutor’s Office

¹⁹⁸ Cf. Official letter No. 102/2009 of the Agent of the Public Prosecutor of the Common Jurisdiction, assigned to the Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence of April 21, 2009 (File of attachments to the answer to the application, volume V, page 9497), and brief of Mrs. Rosendo Cantú addressed to the Agent of the Public Prosecutor’s Office of the Common Jurisdiction, assigned to the Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence of April 29, 2009 (File of attachments to the answer to the application, volume V, pages 9522 to 9525).

¹⁹⁹ Cf. Official letter No. 011/2009 of the Agent of the Federal Public Prosecutor’s Office, assigned to Special Prosecutor’s Office, of May 5, 2009 (File of attachments to the answer to the application, volume V, page 9530).

²⁰⁰ Cf. Brief of Mrs. Rosendo Cantú of May 7, 2009, addressed to the Agent of the Public Prosecutor of the Common Jurisdiction, assigned to Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence (File of attachments to the answer to the application, volume V, pages 9559 to 9561).

²⁰¹ Cf. Official letter No. 143/2009 of the Agent of the Public Prosecutor of the Common Jurisdiction, assigned to the Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence of June 1, 2009 (File of attachments to the answer to the application, volume V, pages 9565 to 9567).

²⁰² Cf. Brief of the representative of Mrs. Rosendo Cantú addressed to the Agent of the Public Prosecutor’s Office of the Common Jurisdiction, assigned to the Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence, of June 7, 2009 (File of attachments to the answer to the application, volume V, pages 9593 to 9595).

²⁰³ Cf. Order No. 145/2009 of the Agent of the Public Prosecutor’s Office of the Common Jurisdiction, assigned to the Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence of August 5, 2009 (File of attachments to the answer to the application, volume V, page 9694).

²⁰⁴ Cf. Record of the Agent of the Public Prosecutor’s Office of the Common Jurisdiction, assigned to the Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence in the Preliminary Investigation FEIDSVI/002/2009 of August 14, 2009 (File of attachments to the answer to the application, volume V, pages 9735 to 9737).

²⁰⁵ Cf. Resolution and Official letter No. 344/2009 of the Special Prosecutor’s Office for the Investigation of Sexual Offenses and Domestic Violence of October 29, 2009 (File of attachments to the answer to the application, volume V, pages 9788 to 9822).

155. On November 18, 2009, the Second Investigative Agency of the Military Attorney General's Office acknowledged receipt of the files corresponding to Preliminary Investigation FEIDSVI/002/2009 and assigned it as Preliminary Investigation SC/180/2009/II.²⁰⁶ On February 18, 2010, the Section for Preliminary Investigations of the Military Attorney General's Office ordered the preliminary investigation file to be forwarded to the Investigative Agency of the Military Prosecutor's Office, Specialized in Naval Matters Table I, attached to the Preliminary Investigations Section of the Attorney General's Office,²⁰⁷ which, on that same day, filed it as Preliminary Investigation SC/180/2009/II-E.²⁰⁸ In this phase of the preliminary investigations in the military jurisdiction, the evidence gathering procedures were conducted such as statements and expert opinions.²⁰⁹

B. Intervention of the military criminal justice system

156. The Inter-American Commission held that there are no elements to justify the intervention of the military criminal justice system in the investigation of a rape complaint. The military justice system should be used only to try soldiers on active duty for the alleged perpetration of strictly service-related offenses. In cases involving human rights violations, the military criminal jurisdiction does not meet the requirements of independence and impartiality established in Article 8(1) of the American Convention. Similarly, the transfer of partial competence from the military jurisdiction to the civil jurisdiction to investigate only civilians is incompatible with the Convention. Consequently, it asked the Court to declare that the State violated Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof.

157. The representatives argued that Mrs. Rosendo Cantú's rights to judicial guarantees and to judicial protection were violated because her case was submitted to the military jurisdiction, based on Article 13 of the Constitution and Article 57(ii) (a) of the Military Justice Code, and also because the State had not provided an effective remedy to contest the application of this jurisdiction to her case. The military jurisdiction does not meet the requirements of impartiality, independence and competence to hear cases of human rights violations, and the submission of the case to this jurisdiction violated the guarantee of a hearing by a competent court. This practice is based on the absence of a provision in the Mexican legal system to exclude the military justice system from hearing offenses of this nature, and in general, to the generic transfer of ordinary crimes committed by soldiers on active service, or related to active service, to this jurisdiction based on Article 57 (ii) (a). All this is a result of the ambiguity of Article 13 of the Constitution and Article 57(ii) (a) of the Military Justice Code. In addition, they emphasized that this situation is aggravated by the inefficacy of the domestic remedies available to question which jurisdiction is responsible for the investigation of the case, given that on two occasions "the *amparo* petition proved to be ineffective and

²⁰⁶ Cf. Decision to open file issued by the Agent of the Military Prosecutor's Office assigned to the Office of Preliminary Investigations of the Attorney General of Military Justice, November 18, 2009 (File of attachments to the answer to the application, volume XV, pages 13668 and 13669).

²⁰⁷ Cf. Decision of the Investigative Agent of the Military Prosecutor's Office attached to the Office of Preliminary Investigations of the Attorney General of Military Justice, February 18, 2010 (File of attachments to the answer to the application, volume XXIII, page 17488 and 17489).

²⁰⁸ Cf. Decision to file issued by the Agent of the Special Military Prosecutor's Office attached to the Office of Preliminary Investigations of the Attorney General of Military Justice of February 18, 2010 (File of attachments received during the public hearing, volume II, page 17677).

²⁰⁹ *Inter alia*, the following expert opinions were issued: i) physiognomic identification, cf. Unnumbered official letter from the General Office of Coordination of Expert Services of April 5, 2010 (File of attachments presented during the public hearing, volume II, pages 17823 to 17827); ii) psychology, cf. Unnumbered official letter from the Office of Psychology of the Military General Hospital of April 20, 2010 (File of attachments received during the public hearing, volume II, pages 17922 to 17930), and iii) cartography, cf. Expert opinion on cartography presented on May 14, 2010, *supra* note 104, pages 18112 to 18125.

inadequate in protecting the human rights of the [victim], because the investigations [...] continued [...] under the military jurisdiction." For these reasons, they asked the Court to declare that the State had violated the rights contained in Articles 8 and 25 of the American Convention, and also in Articles 1, 6 and 8 of the Convention against Torture and Article 7 of the Convention of Belém do Pará.

158. In its answer to the application, the State held, *inter alia*, that the guarantee of a competent, independent and impartial judge had not been affected, because the actions taken until then corresponded to the ministerial [investigative] authorities. Consequently, the Court was being asked to sanction the expectation of a violation which was not a *fait accompli* and, in particular, one carried out to the detriment of Mrs. Rosendo Cantú, who "has not been subject to the military jurisdiction, and her complaint has not been heard by a military court." Furthermore, the State indicated that the conduct of the investigation has been a central element for determining jurisdiction. In other words, the investigation was initiated by the civil authorities with whom the complaint was filed. When the involvement of members of the Armed Forces was alleged, the investigation was transferred to the Military Prosecutor's Office. The alleged victim's failure to cooperate prevented the investigation from progressing. Regarding the investigation of the facts in the complaint, the State considered that "the investigation should continue, and that there was willingness on the part of the investigative authorities to uncover the truth of the matter and punish those responsible." Once the artist's portrait was completed in August 2009, and the alleged perpetrators had been identified, the investigation was assigned to a special agency of the Military Attorney General's Office, which has undertaken various actions and expects these will yield specific results concerning the alleged facts of this case. Accordingly, it asked the Court to declare the non-existence of violations of Articles 8(1) and 25(1) of the American Convention, to the detriment of Mrs. Rosendo Cantú. Subsequently, during the public hearing the State affirmed that it "would not present any arguments on investigative competence in this case, because the Court had already made a final ruling on this issue in its Judgment in the case of [*Radilla Pacheco*]." In its final written arguments, the State argued that despite the Court's ruling in that case, it is the Military Prosecutor's Office "that is responsible for continuing the investigations" and that "[i]t is inappropriate to suspend the investigations underway, given that they were properly established in the current legal context."

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159. First, regarding the State's argument that the rights to a fair trial and to judicial protection have not been violated because the inquiries are still at the investigative stage, the Court recalls its case law establishing that the guarantees under Article 8(1) of the Convention do not apply merely to judges and trial courts or judicial proceedings.²¹⁰ In particular, in relation to the investigations conducted by the Public Prosecutor's Office, the Court has established that, depending on the circumstances of the case, it may have to examine the measures that relate to and constitute the grounds for judicial proceedings, particularly the investigative procedure, on which the results of the opening and progress of these proceedings depend.²¹¹ Accordingly, the Court will rule on the investigation conducted in this case and will determine whether

²¹⁰ *Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, para. 105; *Juridical Condition and Rights of Undocumented Immigrants. Advisory Opinion OC-18/03* September 17, 2003. Series A No. 18, para. 124 and *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C No. 151, para. 118.

²¹¹ *Cf. Case of the "Street Children" (Villagrán Morales et al.), supra* note 123, para. 222; *Case of Tristán Donoso, supra* note 130, para. 145 and *Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 23, 2009. Series C No. 203, para. 120.

the rights to a fair trial and judicial protection and, if applicable, other Inter-American norms, have been violated in the domestic proceedings.

160. Specifically regarding the intervention of the military jurisdiction in examining facts that constitute human rights violations, the Court recalls that it recently ruled in the case of *Radilla Pacheco* with regard to Mexico. Taking this into account, together with the State's arguments (*supra* para. 17) in this case, the Court deems it sufficient to reiterate that:

[I]n a democratic State governed by the rule of law, the military criminal jurisdiction shall have a restrictive and exceptional scope and be directed toward the protection of special juridical interests, related to the functions characteristic of the military forces. Therefore, the Court has stated previously that only soldiers on active service shall be prosecuted under the military jurisdiction for the commission of crimes or offenses that, by their nature, threaten the juridical rights of the military system.²¹²

Likewise, [...] taking into account the nature of the crime and the juridical right damaged, the military criminal jurisdiction is not the competent jurisdiction to investigate and, if applicable, prosecute and punish the authors of human rights violations; rather, the processing of those responsible always corresponds to the ordinary [non-military] forum. In this regard, the Court has indicated on numerous occasions that "[w]hen the military jurisdiction assumes competence for a matter that should be heard by the ordinary jurisdiction, it is violating the right to a hearing by an ordinary court previously established by law and, *a fortiori*, to due process," which is closely related to access to justice. The judge in charge of hearing a case shall be competent, as well as independent and impartial.²¹³

Regarding situations that violate the human rights of civilians, the military jurisdiction cannot operate under any circumstance.²¹⁴

The Court points out that when the military courts hear cases of acts that constitute violations of the human rights of civilians, they exercise jurisdiction not only with regard to the defendant, who must necessarily be someone on active military duty, but also with regard to the civilian victim, who has the right to participate in the criminal proceedings not only for the purposes of the corresponding reparation of the damage but also to exercise his or her rights to the truth and to justice [...]. In this regard, the victims of human rights violations and their next of kin have the right to have these violations heard and decided by a competent court, in accordance with due process and access to justice. The importance of the passive subject transcends the military sphere, because juridical rights that belong to the ordinary regimen are involved.²¹⁵

161. The rape of a person by military personnel bears no relation, in any case, to military discipline or mission. On the contrary, the offense committed by military personnel against Mrs. Rosendo Cantú affected juridical rights protected by domestic law and by the American Convention, such as the victim's right to personal integrity and privacy. It is evident that such conduct is openly contrary to the obligations to respect and protect human rights and, consequently, is outside the competence of the military jurisdiction. Based on the foregoing, the Court concludes that the intervention of the military justice system in the preliminary investigation of the rape was contrary to the parameters regarding the exceptional and restrictive nature of that system and involved the application of military jurisdiction which acted without taking into account the nature of the acts involved. This conclusion is valid in the present case, even though the incident is only at the investigation stage in the Military Prosecutor's Office. As stated previously, the incompatibility of the American Convention with the intervention of the military justice system in this type of case does not apply solely to the act of prosecution, which is the responsibility of a court, but fundamentally to the investigation itself, given that this process constitutes the beginning and the necessary grounds for the subsequent intervention of an incompetent court. Based on the foregoing, the Court

²¹² *Case of Radilla Pacheco*, *supra* note 36, para. 272.

²¹³ *Case of Radilla Pacheco*, *supra* note 36, para. 273.

²¹⁴ *Case of Radilla Pacheco*, *supra* note 36, para. 274.

²¹⁵ *Case of Radilla Pacheco*, *supra* note 36, para. 275.

finds that the State violated the rights to a fair trial and judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú. As in previous cases²¹⁶ when the Court concludes that the military criminal jurisdiction is not competent, it considers it unnecessary to rule on other arguments concerning the independence or impartiality of the military justice system or on the possible violation of other Inter-American instruments, based on the same facts.

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162. Furthermore, the Court notes that the intervention of the military justice system was based on Article 57(ii) (a)²¹⁷ (*supra* para. 144). In this regard, the Court reiterates that this provision:

is a broad and imprecise provision that prevents the determination of the strict connection of a crime that falls under the ordinary jurisdiction with military jurisdiction objectively assessed. The possibility that the military courts may prosecute a soldier accused of an ordinary crime, merely because he is on active service, implies that the jurisdiction is granted merely because he is a soldier. Thus, even if the crime is committed by soldiers while they are still on active service, or based on acts of service, this is not sufficient for such crimes to be heard by the military criminal justice system.²¹⁸

163. In the case of *Radilla Pacheco*, the Court considered that the provision contained in the aforementioned Article 57(ii) (a) operates as a rule and not as an exception, a necessary characteristic of military jurisdiction for it to comply with the standards established by this Court.²¹⁹ The Court recalls that Article 2 of the American Convention establishes the general obligation of a State Party to adapt its domestic law to the provisions of the Convention in order to guarantee the rights enshrined therein, which means that the measures of domestic law must be effective (the *effet utile* principle).²²⁰ Consequently, the Court finds that the State failed to comply with its obligations under Article 2 of the American Convention, in connection with Articles 8 and 25 thereof, by extending the jurisdiction of the military justice system to crimes that have no specific connection to military discipline or to juridical rights inherent to the military justice system.

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164. Finally, regarding the alleged absence of an effective remedy to contest the military jurisdiction, the Court has indicated that Article 25(1) of the Convention

²¹⁶ Cf. *Case of Cantoral Benavides*, *supra* note 125, para. 115 and *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2009. Series C No. 207, para. 124.

²¹⁷ Article 57(II)(a) of the Military Justice Code states:
The following are crimes against military discipline:
II. Those of the common or federal jurisdiction, when any of the circumstances stated below are involved:
a) when committed by military personnel while on active service or as a result of their actions [.]

²¹⁸ *Case of Radilla Pacheco*, *supra* note 36, para. 286.

²¹⁹ Cf. *Case of Durand and Ugarte v. Peru. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 117; *Case of La Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 200 and *Case of Radilla Pacheco*, *supra* note 36, para. 287.

²²⁰ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 68; *Case of the Dos Erres Massacre*, *supra* note 27, para. 122 and *Case of Chitay Nech et al.*, *supra* note 25, para. 213

establishes the obligation of the States Party to guarantee to all those under its jurisdiction, an effective judicial remedy for acts that violate their fundamental rights.²²¹

165. Mrs. Rosendo Cantú filed a petition for amparo against the decision of the Civil Public Prosecutor's Office confirming the military justice system's jurisdiction in this case (*supra* para. 145). However, her petition was dismissed in first instance (*supra* para. 145), since the proceedings of the Common Public Prosecutor's Office "are unlikely to affect the legal interest of the plaintiff in this jurisdiction, because it is not a final proceeding or a decision that is directly binding for the agent of the [Military] Prosecutor's Office, who declined jurisdiction, to rule in this regard." Therefore, they invoked "grounds of inability to execute the petition for amparo which prohibits the Court of Constitutional Control from ruling on the merits of the matter."²²² This decision was confirmed using the same arguments.²²³ Mrs. Rosendo Cantú also presented an appeal regarding the jurisdiction of the Military Prosecutor's Office (*supra* para. 145) requesting that it refrain from hearing the case.²²⁴ In response to the decision to dismiss the appeal²²⁵ and to confirm the military's jurisdiction in the case, Mrs. Rosendo Cantú lodged a new appeal for amparo, challenging the Military Prosecutor's Office's jurisdiction over case of the rape committed against her.²²⁶ This appeal was partially dismissed and partially denied on the merits by the Fifth Judge of District "B" of Appeals on Criminal Matters of the Federal District, who ruled that, "if the complainant in the case is the party offended by the crime, it is not legally possible to establish the civil authority's competence to hear or investigate those unlawful acts, given that was not the legislator's purpose except when the commission of the offense involves civilians and soldiers, or only civilians who infringe upon military law, namely, when the main perpetrator is a civilian or citizen, circumstances not evident in this case given nature of the complainant."²²⁷ Likewise, the Judgment affirmed that, "given that the notion of a violation [to the rights of Mrs. Rosendo Cantú] is unfounded, [...] it is appropriate to deny the amparo."²²⁸

166. Based on the foregoing decisions, the Court concludes that Mrs. Rosendo Cantú was unable to contest the competence of the military jurisdiction to hear matters which, by their nature, should be brought before the authorities of the ordinary courts. In this regard, the Court has indicated that States have an obligation to establish by law, and ensure the application of effective remedies and guarantees of due process before the competent authorities, in order to protect all those subject to their jurisdiction from acts that violate their fundamental rights or that lead to the determination of their rights and obligations.²²⁹ Thus, the Court has established that in order for the State to comply with

²²¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Usón Ramírez*, *supra* note 216, para. 128 and *Case of Radilla Pacheco*, *supra* note 36, para. 291.

²²² Cf. Order of the First District Judge of the state of Guerrero, *supra* note 166, page 11285 and 11288.

²²³ Cf. Judgment of the Fifth Judge of District "B" on Criminal Matters in the Federal District, *supra* note 172, pages 12414 to 12438.

²²⁴ Cf. Brief of Mrs. Rosendo Cantú challenging jurisdiction, *supra* note 169, pages 16762 to 16778.

²²⁵ Cf. Order No. AP-I-3577 of the Attorney General for Military Justice of January 20, 2003, *supra* note 170, pages 550 to 587.

²²⁶ Cf. Petition for amparo presented by Mrs. Rosendo Cantú on February 11, 2003, *supra* note 171, pages 11947 to 12007.

²²⁷ Cf. Judgment of Fifth Judge of District "B" on Criminal Matters in the Federal District, *supra* note 172, page 12433.

²²⁸ Cf. Judgment of Fifth Judge of District "B" on Criminal Matters in the Federal District, *supra* note 172, page 12437.

²²⁹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) Merits*, *supra* note 123, para. 79; *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru*.

the provisions of Article 25 of the Convention, the formal existence of remedies is not sufficient; rather, they must be effective under the terms of that instrument.²³⁰ Being effective means that these remedies must provide results or responses to the violations of rights recognized in the Convention, in the Constitution or by law.²³¹ The Court has reiterated that this obligation implies that the remedy must be adequate to address the violation and be applied effectively by the competent authority.²³²

167. As stated previously (*supra* paras. 160), the Court emphasizes that the victim's participation in criminal proceedings is not limited to merely repairing the damage done but, is primarily designed to make effective her rights to know the truth and obtain justice before the competent judicial authorities. This necessarily means that, at the domestic level, adequate and effective remedies must exist for a victim to be able to challenge the competence of the authorities who exercise jurisdiction over matters, when it is considered that they do not have jurisdiction.²³³ Consequently, in this case, the remedy of amparo was not effective in allowing Mrs. Rosendo Cantú to challenge the hearing of the complaint of rape by the military courts, which constitutes a violation of Article 25(1) of the Convention.

C. Due diligence in processing the complaint and investigating the rape

168. The Commission argued that the State obstructed Mrs. Rosendo Cantú's access to justice by denying her medical care and by not acting with due diligence to investigate and punish the rape of which she was a victim. As regards the deficient medical care, the Commission stated that: i) the doctor on call at the state emergency clinic in the community of Caxitepec where Mrs. Rosendo Cantú went on February 18, 2002, refused to see her "because he did not want problems with the soldiers" and because he did not have "the necessary equipment"; ii) on February 25, 2002, Mrs. Rosendo Cantú, with her husband and daughter, walked for almost eight hours to reach the General Hospital of Ayutla de los Libres and was not seen until the following day because she "did not have an appointment"; iii) the medical examination by a medical examiner took place on March 19, 2002, when "only physical traces of violence was evident," and iv) the "gynecological examination performed on Mrs. Rosendo Cantú focused on a physical and gynecological examination that did not comply with the minimum standards necessary to investigate a rape and with no consideration of the psychological aspects involved." This situation was aggravated "because of [Mrs.] Mrs. Rosendo Cantú's condition as an indigenous minor." Nevertheless, the Commission indicated that, by "not offering Mrs. Rosendo [Cantú] the proper guarantees to file a complaint and receive an effective legal response," the State's investigation had serious deficiencies: i) in her statement at the Public Prosecutor's Office she was not guaranteed the presence of an official interpreter, or privacy or special measures of protection in consideration of her status as an adolescent and a rape victim; ii) the State wasted "opportunities to gather basic evidentiary elements in the case, thereby hindering the possibility of identifying the alleged perpetrators of the rape"; iii) the report on the physical and gynecological examinations was neither detailed nor complete, as recommended by the Istanbul

Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2009 Series C No. 198, para. 72, and *Case of Radilla Pacheco*, *supra* note 36, para. 295.

²³⁰ Cf. *Judicial Guarantees in a State of Emergency (Arts. 27(2), 25 and (8) of the American Convention)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24; *Case of Radilla Pacheco*, *supra* note 36, para. 296 and *Case of Chitay Nech et al.*, *supra* note 25, para. 202.

²³¹ Cf. *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) of the American Convention)*. *supra* note 230, para. 23; *Case of Usón Ramírez*, *supra* note 216, para. 129 and *Case of Chitay Nech et al.*, *supra* note 25, para. 202.

²³² Cf. *Case of Maritza Urrutia v. Guatemala*, *supra* note 125, para 117; *Case of Radilla Pacheco*, *supra* note 36, para. 296 and *Case of Chitay Nech et al.*, *supra* note 25, para. 202.

²³³ Cf. *Case of Radilla Pacheco*, *supra* note 36, para. 297.

Protocol, and iv) the investigation methods did not comply with the parameters established in that Protocol. Consequently, although eight years have passed since the rape incident, "the investigation is in its initial stages." Based on the foregoing, the Commission requested that the Court declare that the State violated Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof.

169. As to the specific obligation to punish violence against women, the Commission reported that it had received "information on the obstacles faced by indigenous women in obtaining access to justice, which are generally related to social exclusion and ethnic discrimination." These barriers can be particularly serious, since they represent "multiple forms of discrimination" because the alleged victims are women, indigenous people and poor. Particularly, in cases involving the rape of indigenous women, investigators frequently reject the complaints, place the burden of proof on the victim and the investigation mechanisms are flawed and even threatening and disrespectful. Article 7(b) of the Convention of Belém do Pará requires the State to act with due diligence when investigating and punishing violence against women, establishing specific obligations that complement the State's obligations regarding compliance with the rights enshrined in the American Convention. In this case, Mrs. Rosendo Cantú was not provided with access to the necessary medical services as a victim of rape, and this lack of diligence in offering services has contributed to the impunity of the case. The Commission asked the Court to rule that the State had failed in its obligation to act with due diligence to prevent, investigate and punish violence against women, pursuant to Article 7 of the Convention of Belém do Pará. Furthermore, the Commission asked the Court to declare that "the absence of an impartial investigation into torture, and the continuing impunity of those responsible, constitute a failure to comply with the obligations established in Articles 1, 6 and 8 of the [Convention Against Torture]."

170. The representatives asserted that the State did not offer Mrs. Rosendo Cantú effective access to justice on equal terms, given that her specific circumstances were not taken into consideration. They argued that "there was complete ignorance on the part of the medical institutions regarding the treatment of a woman who had been the victim of sexual violence": i) on February 18, 2002, the doctor at the Caxitepec clinic refused to examine the victim due to fear of the soldiers and because he lacked the necessary equipment, so he sent her to the Ayutla General Hospital without providing information on the circumstances in which he had received her or the reasons for sending her to the Hospital; ii) the [female] doctor who examined her at the Ayutla General Hospital on February 26, 2002, "did not have the necessary expertise to perform an examination of that nature," and her "medical note [only] referred [to] a 'trauma to the abdomen'"; iii) on March 12, 2002, Mrs. Rosendo Cantú, accompanied by officials of the Human Rights Commission of the state of Guerrero and the NHRC, was treated at the Ayutla General Hospital. The [female] doctor ordered examinations but these were not conducted "for lack of [chemical] reagents"; iv) after filing the complaint, Mrs. Rosendo Cantú was not examined by a female forensic examiner, because the Common Public Prosecutor's Office did not "have a female forensic physician, and [...] the only doctor they had was not [available] at the time"; v) to the request of the Public Prosecutor's Office to perform a gynecological examination of Mrs. Rosendo Cantú, the General Office of Expert Services of the Guerrero Office of the Attorney General "responded that it did not have personnel specialized in [g]ynecology" and that the examination would be carried out in the city of Chilpancingo; vi) the relevant examinations for a rape victim were carried out on March 19, 2002, by a "male medical examiner," who "did not find evidence of rape, only visible external physical marks that remained," and vii) the examinations performed on the victim were not conducted by competent professionals, according to international standards and were incomplete. Indeed, the State did not seek a psychological examination to establish the existence of sexual torture, did not carry out essential examinations required in cases of rape against women and did not "offer the victim the basic treatment guarantees afforded to a minor victim of violence." The representatives also pointed out that various omissions by the State in the investigation have "translated into the failure to conduct a serious, complete and effective investigation of the facts": i)

the authorities did not initiate the investigation of the rape as an offense of torture, taking into account the specificities of the case or the international standards for the investigation of that type of violation; ii) the Public Prosecutor's Office made serious errors when taking the victim's statement; the statement was not taken by competent personnel with experience in dealing with victims, with awareness of the context and sensitivity to the complainant; no interpreter or translator was provided and no questions were asked to guide the statement so as to obtain the relevant information to clarify the facts, and iii) the authorities did not collect or adequately and diligently protect evidence that was fundamental to the investigation. Based on the foregoing, the representatives argued that the State violated Articles 8 and 25 of the American Convention.

171. Regarding the obligation to punish violence against women, the representatives argued that the State had failed to comply with Article 7(b) of the Convention of Belém do Pará by failing to guarantee the rights of Mrs. Rosendo Cantú, because it had not conducted an exhaustive, serious and effective investigation into the incident of which she was a victim. Finally, based on the same facts, in addition to the failure to properly define the crime of torture in the Criminal Code of the state of Guerrero, the representatives concluded that the State had failed to comply with the obligations established in Articles 1, 6 and 8 of the Convention Against Torture, in relation to Articles 1(1) and 2 of the American Convention.

172. In its answer to the application, based on different arguments, the State denied that it had violated Mrs. Rosendo Cantú's rights to a fair trial and judicial protection. Subsequently, the State made a partial acknowledgement of its international responsibility concerning the right to a fair trial and judicial protection (*supra* paras. 14 and 18), though it asked the Court to rule on specific points, "in its analysis of the scope of the State's obligations in light of Articles 8(1) and 25 of the American Convention." (*infra* paras. 187 to 192).

173. At the same time, Mexico denied any violation of the Convention of Belém do Pará in the investigation of the facts and presented information on "the actions progressively taken to guarantee the promotion of and respect for women's human rights," in order to "corroborate [...] the compliance with its conventional obligations enshrined in Articles 1(1) and 2 of the [American Convention], in relation to Article 7 of the [Convention of Belém do Pará]." The State referred to various public policy initiatives implemented in order to "achieve the [progressive] protection, prevention and punishment of [all] acts [...] of discrimination and violence against women, of any type." Regarding the alleged violation of the Convention to Prevent and Punish Torture, the State noted that, "the determining objective and subjective elements of torture that would enable the Court to condemn the State for its omission are not present" and asked the Court to declare "the non-configuration of violations of Articles 1, 6 and 8 of the Convention [against Torture]."

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174. The Court recalls that Mexico acknowledged its international responsibility in relation to Articles 8 and 25 of the American Convention for the following facts: the lack of appropriate and specialized medical care provided (to Mrs. Rosendo Cantú) at the time she filed her criminal complaint, the lack of specialized attention afforded to her as a female minor at the time the criminal complaint was filed, the delay in carrying out the investigations and the effects on her mental integrity resulting from the delay in the investigation. The State also argued that it had not violated other rights established in the American Convention, or in any other Inter-American legal instrument (*supra* para. 17). Consequently, there is still a need to determine certain facts and to settle the dispute as to whether the criminal investigation failed to comply with unacknowledged aspects of the guarantees arising from Articles 8(1) and 25(1) of the American

Convention, in relation to Articles 1(1) and 2 thereof, and also Article 7 of the Convention of Belém do Pará and Articles 1, 6 and 8 of the Convention to Prevent and Punish Torture.

175. The Court reiterates that the obligation to investigate human rights violations is among the positive measures that States must adopt to guarantee the rights established in the Convention.²³⁴ The obligation to investigate is an obligation of means rather than of results. However, it must be undertaken by the State as an inherent legal obligation and not as a mere formality, preordained to be ineffective, or as a step taken by private interests that depends upon the procedural initiative of the victims or their family, or upon their elements of proof.²³⁵ In light of this obligation, once the State authorities are aware of an incident, they should initiate *ex officio* and without delay, a thorough, impartial and effective investigation.²³⁶ This investigation must be performed using all available legal means for the purpose of discovering the truth.

176. The Court has also indicated that, according to Article 8 of the Convention, the victims of human rights violations or their families should have ample opportunity to be heard and to take part in the respective proceedings, both in order to clarify the facts and punish those responsible and also to seek appropriate reparation. Furthermore, the Court has indicated that the obligation to investigate and the corresponding right of the alleged victims or their families is not only derived from the treaty-based provisions of international law which are binding for the State Parties, but also from domestic law regarding the obligation to investigate *ex officio* certain unlawful conduct, as well as from the norms that allow victims or their families to denounce or submit complaints, evidence or petitions, or take any other steps in order to participate in procedural terms in the criminal investigation to establish the truth of the facts.²³⁷

177. In cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are complemented and enhanced for States Parties by the obligations arising from the specific obligations of the Inter-American treaty of the Convention of Belém do Pará. Article 7(b) of this Convention specifically requires the States Parties to apply due diligence to prevent, punish and eradicate violence against women. Thus, when an act of violence is committed against a woman, it is particularly important that the authorities in charge of the investigation conduct it in a resolute and effective manner, taking into account society's obligation to reject violence against women and the State's obligation to eliminate it and secure the victims' trust in the State institutions for their protection.

178. On previous occasions, this Court has defined the guiding principles that must be observed in criminal investigations into human rights violations, which include, *inter alia*: the recovery and preservation of evidence in order to assist in a potential criminal investigation of the perpetrators; identification of possible witnesses, obtaining their statements and determination of the cause, manner, place and time of the act

²³⁴ Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 33, paras. 166 and 176; *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 98 and *Case of Garibaldi*, *supra* note 211, para. 112.

²³⁵ Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 33, para. 177; *Case of Radilla Pacheco*, *supra* note 36, paras. 192 and 233 and *Case of Chitay Nech et al.*, *supra* note 25, para. 192

²³⁶ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 298 and *Case of González et al. ("Cotton Field")*, *supra* note 21, para. 290.

²³⁷ Cf. By way of an example, the Federal Code of Criminal Procedure, Article 141, which recognizes the Rights of the injured party in the preliminary investigation (section A), in the criminal procedure (section B), and during the execution of sanctions (section C), and the Guerrero Criminal Procedure Code, Article 5, first paragraph, which recognizes the right of the victim or the injured party to collaborate with the Public Prosecutor, offering the court, either through this channel or directly, all the facts available to prove the facts and amount of damages and injuries caused by the crime.

investigated. In addition, there should be a thorough examination of the crime scene and a rigorous analysis of the evidence by competent professionals using the most appropriate procedures.²³⁸ In cases of violence against women, several international instruments describe and illustrate the State's obligation to investigate such acts with due diligence.²³⁹ For example, in the course of a criminal investigation for rape: i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and trust; ii) the victim's statement should be recorded to avoid or limit the need for repetition; iii) the victim should be provided with medical, health care and psychological treatment, both on an emergency basis, and continuously if required, through an assistance protocol designed to lessen the consequences of rape; iv) a complete and detailed medical and psychological examination should be conducted immediately by suitable trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she may be accompanied by a trusted person if she so wishes; v) the investigative tasks should be coordinated and documented and the evidence handled with care, taking sufficient samples and performing all possible tests to determine the perpetrator of the act, and obtaining other evidence such as the victim's clothing, immediate examination of the crime scene and guaranteeing the proper chain of custody of the evidence, and vi) access to free legal assistance at all stages of the proceedings should be provided for the victim.

179. In this case, in addition to the facts acknowledged by the State (*supra* paras. 16 and 18), the Court considers proven the following omissions and errors in the investigations:

- i) the State had knowledge of the facts prior to the filing of the formal complaint on March 8, 2002 with the Public Prosecutor's Office, but did not immediately open an investigation, did not offer prompt medical assistance to the victim to obtain the necessary expert evidence and did not immediately file a

²³⁸ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 128; *Case of Garibaldi*, *supra* note 211, para. 115 and *Case of González et al. ("Cotton Field")*, *supra* note 21, para. 300.

²³⁹ Cf. United Nations Office of the High Commissioner for Human Rights, Istanbul Protocol, *supra* note 39, *inter alia*, paras. 67, 77, 89, 99, 101 to 103, 155, 162, 163, 170, 171, 224, 225, 260, 269 and 290, and World Health Organization, Guidelines for Medical-Legal Care for Victims of Sexual Violence, *supra* note 39, *inter alia*, pages 17, 30, 31, 34, 39-44 and 57-74.

complaint for the possible rape of an indigenous girl.²⁴⁰ The NHRC received a complaint²⁴¹ from

ii) Mrs. Rosendo Cantú narrating the facts on February 27, 2002,²⁴² issued a resolution the following day,²⁴³ and then on March 4, the complaint was processed.²⁴⁴ Moreover, in a report presented by the NHRC, the State affirmed that the Commander of the 35th Military Zone learned of the facts on February 28, 2002,²⁴⁵ and the military authorities sent radiograms on March 1 and 2, 2002,²⁴⁶ referring to the facts of the case. The formal investigation by the Military Prosecutor's Office did not begin until March 5, 2002;

iii) a female official of the Civil Public Prosecutor's Office declined to receive Mrs. Rosendo Cantú's complaint; this situation required the intervention of another public servant to ensure that they complied with their legal obligations;²⁴⁷

²⁴⁰ Article 71 of the NHRC Law of 1992 establishes that:

The National Commission may render a special report when acts or omissions persist that involve evasive conduct or delaying tactics on the part of the authorities and public servants who intervene or assist in the investigations, notwithstanding the requirements established.

The National Commission shall report to the competent organs any crimes or misdemeanors which, regardless of said conduct and attitudes, were committed by such authorities or government officials.

Article 100 of the Mexican Military Justice Code stipulates that:

Any member of the military who discovers or has any knowledge of the commission of a crime of the jurisdiction of military tribunals, is obliged to report it immediately to the Public Prosecutor's Office, through the proper channels.

The infringement of this provision shall not be punishable when the offender is linked to a member of the military through kinship or direct blood ties without limitation of degree, and in the collateral line to the fourth degree, or in affinity to the second degree.

The Law for the Protection and Development of Children in the state of Guerrero, of January 15, 2002, states in Article 122 that:

Any person who has knowledge of actions or omissions involving mistreatment, abandonment, neglect, abuse and generally, any assault against a minor, against their physical or moral integrity, property or rights, is required to file a complaint with the Office for the Defense of the Child.

²⁴¹ Cf. Complaint filed by Mrs. Rosendo Cantú and Mr. Bernardino Sierra before the NHRC, *supra* note 64, pages 7556 and 7561.

²⁴² Cf. Acknowledgment of receipt of the complaint filed by Mrs. Rosendo Cantú in the NHRC Office of Parties by the Fourth Inspectorate General of the NHRC, of February 27, 2002 (File of attachments to the answer to the application, volume I, page 7556).

²⁴³ Cf. Record of receipt of documents of the NHRC, of February 28, 2002 (File of attachments to the answer to the application, volume I, page 7550).

²⁴⁴ Cf. Identification card of the complaint of the technical record of the NHRC, of March 4, 2002 (File of attachments to the answer to the application, volume I, page 7574 to 7576).

²⁴⁵ Cf. Official letter DH-8189/0445 of the Attorney General for Military Justice addressed to the Fourth General Inspectorate of the NHRC, of April 6, 2002 (File of attachments to the answer to the application, volume I, pages 7697 to 7701) and Official letter No. 11606/9656 of Legal Aid of Section of the Agent of the Military Prosecutor's Office assigned to 35th the Military Zone, addressed to the Secretary of the Secretariat of National Defense, of March 28, 2002 (File of attachments to the answer to the application, volume I, pages 7702 to 7707).

²⁴⁶ Cf. Radiogram 2441 of the Commander of the 35th Military Zone of March 1, 2002 (File of attachments to the answer to the application, volume II, pages 8100 to 8103), radiogram 2/5179 of the Command of the IX Military Region of March 2, 2002 (File of attachments to the answer to the application, volume I, pages 8112 to 8116).

²⁴⁷ Cf. Statement by Mr. Lugo Cortés during the public hearing, *supra* note 88. See also, statement of Mrs. Rosendo Cantú during the public hearing *supra* note 64 and statement of Mrs. Eugenio Manuel rendered before a notary public (Merits file, volume III, page 1278).

iv) even though she did not speak Spanish fluently at the time of the incident, Mrs. Rosendo Cantú was not provided with an interpreter, but had to be assisted by her husband; in the Court's opinion this was inappropriate because it failed to respect her cultural diversity, and failed to ensure the quality of the contents of the statement, or protect the confidentiality of the complaint.²⁴⁸ The Court considers it especially inappropriate that victim had to turn to her husband to recount the facts of the rape;

v) upon filing her complaint, the victim was not guaranteed the minimum requisites of consideration and privacy that should be afforded to a victim of this type of offense. On the contrary, it occurred in a place where members of the general public were present, and where there was even a possibility that the victim could be overheard by people she knew;²⁴⁹

vi) there is no record that the authorities in charge of the investigation collected or made arrangements to collect the pieces of evidence regarding other elements, such as the clothing that Mrs. Rosendo Cantú was wearing on the day of the incident;

vii) Mrs. Rosendo Cantú was not provided with appropriate medical or psychological treatment during the investigation of the case,²⁵⁰ and

viii) the investigation of the case was archived for three years and ten months.²⁵¹

180. At the same time, the Court notes with particular concern that the authorities in charge of the investigation focused their efforts on repeatedly summoning Mrs. Rosendo Cantú to make statements and not on obtaining and safeguarding other evidence. The Court emphasizes that in cases of rape, insofar as possible, the investigation must try to avoid re-victimization or the re-experiencing of the profoundly traumatic experience each time the victim recalls or testifies about what happened.

181. Furthermore, the Court finds that in this case, several of the government employees who initially intervened in the complaint filed by Mrs. Rosendo Cantú showed a complete lack of motivation, sensitivity and competence. Likewise, the failure of the medical staff and officials of the Public Prosecutor's Office who initially attended the

²⁴⁸ Cf. Statement by Mr. Lugo Cortés during the public hearing, *supra* note 88. See also, statement of Mrs. Rosendo Cantú during the public hearing *supra* note 64 and statement of Mrs. Eugenio Manuel rendered before a notary public, *supra* note 247, page 1278.

²⁴⁹ Cf. Statement of Mr. Lugo Cortés during the public hearing, *supra* note 88. Also see statement of Mrs. Rosendo Cantú during the public hearing *supra* note 96 and statement of Mrs. Eugenio Manuel rendered before a notary public, *supra* note 247, page 1278.

²⁵⁰ Cf. Psychiatric report on Mrs. Rosendo Cantú, *supra* note 102, pages 7673, 7688, 7689 to 7691, 7694 and 7696; Psychological impression number 27 issued by psychologist Eduwiges Sánchez Hernández of the Special Prosecutor's Office for the Commission on Violence Against Women and Human Trafficking (FEVIMTRA), of September 19, 2008, signed by the psychologist Ana María Olguín García (File of attachments to the answer to the application, volume V, pages 9460 to 9462); Psychology report, received on record on April 21, 2010, within the Preliminary Investigation SC/180/2009/II-E (File of attachments received during the public hearing, volume II, pages 17922 to 17929).

²⁵¹ The investigations of the case in the Military Justice System were archived between March 12, 2004 and January 10, 2008. Cf. Agreement of Consideration of the Fourteenth Investigative Agent of the Military Prosecutor's Office, assigned to the Office of Preliminary Investigations of the Attorney General of Military Justice, of February 26, 2004 (File of attachments to the answer to the application, volume V, pages 9788 to 9803 and volume X, pages 11916 to 11922). See also, Brief of Observations of the State in the processing of the case before the Commission, *supra* note, pages 4390 to 4406, and Record of the Agent of the Public Prosecutor of the Common Jurisdiction, assigned to the General Office of Control of Investigatory Services, of January 10, 2008 (File of attachments to the answer to the application, volume XV, page 13786).

victim to use an action protocol was especially serious and had negative consequences on the assistance afforded to the victim and on the legal investigation of the rape. Regarding this aspect, the Court stresses the comments made by the expert witness Arroyo Vargas during the public hearing of the case, that in “cases of sexual violence, the minimum standards [for evidence gathering] must be immediacy and speed.”²⁵²

182. Based on the foregoing considerations and on the State’s partial acknowledgement of responsibility, the Court concludes that the State authorities did not act with due diligence in the investigation of the rape of Mrs. Rosendo Cantú, which, in addition, exceeded a reasonable period of time. Consequently, the State violated her rights to a fair trial and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and did not comply with the obligations established in Article 7(b) of the Convention of Belém do Pará, to the detriment of Mrs. Rosendo Cantú.

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183. As to the allegations by the representatives and the Commission regarding discrimination in access to justice to the detriment of Mrs. Rosendo Cantú, the Court notes that the representatives considered that the State violated her rights to equal protection and non-discrimination in access to justice, recognized in Articles 8 and 25, 24 and 1(1) of the American Convention, whereas the Commission only alleged non-compliance with the latter provision and its corresponding substantive norms. In this regard, the Court recalls that the general obligation of Article 1(1) refers to the State’s responsibility to respect and guarantee “without discrimination” the rights contained in the American Convention, while Article 24 protects the right to “equal protection of the law.”²⁵³ In other words, if it is argued that a State discriminates in its respect for or guarantee of a conventional right, then the matter should be analyzed under Article 1(1) of the substantive right in question. Conversely, if the alleged discrimination refers to unequal protection by the domestic law, then it should be analyzed under Article 24 thereof. As such, the alleged discrimination in access to justice derived from Articles 8 and 25 should be analyzed under the general obligation to respect and guarantee the conventional rights without discrimination, recognized under Article 1(1) of the Convention.

184. As the Court has established previously, and based on the principles of non-discrimination enshrined in Article 1(1) of the American Convention, in order to guarantee access to justice to members of indigenous communities, “it is essential that States offer effective protection that takes into account their particularities, social and economic characteristics, as well as their situation of special vulnerability, customary law, values, customs and traditions.”²⁵⁴ Moreover, the Court has noted that, “States

²⁵² Cf. Statement of expert witness Arroyo Vargas rendered during the public hearing on May 27, 2010.

²⁵³ Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 53 and 54. Also cf. *Case of Aritz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182, para. 209; *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 348 and *Case of Perozo et al.*, *supra* note 236, para. 379.

²⁵⁴ Cf. *Case of Yakye Axa Indigenous Community*, *supra* note 102, para. 63; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment March 29, 2006. Series C No. 146, para. 83; *Case of the Saramaka People. v. Surinam. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 178 and *Case of Tiu Tojín v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 96.

should avoid creating, either directly or indirectly, situations of *de jure* or *de facto* discrimination."²⁵⁵

185. The Court considers it proven that Mrs. Rosendo Cantú was not provided with a translator by the State when she required medical care, or when she filed her initial complaint; nor did she receive information, in her own language, about the subsequent steps taken regarding her complaint. In order to inform the authorities about what had happened to her and to obtain information, she had to turn to her husband who spoke Spanish. Nevertheless, on subsequent occasions when the State called upon the victim, it offered an interpreter and also stated that it was implementing a program to provide indigenous interpreters in Guerrero. The Court takes a positive view of both these steps. However, the inability to file a complaint and receive information in her language at the initial stages of this case implied treatment that did not consider Mrs. Rosendo Cantú's situation of vulnerability based on her language and ethnicity, thereby constituting an unjustified impairment of her right to obtain justice. Accordingly, the Court considers that the State did not fulfill its obligation to guarantee, without discrimination, the right to have access to justice, according to Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof.

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186. In addition, the Commission and the representatives alleged the violation of the Inter-American Convention to Prevent and Punish Torture. They stated, *inter alia*, that the authorities did not investigate the rape as a crime of torture, and that the Criminal Code of Guerrero does not define this crime. The Court understands that this argument fundamentally refers to the legal definition under which the rape suffered by Mrs. Rosendo Cantú was investigated. Article 1 of the treaty establishes the general obligation to prevent and punish torture. In this regard, Article 6 establishes the obligation to make torture a criminal offense under domestic law, establishing severe penalties for such acts. Finally, Article 8 of the Convention establishes, in general terms, the obligation to open, *ex officio* and immediately, an impartial criminal investigation into any alleged act of torture. The Court considers that in this case, the State did not fail to comply with Articles 1, 6 and 8 of the aforementioned Convention when investigating the facts to the detriment of Mrs. Rosendo Cantú, which given its characteristics constituted a crime of torture, classifying it as a rape. Indeed, the investigation under the definition of a rape is consistent with the complaint filed in this specific case and with the general obligation that acts of torture be considered crimes in domestic law, as well as with the requirement of the severity of punishment. In this regard, the Court notes that rape is a crime defined in the Criminal Code of Guerrero²⁵⁶ and in the Federal Criminal Code of Mexico,²⁵⁷ which establish penalties of eight to

²⁵⁵ *Juridical Condition and Rights of Undocumented Immigrants*. Advisory Opinion OC-18/03, *supra* note 210, para. 103.

²⁵⁶ The Criminal Code of the state of Guerrero establishes:

Article 139: Any person who by means of physical or moral violence copulates with a person of any gender, shall be punished with eight to sixteen years of imprisonment and sixty to four hundred days fine.

Article 141: A penalty of eighteen to twenty-two years imprisonment and one hundred and twenty to five hundred days fine shall be imposed: [...] III. When the act of copulation is carried out by the perpetrator, taking advantage of the means of circumstances afforded by his job, public office or position, having regard to his professional responsibilities. The agent will also be sentenced to dismissal from public service or employment and disqualification for eight years.

Article 142: When a rape is committed by two or more persons, a penalty of ten to thirty years imprisonment and four to six hundred days fine shall be imposed.

²⁵⁷ The Federal Criminal Code of Mexico establishes:

Article 265: Any person who, by means of physical or moral violence, copulates with a person of any gender, will be punished by eight to fourteen years of prison.

sixteen years of imprisonment and eight to fourteen years of imprisonment, respectively. Based on the foregoing, it is not necessary to issue an additional ruling in this respect, neither on the inadequate definition of the crime of torture in the state of Guerrero nor on other alleged violations based on the same facts that were analyzed in a timely manner under other treaty-based obligations.

D. Request of the State regarding specific aspects of the investigations

187. Finally, in response to the State's request (*supra* para. 17), the Court will rule on the following aspects:

A. The actions of the authorities within the current legal framework

The State argued that: i) "the domestic investigations of the facts denounced [...] have been carried out, at all times, by ministerial [investigative] authorities previously created by law which have acted within the legal framework in force in Mexico"; ii) "the [M]ilitary [P]rosecutor is currently the only competent authority under the current legal system in Mexico, and will continue as such until a legislative reform is approved in this regard"; iii) the objection to the jurisdictional authority expressed by the alleged victim during the domestic investigation should also be analyzed by the Court, and iv) "Mrs. Rosendo Cantú's failure to appear in court [...] resulted in a vicious circle in which the jurisdiction of the [investigative authorities] was challenged, while the necessary information was not given to the authorities to specify the type of crime that was being investigated." Consequently, Mexico asked the Court to determine "to what extent it was valid for victims to oppose, based on the argument of jurisdiction, the implementation of measures that were essential to the investigation and for which all necessary guarantees had been ensured," and to consider that the ministerial [investigative] authorities had acted in conformity with the current legal framework and, subject to subsequent legislative reforms, determine that it is the Military Prosecutor's Office who must continue with the investigation of the facts.

B. Interventions with a gender perspective and respect for procedural guarantees

The State indicated that Mrs. Rosendo Cantú: i) "was provided with an interpreter- translator of the Secretariat of Indigenous Affairs of the government of the state of Guerrero;" ii) has had the right to be assisted by a person of trust during the processing of this case; iii) has had, along with her attorneys, the opportunity to be heard by the ministerial [investigative] authorities and at all times has had full access to the case files; iv) has personally and through her representatives received explanations about the nature of the jurisdiction in the case, and v) her request that the Attorney General's Office participate in facilitating the proceedings was addressed. The State also affirmed that during the period when the investigation was under the civil jurisdiction, "the interdisciplinary group on gender perspective was created, made up of female personnel" from various organizations, which has continued collaborating in the investigations since the case was forwarded" to the military jurisdiction. This interdisciplinary group on gender-perspective "was always fully available to travel to the locations indicated by the representatives to complete the procedures and [also kept] open channels of communication to address specific requests in the investigations."

Article 266 bis: The punishment contemplated for sexual abuse and rape shall be increased by half, at a minimum and maximum, when: [...] III. The crime is committed by a person holding public office or employment or in the course of his professional activities, using the means or circumstances that they provide. In addition to the prison sentence, the convicted individual shall be disqualified from office or employment or suspended for a term of five years from the exercise of that profession.

C. Invitation to the victim to participate in the investigations and the value of the victim's statement

The State asked the Court to analyze "its willingness to continue the investigations, [through] the repeated invitations made [...] to the alleged victim to involve her in the investigations." Mrs. Rosendo Cantú was invited to testify on ten occasions and she was officially asked to propose dates to take part in the proceedings. Accordingly, the State requested that the Court consider "to what extent the lack of cooperation by Mrs. Rosendo Cantú and her representatives has had an impact on the progress of the investigations."

D. Procedural handling of the investigation by the State

The State argued that it had promoted the investigation as its own legal duty, carrying out numerous ministerial [investigative] actions. The State's intense evidence-gathering activity has involved taking statements from various witnesses, analyzing documentary evidence, conducting "geo-referencing studies to determine the location of military personnel at the time of the events" and "medical assessments, *inter alia*."

E. Recent actions by the Military Prosecutor's Office

Mexico affirmed that as of the date when the investigations were resumed in the military jurisdiction, several procedures were carried out to determine the *corpus delicti* and the likely perpetrators. It further asserted that to avoid re-victimizing Mrs. Rosendo Cantú, it requested the presence of the gender-perspective interdisciplinary group of the Attorney General's Office at all proceedings requiring the possible participation of the alleged victim.

F. The alleged complaint filed by Mrs. Rosendo Cantú before the municipal authorities and medical personnel

The State indicated that "there is no record to show that Mexican public servants indeed had knowledge of the alleged rape of Mrs. Rosendo Cantú prior to the filing of the criminal complaint," and that neither the Commission nor the representatives have effectively proven otherwise. Similarly, the State affirmed that "the two occasions on which the Mexican authorities first had knowledge of the alleged rape" were when the criminal complaint was filed before the Public Prosecutor of the city of Ayutla de los Libres on March 8, 2002, and via a newspaper report referring to the rape, which prompted the Military Prosecutor to open an *ex-officio* investigation on March 5, 2002. As to the facts of the case referencing the medical personnel of the state of Guerrero, the State indicated that the medical files recording the care received by Mrs. Rosendo Cantú on February 18 and 26, 2002, respectively, at the clinic of Caxitepec and at the General Hospital of Ayutla de los Libres, make no reference to receiving information from the victim indicating that she had been raped. For this reason, the medical professionals did not treat her case as such and did not fail to comply with the obligation contained in domestic regulations to "inform the authorities responsible [...] of any alleged criminal act, with special emphasis on incidents involving gender-based violence."

188. In the first place, the Court points out that some of these arguments, such as those concerning the actions by the authorities within the current legal framework and the scrupulous respect for the procedural guarantees of Mrs. Rosendo Cantú, have already been addressed in detail in this section of the Judgment. The Court recalls that, regardless of its compliance with domestic law, the intervention of the Military Prosecutor's Office is not consistent with the guarantees arising from the American Convention (*supra* paras. 159 to 161). Furthermore, regarding respect for procedural guarantees, the Court takes a positive view of some of the efforts made by the State, including the provision of an interpreter on some occasions when Mrs. Rosendo Cantú was summoned to testify or take part in proceedings. Nevertheless, as the Court has

indicated, the State's actions have not been sufficient and, in some cases, have not been timely, to ensure due diligence in the investigation of the rape; indeed, Mexico has partially acknowledged these failings. Based on the foregoing, the Court does not find any reason to further consider these points.

189. In addition, the Court welcomes the establishment of an interdisciplinary group on gender perspective composed of female personnel from the Attorney General's Office, attached to different institutions, with the aim of accompanying and supporting victims in the proceedings and, to the extent possible, minimizing their re-victimization. The Court also appreciates that some progress was made during the operation of this group, for example, the artist's portrait was completed with Mrs. Rosendo Cantú's assistance, a measure that could help identify the possible perpetrators of the rape. The Court reiterates that it is essential to provide support to a rape victim from the beginning of the investigation in order to ensure her safety and provide an appropriate context to refer to the abuse suffered and to facilitate her participation, as simply and as carefully as possible, in the investigation procedures. The Court notes that, although the gender perspective group played a positive role, its work began as a result of a commitment made by the State at a hearing on this case before the Commission on October 2007; in other words, more than five and a half years after the facts had been reported.²⁵⁸

190. As to Mrs. Rosendo Cantú's failure to appear to testify, this Court realizes that in the investigation of criminal acts, even though the burden of the investigation should not rest with the victim, the victim's participation may be necessary. Therefore, the Court appreciates the State's effort to summon Mrs. Rosendo Cantú to testify on various occasions in order to advance the investigation. Nevertheless, the Court recalls its previous observations with regard to repeatedly summoning a victim of sexual offenses to testify, (*supra* paras. 178 and 180) and, in addition, it considers evident the profound fear and apprehension that would be felt by the victim of a rape attributed to soldiers when summoned to appear by the Military Prosecutor's Office, regardless of whether this authority would directly conduct the proceeding or would carry it out through the Civil Public Prosecutor's Office.

191. The Court appreciates the various investigative measures mentioned by the State. Those efforts should be continued by the ordinary Public Prosecutor's Office so that the investigation is completed with the utmost diligence and urgency, in order to determine the truth of the facts and investigate, and if applicable, punish those responsible for the rape of Mrs. Rosendo Cantú.

192. Finally, the Court finds it proven that State officials of various jurisdictions had knowledge of the facts of the case prior to the dates acknowledged by the State, specifically on February 27 and 28, 2002 (*supra* para. 179). Likewise, regarding the medical care provided on February 18 and 26, 2002, and in particular, whether the doctors were informed of the rape, the Court has already ruled on this matter in this Judgment (*supra* para. 130). Nevertheless, the Court notes that although the doctor who saw her on February 18, 2002, did in fact provide the primary care she requested (*supra* para. 130), he had received information regarding physical assault to a girl committed by soldiers, which he should have reported to the competent authorities in accordance with domestic law.²⁵⁹

²⁵⁸ Cf. Answer to the application (Merits file, volume I, page 471).

²⁵⁹ The Law for the Protection and Development of Children in the State of Guerrero, of January 15, 2002, Article 122 mandates that:

Article 122: "[a]ny person who has knowledge of actions or omissions involving mistreatment, abandonment, neglect, abuse and generally, any assault against a minor, against their physical or moral integrity, property or rights, is required to file a complaint with the Office for the Defense of the Child."

Also, the Code of Criminal Procedure in the state of Guerrero states:

E. Alleged threats and harassment of persons connected to the case

193. The Commission alleged that the harassment and threats supposedly suffered by Mrs. Rosendo Cantú, her family and her representatives “denote the absence of justice and lack of adequate measures taken by the State.” The Commission pointed out that the victim and her daughter “had to leave the community of Barranca Bejuco to protect themselves and the [c]ommunity itself. After their departure, the victim and her daughter [...] had to move on various occasions due to threats and acts of harassment.” The persistent nature of the threats, acts of persecution and harassment have made it necessary for the State to adopt measures to eliminate the situation of risk and guarantee the security of the victim, her family and her representatives.

194. The representatives argued that on several occasions, Mrs. Rosendo Cantú “has felt that she is being followed and watched, particularly when attending events to report her situation to other human rights organizations and as a result of filing the present complaint before the [...] Court.” During the public hearing, Mrs. Rosendo Cantú affirmed that for security reasons she now lives in a place and in conditions that are not of her choosing. This situation of threats and harassment has resulted in “provisional measures ordered by [the] Court to protect those involved in the pursuit of justice, although this has not stopped the threats”. The representatives concluded by asking the Court to declare the State responsible for the violation of the victim’s right to access justice given that “no effective measures were adopted to enable her and her representatives to continue in their pursuit of justice in conditions of safety,” thereby violating Articles 8 and 25 of the American Convention, Articles 1, 6 and 8 of the Convention Against Torture, and Article 7 of the Convention of Belém do Pará.

195. The State indicated that it has informed the Court that Mrs. Rosendo Cantú and her family all had remedies available to them under domestic law to denounce possible accusations or threats; similarly, it has implemented the measures necessary to protect her and her family, such as the provisional measures in force in this case. The Court also stated that, “the factual elements that prompted the implementation of precautionary and provisional measures are not part of factual framework of this case.”

196. The Court recalls that the alleged facts of harassment and threats, while not forming part of the litigation in this case, are being considered by the Court through the provisional measures ordered opportunistically (*supra* para. 15). In this regard, the Court considers that there should be no obstacles in pursuing justice in this case and, therefore, the State must continue to adopt all necessary measures to protect and guarantee the safety of the victims and other people connected to this case, ensuring that they can exercise their rights to a fair trial and to judicial protection without restrictions.

X

Article 55. When a public servant has knowledge of the commission of a crime, in the exercise of and as a result of his duties, he should report it immediately, if the crime is prosecutable *ex officio*, or else inform his hierarchical superior, if the crime is prosecutable by means of a complaint or an equivalent act, which depends on an authority. Failure to do so shall result in the application of a penalty for concealment.

Article 140 of the Health Law 159 of the state of Guerrero states the following:

Article 140: Members of the public health system should provide preferential and immediate care to children and the elderly who have been subjected to any form of abuse that endangers their physical and mental integrity. They shall also provide care to those who have been victims of crimes that threaten the physical or mental or normal psychosomatic development in individuals.

In such cases, state health institutions shall take the immediate measures necessary to protect the health of children and the elderly, without prejudice to the intervention of competent authorities.

**ARTICLE 19 (RIGHTS OF THE CHILD)²⁶⁰ IN RELATION TO ARTICLE 1(1)
(OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION**

197. The Commission stated that “the rape of [Mrs. Rosendo Cantú, a minor at the time], as well as the actions of the military jurisdiction during the investigation of the case and the subsequent impunity of those responsible [that] continues to date, constitute a clear violation of the State’s obligation to grant the special protection guaranteed in the American Convention and in other applicable international treaties.” Therefore, it asked the Court to declare the international responsibility of the State for the violation of Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú.

198. The representatives emphasized that at the time of the rape, Mrs. Rosendo Cantú was a seventeen-year-old girl. The State “did not provide [her] with primary medical care until [ten] days after she was raped” and “she did not receive proper medical treatment for her ailments until [six] months [after] the incident, when she went to a private clinic.” This being the case, the State did not comply with its duty to provide the highest level of health care for Mrs. Rosendo Cantú, given her status as a minor. Moreover, the State failed to adopt any other measures of special protection for her. Therefore, the representatives requested that the Court declare the State responsible for failing to adopt special measures of protection given her status as a minor, thereby violating Article 19 of the American Convention, to the detriment of Mrs. Rosendo Cantú.

199. In its answer to the application, the State challenged the alleged violation of Article 19 of the Convention. Nevertheless, in the public hearing and in its final written arguments, Mexico admitted that “the authorities [...] were negligent in providing Mrs. Rosendo Cantú with specialized attention given that she was a minor at the time when the complaint was filed with the Public Prosecutor of the state of Guerrero. This constituted non-compliance with the obligation to protect the rights of the child, recognized in Article 19 of the American Convention [...] and in other international instruments to which the Mexican State is a Party, such as the Convention on the Rights of the Child.”

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200. The Court has established (*supra* para. 23) that the State’s acknowledgment of responsibility has been clear and specific regarding the lack of special measures in favor of Mrs. Rosendo Cantú, given her status as minor at the time of the events, thereby acknowledging its international responsibility for the violation of the rights of the child established in Article 19 of the American Convention. Nevertheless, the Court deems it appropriate to add the following considerations.

201. The Court has previously ruled that, according to Article 19 of the American Convention, the State must assume a special position as guarantor with greater care and responsibility and must take special measures or steps aimed at the child’s best interest.²⁶¹ In this regard, the State must pay special attention to the needs and rights

²⁶⁰ Article 19 of the Convention establishes that:

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society and the State.

²⁶¹ Cf. *Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02* of August 28, 2002. Series A No. 17, paras. 56, 59 and 60; *Case of Servellón García v. Honduras. Merits, Reparations and Costs.* Judgment of September 21, 2006. Series C No. 152, para. 116 and *Case of Chitay Nech et al., supra* note 25, para. 164.

of the child, considering her particular condition of vulnerability.²⁶² In accordance with its treaty-based obligations, the State should have adopted special measures in favor of Mrs. Rosendo Cantú, not only when filing the criminal complaint, but also during the time when, as a minor, she was involved in the investigations into the offense of which she was the victim, particularly so since she was also an indigenous person, and indigenous children whose communities are affected by poverty find themselves in a situation of particular vulnerability. The obligation to protect children's best interest during the proceedings of which they are a part²⁶³ may imply, *inter alia*, the following: i) providing information and implementing the appropriate procedures, adapting these to each child's particular needs and guaranteeing that children have legal and other assistance at all times; ²⁶⁴ ii) in cases where children have been victims of crimes such as sexual abuse or other forms of mistreatment, guaranteeing their right to be heard, ensuring their full protection, ensuring that personnel are trained to work with children and that the interview rooms are safe and not intimidating, hostile, insensitive or inappropriate²⁶⁵ and iii) to the extent possible, ensuring that children are not questioned more often than necessary in order to avoid re-victimization or a traumatic impact on the child.²⁶⁶

202. Consequently, considering that Mrs. Rosendo Cantú was a girl at the time of the events, that she did not afforded special measures appropriate for her age and the State's acknowledgment of its responsibility, the Court declares that the State violated her right to special protection given her status as a minor, enshrined in Article 19 of the American Convention, in relation to Article 1(1) thereof.

XI REPARATIONS (*Application of Article 63(1) of the American Convention*²⁶⁷)

203. Based on the provisions of Article 63(1) of the American Convention, the Court has stated that any violation of an international obligation that has produced damage entails an obligation to provide adequate reparation²⁶⁸ and that this provision "embodies

²⁶² Cf. *Juridical Condition and Human Rights of the Child*, *supra* note 261, paras. 60, 86 and 93; *Case of the Dos Erres Massacre*, *supra* note 27, para. 184 and *Case of Chitay Nech et al.*, *supra* note 25, para. 164.

²⁶³ Cf. Committee on the Rights of the Child. General Comment 12: The right of the child to be heard, 51st Period of Sessions, 2009, U.N. Doc. CRC/C/GC/2009 (July 20, 2009), para. 70.

²⁶⁴ Cf. Committee on the Rights of the Child. General Comment 5: General measures of implementation for the Convention on the Rights of the Child (Articles 4 and 42 and paragraph 6 of Article 44), 34th Period of Sessions, 2003, U.N. Doc. CRC/GC/2003/5 (November 27, 2003), para. 24, and Committee on the Rights of the Child, General Comment 12: The right of the child to be heard, *supra* note 263, para. 64.

²⁶⁵ Cf. Committee on the Rights of the Child. General Comment 12: The right of the child to be heard, *supra* note 263, para. 21 *in fine*, 34 and 64.

²⁶⁶ Cf. Committee on the Rights of the Child. General Comment 12: The right of the child to be heard, *supra* note 263, para. 24.

²⁶⁷ Article 63(1) of the American Convention establishes that: "If the Court finds that there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

²⁶⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Chitay Nech et al.*, *supra* note 25, para. 227 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 211.

a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility."²⁶⁹

204. This Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven and the measures requested to repair the respective damage. Consequently, the Court must adhere to this concurrence in order to rule appropriately and according to law.²⁷⁰

205. The Court will proceed to examine the claims submitted by the Commission and the representatives, as well as the State's arguments, so as to order appropriate measures to repair the damage caused to the victims. Regarding the State's arguments, the Court notes that it presented specific arguments only with regard to some of the requested measures of reparation. Otherwise, in general terms, Mexico requested that the Court reject "any claim for reparation presented by the [Commission] or the petitioners." In addition, it requested that the measures ordered "should be aimed at redressing the violation [...] committed and not at making the victims wealthy, [...] or at providing a double reparation." Finally, it asked the Court to take into account the public policy measures implemented by the State as guarantees of non-repetition.

206. The Court reiterates that Mrs. Rosendo Cantú is an indigenous woman, a girl at the time when the violations occurred, whose situation of particular vulnerability will be taken into account in the reparations awarded in this Judgment. Furthermore, the Court considers that the obligation to repair the damage caused in a case involving victims belonging to an indigenous community may call for measures that encompass the entire community²⁷¹ (*infra* para. 226).

A. Injured party

207. Under Article 63(1) of the American Convention, anyone declared a victim of the violation of any right enshrined therein is considered an injured party. In this case, the victims are Mrs. Rosendo Cantú and her daughter, Yenys Bernardino Rosendo. Accordingly they will be considered as beneficiaries of the reparations ordered by this Court.

B. Measures of satisfaction, rehabilitation, and guarantees of non-repetition

i) Obligation to investigate the facts and to identify, prosecute and eventually punish those responsible

208. The Commission and the representatives broadly agreed on the obligation to investigate the facts and, where applicable, to punish those responsible. In synthesis, they asked the Court to order the State to investigate the facts of the case with due diligence, in order to determine the historical truth of what occurred, identify those responsible and apply the appropriate punishment. Moreover, they stated that the victim and her family should have full access and capacity to act in all the stages of the investigation, in accordance with domestic law and the American Convention.

²⁶⁹ Cf. *Case of Castillo Páez v. Peru. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 43, para. 43; *Case of Chitay Nech et al.*, *supra* note 25, para. 227 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 211.

²⁷⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110; *Case of Radilla Pacheco*, *supra* note 36, para. 362 and *Case of the Dos Erres Massacre*, *supra* note 27, para. 227.

²⁷¹ Cf. *Aloeboetoe et al. v. Surinam. Reparations and Costs*. Judgment of September 10, 1993. Series C. No. 15, paras. 96 and 97; *Case of the Plan of Sánchez Massacre v. Guatemala. Reparations and Costs*. Judgment of November 19, 2004. Series C No. 116, para. 86 and *Case of the Moiwana Community v. Surinam. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, para. 194.

Furthermore, they requested security guarantees for the victim, her family and the representatives in relation to the threats and persecution they suffered in their pursuit of justice.

209. The Commission added that the State must adopt all the legal and administrative measures necessary to complete the investigation in the ordinary jurisdiction, forwarding it all the background of the military investigation. It also indicated that the State must investigate and punish all those responsible for the obstruction of justice, the cover-up and the impunity that have prevailed in this case.

210. The representatives added that the State must adopt affirmative measures to guarantee Mrs. Rosendo Cantú's access to justice, taking into account the cultural, social, economic and other obstacles she has faced and offer her the means to overcome them. Finally, they requested administrative sanctions against of the public servants responsible for the irregularities found in the investigation.

211. The Court has established in this Judgment, bearing in mind the State's partial acknowledgement of responsibility, that the investigation of the rape of Mrs. Rosendo Cantú has not yet been conducted with due diligence or in the appropriate jurisdiction, and therefore Mexico has violated the rights to a fair trial and to judicial protection established in Articles 8 and 25 of the American Convention (*supra* para. 162). Consequently, as it has on other occasions,²⁷² the Court orders the State to conduct an efficient criminal investigation into the facts of this case, so as to determine the corresponding criminal responsibilities and apply the penalties and consequences established by law. This obligation must be fulfilled within a reasonable period of time, respecting the abovementioned criteria regarding investigations in this type of case.²⁷³

212. In particular, the State, through its competent institutions, must ensure that the preliminary investigation currently under way into the facts related to the rape of Mrs. Rosendo Cantú remain within the ordinary jurisdiction. Furthermore, if new criminal actions based on the facts of this case are filed against alleged perpetrators, who are or have been members of the military, the authorities in charge of the case must ensure that these are processed by the ordinary courts, and under no circumstances by the military jurisdiction.²⁷⁴

213. The Court reiterates that during the investigation and prosecution, the State must ensure that the victim has full access and capacity to act at all stages. In a case such as this, where the victim, an indigenous woman, has had to overcome numerous obstacles to obtain justice, the State has an obligation to continue to offer the means by which the victim may fully access and participate in all the proceedings of the case. To this end it must ensure that an interpreter is provided and that she can rely on assistance with a gender-based perspective, all the above in consideration of her special vulnerability. Finally, if Mrs. Rosendo Cantú gives her consent, the results of the proceedings must be publicized, so that Mexican society can learn the truth about the incident.

214. In addition, on other occasions,²⁷⁵ the Court has ordered the State to initiate disciplinary, administrative or criminal proceedings, under its domestic law, against those responsible for various procedural and investigative irregularities in a case. In this case, taking into account that an agent at the Ayutla Public Prosecutor's Office complicated matters when receiving the complaint filed by Mrs. Rosendo Cantú (*supra*

²⁷² Cf. *Velásquez Rodríguez*, *supra* note 33, para. 174; *Case of Chitay Nech et al.*, *supra* note 25, para. 235 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 216.

²⁷³ Cf. *Case of Radilla Pacheco*, *supra* note 36, para. 331. See *Case of the Dos Erres Massacre*, *supra* note 27, para. 233; *Case of Chitay Nech et al.*, *supra* note 25, para. 235 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 216.

²⁷⁴ Cf. *Case of Radilla Pacheco*, *supra* note 36, para. 332.

²⁷⁵ Cf. *Case of the Dos Erres Massacre*, *supra* note 27, para. 233, subsection d.

para. 179) and that one of the doctors did not send the appropriate legal notification to the authorities, (*supra* para. 192) the Court orders the State to examine these matters in accordance with the relevant disciplinary standards and, if applicable, the conduct of the public servants concerned.

215. Finally, as regards the request to guarantee the security of the victims, their family members and their representatives, the Court recalls that the provisional measures ordered opportunely by this Court remain in force (*supra* para. 15).

ii) Adaptation of domestic laws to international standards of justice

216. The Commission asked the Court to order the State to limit the scope of the military jurisdiction, excluding it from hearing cases involving human rights violations, and particularly cases of sexual abuse.

217. The representatives asked the Court to order the State to reform Article 13 of the Constitution and Article 57 of the Code of Military Justice in order to establish clearly, precisely and unambiguously, that the military justice system must abstain, in all circumstances, from hearing cases of human rights violations attributed to members of the Mexican Armed Forces, whether or not they are on active duty, since they consider that the State has not complied with this obligation.

218. In the Court's opinion, it is not merely the annulment or issuance of domestic legal provisions that guarantees the rights contained in the American Convention. Under the obligation established in Article 2 thereof, the State must also adopt practices leading to the effective observance of the rights and freedoms enshrined in the Convention. The existence of a standard does not, in and of itself, guarantee its effective application. It is necessary that the application of standards or their interpretation, as jurisdictional practices and expressions of the State's public order, be adapted to the objective pursued by Article 2 of the Convention. In practical terms, as the Court has already established, the interpretation of Article 13 of the Mexican Constitution must be consistent with the constitutional and treaty-based principles of due process and access to justice contained in Article 8(1) of the American Convention and the relevant provisions of the Mexican Constitution.²⁷⁶

219. In its case law, this Court has established that it is aware that domestic authorities are subject to the rule of law, and consequently that they are obliged to apply the provisions in force in their legal code.²⁷⁷ However, when a State is a Party to an international treaty such as the American Convention, all its organs, including its judges, are also subject to that treaty, which requires them to ensure that the effects of the provisions of the Convention are not diminished by the application of standards contrary to its object and purpose. The Judicial Branch must exercise a "control of conventionality" *ex officio* between domestic standards and the American Convention, obviously within the context of its respective jurisdictions and the corresponding procedural rules. In this task, the Judicial Branch should bear in mind not only the treaty, but also the corresponding interpretation made by the Court, as the final interpreter of the American Convention.²⁷⁸

²⁷⁶ Cf. *Case of Radilla Pacheco*, *supra* note 36, para. 338.

²⁷⁷ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 173 and *Case of Radilla Pacheco*, *supra* note 36, para. 339.

²⁷⁸ Cf. *Case of Almonacid Arellano*, *supra* note 282, para. 124; *Case of Boyce et al. v. Barbados. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007, Series C No. 169, para. 78 and *Case of Radilla Pacheco*, *supra* note 36, para. 339.

220. Thus, it is necessary to ensure that the constitutional and legislative interpretations of criteria for the personal and material jurisdiction of the military jurisdiction in Mexico are adapted to the principles established in the Court's case law, which have been reiterated in this case. This implies that, regardless of any legal reforms that the State must adopt (*infra* para. 222), it is incumbent upon the judicial authorities, based on control of conventionality, to order immediately and *ex officio* that the case be heard by the ordinary criminal justice system.

221. In addition, the Court recalls that it has already ruled in the case of *Radilla Pacheco*, that it is not necessary to order the amendment of the normative content that regulates Article 13 of the Political Constitution of the United Mexican States.

222. Nevertheless, as stated in Chapter IX of this Judgment, Article 57 of the Military Justice Code is incompatible with the American Convention (*supra* paras. 162 and 163). Consequently, the Court reminds the State of its obligation to adopt, within a reasonable time, the necessary legislative reforms in order to ensure compatibility with international standards and with the Convention, as established in this Judgment.

223. Finally, in accordance with Chapter IX of this Judgment, Mrs. Rosendo Cantú did not have an appropriate and effective remedy to contest the intervention of the military justice system (*supra* paras. 164 to 167). Consequently, Mexico must adopt, also within a reasonable time, the relevant legislative reforms to enable those affected by the intervention of the military justice system to have an effective remedy available to contest its jurisdiction.

iii) Public act of acknowledgement of responsibility

224. The Commission asked the Court to order the State to publically acknowledge its State responsibility for the damage caused.

225. The representatives also requested that a public act be held during which the State would publicly acknowledge its responsibility, both in Spanish and in the Me'paa language, with the intervention of high-ranking officials and with the President of Mexico offering an apology for the violations committed. This act must be "covered by the leading media organizations, at both the state and local level." It should be organized in accordance with the wishes of the victim, who should indicate the place where the act should be held, as well as other aspects related to the content and conditions in which the act will take place. Finally, they requested that during the act, the State acknowledge the marginalization, exclusion and discrimination affecting indigenous peoples, particularly indigenous women, as well as the important work done by human rights organizations.

226. The Court recalls that the State partially acknowledged its international responsibility at the public hearing held in this case (*supra* para. 16). The Court has determined that the State's acknowledgement of responsibility makes a positive contribution to this process and upholds the validity of the principles that inspire the American Convention (*supra* para. 25). However, as in other cases,²⁷⁹ to ensure that this acknowledgement achieves its full effect, the Court considers that the State should organize a public act of acknowledgement of international responsibility, in relation to the facts of this case. During said act, reference should be made to the human rights violations declared in this Judgment. It should be conducted through a public ceremony, held in the Spanish and Me'paa languages, in the presence of high-ranking national authorities and authorities of the state of Guerrero, the victims and authorities and

²⁷⁹ Cf. *Case of Kawas Fernández v. Honduras*, *supra* note 117, para. 202; *Case of Anzualdo Castro, v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 200 and *Case of González et al. ("Cotton Fields")*, *supra* note 21, para. 469.

members of the victims' community. The State, together with Mrs. Rosendo Cantú and/or her representatives, must agree on how the public act of acknowledgment is to be organized, including details such as the place and date. If Mrs. Rosendo Cantú agrees, the act should be broadcast by a radio station in the state of Guerrero. The State has a period of one year from the notification of this Judgment to hold the public act.

iv) Publication of the Judgment

227. The Commission asked the Court to order the State to publish the Judgment in the national media.

228. The representatives asked the Court to order the publication of the pertinent parts of the Judgment, in Spanish and in the Me'paa language, "both in a radio broadcast with statewide coverage as well as in the community, on four occasions [...], and in a newspaper with broad national circulation and another with statewide circulation, in the Official Gazette of the Federation and on the website of the National Defense Secretariat."

229. As on previous occasions,²⁸⁰ the Court decides that, as a measure of satisfaction, the State must publish once, in Spanish, in the Official Gazette, paragraphs 1 to 5, 11, 13, 16 to 18, 24, 25, 70 to 79, 107 to 121, 127 to 131, 137 to 139, 159 to 167, 174 to 182, 184, 185, 200 to 202, 206 and 207 of this Judgment, including the titles of each chapter and of the respective section without the corresponding footnotes, but including the operative paragraphs. Also, if Mrs. Rosendo Cantú authorizes it, the State must: i) publish the official summary issued by the Court in a newspaper with broad national circulation, in Spanish, and in a newspaper with widespread circulation in the state of Guerrero, in Spanish and Me'paa;²⁸¹ ii) publish this Judgment in its entirety,²⁸² together with a translation into Me'paa of the official summary, which should be posted on an appropriate website of the federal State and of the state of Guerrero, taking into account the nature of the publication ordered, and this must remain available for at least one year, and iii) broadcast the official summary once, in both languages, on a radio station²⁸³ with coverage in Barranca Bejuco. The State has six months from the notification of this Judgment to comply with the specified publications and broadcasts.

v) Policy that guarantees indigenous women access to justice and respects their cultural identity

230. The Commission asked the Court to order the State to guarantee indigenous women access to justice through the design of a policy that respects their cultural identity.

231. The State presented a large amount of information on the different actions and measures it has adopted to eradicate discriminatory practices, particularly against women and indigenous people. Similarly, the State referred to various initiatives, including the Intercultural Model for the Development of Indigenous Peoples, facilitated by the Secretariat for Indigenous Affairs of Guerrero. This program includes legal reforms and recognition of indigenous peoples as its key points, and its actions are aimed at reviewing and systematizing laws in order to draft a reform proposal and a law

²⁸⁰ Cf. *Barrios Altos v. Peru*. Reparations and Costs. Judgment of November 30, 2001. Series C No. 87, Operative paragraph 5(d); *Case of Chitay Nech et al. v. Guatemala*, *supra* note 25, para. 244 and *Case of Manuel Cepeda Vargas*, *supra* note 21, para. 220.

²⁸¹ Cf. *Case of Chitay Nech et al.*, *supra* note 25, para. 244 and 245.

²⁸² Cf. *Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 195; *Case of Chitay Nech et al.*, *supra* note 25, para. 244 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 220.

²⁸³ Cf. *Yakye Axa Indigenous Community* *supra* note 254, para. 227; *Case of Tiu Tojin*, *supra* note 254, para. 108 and *Case of Chitay Nech et al.*, *supra* note 25, para. 245.

on rights and culture in Guerrero. The Intercultural Model also includes a Defense and Legal Aid Program for Indigenous Peoples, intended to provide defense, legal aid and administrative services to benefit the indigenous population. Likewise, Mexico described a cooperation program on juridical matters through which projects have been carried out with civil organizations and the United Nations Fund for Women to promote the leadership of indigenous women in public affairs. Finally, during the public hearing, the State presented documentation relating to actions and programs on the topics of gender and indigenous peoples, including the Institutional and Social Enhancement Program for the Exercise of the Human Rights of Indigenous Women, designed by the government of the state of Guerrero, which proposes an "intercultural and gender equity model for the exercise of the human rights of indigenous women."

232. The Court notes that the State provided specific information on programs and actions implemented in this area, whose existence or validity was not challenged by the Commission, though it did not provide information indicating possible shortcomings. In this regard, the Court has already established that the obligation to provide grounds and arguments for claiming reparations and costs is not met by making general requests without any legal or factual basis or evidence that would allow the Court to analyze their purpose, reasonableness and scope.²⁸⁴ Consequently, the Court will not rule on the measure requested.

vi) Multidisciplinary health services for women victims of rape

233. The Commission requested that the Court order the State to design and implement multidisciplinary health services for women victims of rape, which address the specific needs of indigenous women for their recovery, rehabilitation and reinsertion into the community.

234. The State presented information during the public hearing and in its final written arguments regarding the public policies, programs, standards and actions that it has implemented at a federal and local level in order to "reduce the prevalence and severity of the health consequences caused by violence against women, with a particular emphasis on women in situations of great risk and vulnerability." Among other aspects, it presented information concerning Mexican Standard 046-SSA2-2005, entitled "Domestic and sexual violence against women. Criteria for prevention and assistance," which establishes criteria for detection, prevention, medical care and guidance for users of the health care services in general, and particularly for those affected by situations of domestic or sexual violence. This measure aims to ensure that the medical care provided to victims of violence includes actions to promote, protect and restore their physical and mental health to the highest level possible, via treatment, rehabilitation or referrals to specialized institutions. Likewise, it reported on the creation of institutions in Guerrero that intervene in cases of sexual violence against women such as the Special Prosecutor for Sexual Offenses and Domestic Violence, the municipal offices specializing in assistance and prevention of violence against women, comprising lawyers, social workers, doctors and psychologists, and the State System to Prevent, Punish and Eradicate Violence against Women." At the federal level, the State has also established: i) four Integrated Assistance Centers for victims of gender-based violence, "in the expectation of expanding these [...] to all the federal entities" and ii) a national network of shelters for women victims of violence, which offer "specialized and interdisciplinary protection and care for women and children affected by domestic and sexual violence or trafficking."

235. In this regard, the Court notes that the State has provided specific information regarding the institutions, standards, programs and actions implemented in this sphere, the existence and validity of which were not contested by the Commission, and for which the latter did not present information regarding possible shortcomings. Therefore, the

²⁸⁴ Cf. *Case of González et al. ("Cotton Field")*, *supra* note 21, para. 493.

Court reiterates that the duty to provide grounds and arguments as a basis for claims for reparations and costs is not satisfied with generic requests that are not accompanied by evidence or supporting arguments (*supra* para. 232). Consequently, the Court will not rule on the measure requested.

vii) Participatory programs to contribute to the reinsertion of indigenous women victims of rape in the community

236. The Commission asked the Court to order the State to implement participatory programs to contribute to the reinsertion of indigenous women who have been victims of rape into their communities.

237. The State presented information on several public policies introduced at the federal level, and in the state of Guerrero, to promote the participation of indigenous women in the analysis of the situation of violence against women and the "dissemination of the legal instruments that recognize the women's rights." In particular, the State reported on training workshops organized for indigenous women, indigenous authorities, indigenous organizations and those who offer services to prevent violence, municipal authorities, and government employees of the judicial branch, *inter alia*, to "sensitize [them] to provide assistance to women and [promote] their full development in conditions of equal protection and freedom from violence."

238. In this regard, the State provided specific information about the programs and actions it has implemented, the existence and validity of which were not contested by the Commission, and for which the latter did not present information regarding possible shortcomings. Thus, the Court again reiterates that the duty to provide grounds and arguments as a basis for claims for reparations and costs is not satisfied with generic requests that are not accompanied by evidence or supporting arguments (*supra* paras. 232 and 238). Consequently, the Court will not rule on the measure requested.

viii) Protocol for the diligent investigation of acts of violence

239. The Commission asked the Court to order the State to design protocols to facilitate and promote the effective, standardized and transparent investigation of acts of physical, sexual and psychological violence, including a description of the complexities of the evidence, as well as details of the basic evidence that must be collected in order to provide adequate probative grounds, in accordance with the provisions of the Istanbul Protocol.

240. The State reported on the adoption of specific protocols for the investigation of cases of violence against women in Guerrero, as well as protocols for assisting women victims of violence and for the investigation of murders from a femicide perspective. Moreover, it reported on the publication of two manuals entitled, "Networks for the Detection, Support and Referral of Cases of Violence Against Indigenous Women in Guerrero" and "Reference Models on Cases of Gender Violence for the state of Guerrero," as well as other instruments for investigating and addressing violence against women, *inter alia*, the "Integrated Model for Prevention of Domestic and Sexual Violence," a model used by health units and the guide entitled "Medical Care for Raped Victims." Similarly, the State provided information on the process of adapting the Istanbul Protocol to the national context through the design and application of the Specialized Medical/Psychological Assessment for Cases of Possible Torture and/or Mistreatment, issued by the Attorney General's Office, and the publication of institutional guidelines for implementing this Assessment for agents of the Federal Public Prosecutor's Office and forensic experts and/or criminal pathologists of the Federal Attorney General's Office. Furthermore, it reported that 29 federal entities had received training on the application of the Assessment and three federal entities were in the process of training staff of the Attorney General's Office on the implementation of the Istanbul Protocol. Finally, the State provided information on the formulation of Mexican Official Standard NOM-046-

SSA2-2005 on domestic and sexual violence and violence against women, which contains criteria for preventing and addressing this issue. The standard, created after reaching an amicable settlement with the Inter-American Commission, establishes various obligations for health care workers, including the requirement to inform the Public Prosecutor's Office so that it can conduct the appropriate investigations.

241. The Court takes note of the information provided by the State concerning the aforementioned instruments and the training activities carried out by the federal entities. However, the Court has not received the document on the "national contextualization" of the Istanbul Protocol and does not have sufficient information on its application in the state of Guerrero. At the same time, the Court takes a positive view of Mexican Official Standard NOM-046-SSA2-2005, which contains criteria for preventing and addressing sexual abuse and violence against women, and well as the standards of detection and investigation to be applied by health workers. However, the Court notes that despite the fact that in its introduction it states that "with the implementation of this Mexican Official Standard [the State] complies with its international commitments," and that the Standard is the result of an agreement with the Commission, Article 8 of the standard states that it "is not consistent with Mexican and international guidelines or recommendations," namely, that it does not conform to international standards. The Commission and the representatives did not comment on any of the instruments mentioned by the State.

242. In other cases, the Court has ordered that the parameters for investigating and performing forensic analyses be adapted, in line with international standards.²⁸⁵ In this case, the Court considers it necessary that the State continue with the process to standardize a protocol for the investigation of sexual abuse, both at the federal level and in the state of Guerrero, based on the parameters established in the Istanbul Protocol and in the World Health Organization's guidelines.

ix) Training programs for officials

243. The Commission requested that the Court order the State to develop training programs for government officials in line with the Istanbul Protocol, in order to provide them with the necessary scientific and technical elements to assess possible cases of torture or cruel, inhuman or degrading treatment.

244. The State provided information and documentary evidence on the implementation of training programs and courses, as well as operating manuals for government officials, judicial branch officials and health sector workers. Among other initiatives, Mexico reported that in 2009, a procedure was introduced to strengthen the institutional and social response to violence against indigenous women, through the training of government officials in Guerrero in human rights, gender equity and intercultural aspects. Moreover, the Attorney General's Office of Guerrero imparted training courses on human rights, with the goal of raising awareness among officials on the importance of preventing sexual assaults, including seminars on criminal investigations of sexual violence, forensic medicine and assistance to rape victims. In addition, during the 2008-2009 period, the General Secretariat of Guerrero carried out two training workshop entitled "Developing networks for support and referral of cases of gender-based violence in indigenous areas of Guerrero" directed at indigenous authorities and care providers to victims of violence. In addition, ten professional training workshops were implemented for judicial branch officials in Guerrero. Finally, Mexico also referred to other training initiatives of general scope, including the training of translators in agencies of the Public Prosecutor's Office located in indigenous communities.

245. The Court appreciates the various training programs and courses implemented by the State. In this regard, it considers that these should also include, where appropriate,

²⁸⁵ Cf. *Case of González et al. ("Cotton Field")*, *supra* note 21, para. 502.

the provisions of the Istanbul Protocol and the guidelines of the World Health Organization, and should pay special attention to assisting alleged victims of rape, particularly those belonging to vulnerable groups, such as indigenous women and children.

246. As it has done on previous occasions,²⁸⁶ the Court orders the State to continue implementing continuous training programs and courses on the diligent investigation of cases of sexual abuse against women, which include a gender and ethnicity perspective. These courses must be offered to federal-level officials and officials in the state of Guerrero, particularly to those in the Public Prosecutor's Office, the judicial branch, the police force and health workers with competence in these types of cases, who because of their functions constitute the first line of response to women victims of violence.

x) Permanent education programs on human rights in the Armed Forces

247. The Commission requested that the Court order the State to implement permanent education programs on human rights for all ranks within the Mexican Armed Forces. These should make special mention of international human rights instruments, specifically those related to the protection of women's rights, including their right to live without violence and discrimination.

248. The State presented information on the human rights training programs and international humanitarian law programs implemented by the Secretariat of National Defense of Mexico. Likewise, it reported on the creation of this Secretariat's General Office of Human Rights, responsible for promoting a culture of human rights within the Armed Forces and for following up on complaints and recommendations made by the National Human Rights Commission regarding possible human rights violations by military personnel. With regard to a gender perspective, the State indicated that the Secretariat is currently developing a Training and Awareness Program for Soldiers on Gender Perspectives.

249. The Court appreciates the information on training programs provided by the State, and considers it important to strengthen the institutional capacities of the State by training members of the Armed Forces on the principles and standards for the protection of human rights and on the limits to which they should be subject,²⁸⁷ in order to avoid a repetition of acts such as those that occurred in this case. To this end, the State must implement, within a reasonable period of time, a permanent and obligatory training program or course on human rights that includes, among other topics, the limits in the interaction between military personnel and the civilian population, gender and indigenous rights, for all members of all ranks of the Armed Forces.

xi) Medical and psychological care

250. The Commission asked the Court to order the State to adopt measures of medical and psychological rehabilitation for the victim and her family, which should include the design and implementation of a mental health care plan, agreed with mental health professionals and women victims of rape, for their recovery, rehabilitation and full reinsertion into the community.

251. The representatives asked the Court to order the State to guarantee Mrs. Rosendo Cantú and her daughter medical and psychological care provided by competent and trustworthy professionals, which takes into account her status as an indigenous woman victim of violence, her culture and her place of residence. They also requested

²⁸⁶ Cf. *Case of González et al. ("Cotton Field")*, *supra* note 21, para. 541.

²⁸⁷ Cf. *Case of La Rochela Massacre*, *supra* note 219, para. 303.

that the State cover all expenses related to this treatment, including transportation and any other needs that might arise.

252. The Court finds, as it has in other cases,²⁸⁸ that it is essential to order a measure of reparation to provide appropriate care for the physical and psychological effects suffered by the victims, having regard to their gender and ethnicity. Consequently, having confirmed the violations and the damage suffered by the victims in this case, the Court rules that the State shall provide, immediately and free of charge, the medical and psychological care they require. In doing so, the State must obtain the consent of the victims, providing prior, clear and sufficient information. The treatment should be provided for as long as is necessary and should include the provision of medicines, and if applicable, transportation, interpreters and other costs that are directly related and strictly necessary.

253. In particular, the psychological or psychiatric treatment must be provided by State personnel and institutions specializing in the treatment of victims of acts of violence as in this case. If the State cannot offer such services, it must provide these by using specialized private or civil society institutions. In providing this treatment, the specific circumstances and needs of each victim must be taken into account, so that they are offered individual and family treatment, as agreed with each one, following an individual evaluation.²⁸⁹ Finally, this treatment must be provided, to the extent possible, at the institutions nearest to their place of residence. The victims who request this measure of reparation, or their legal representatives, have six months from the notification of this Judgment to inform the State of their specific requests for psychological or psychiatric treatment. The Court emphasizes that the State and the representatives must make their best collaborative efforts and provide the victims with all the information necessary for them to receive psychological treatment in order to move forward with the implementation of this measure in an agreed manner.

xii) Definition of the crime of torture in the Criminal Code of Guerrero

254. The representatives requested that the Court order the State to properly define the crime of torture in the criminal legislation of Guerrero so that officials involved in judicial proceedings can effectively investigate and punish those responsible for the conduct included in that definition. In their final written arguments, the representatives requested that the Court order the State to “reform the legal provisions applied to the crime of torture in Guerrero,” which “do not comply with basic conventional standards and have also been included in a regulatory body other than the state Criminal Code.”

255. The Court has decided in this case that the investigation of the crime of rape is not incompatible with the obligations of the Inter-American Convention to Prevent and Punish Torture (*supra* para. 186). For this reason, the Court considers that it is not necessary to rule on this request for reparation.

xiii) Award of scholarships

256. The representatives asked the Court to order the State to award scholarships to Mrs. Rosendo Cantú and her daughter, because they considered that “the only way they can help improve their lives is to continue with their studies.”

257. The Court has established in this Judgment that the facts of the case affected Mrs. Rosendo Cantú and her daughter in a way that continues over time, and that it

²⁸⁸ Cf. *Case of Barrios Altos*, *supra* note 277, para. 45; *Case Chitay Nech et al.*, *supra* note 25, para. 255 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 235.

²⁸⁹ Cf. *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109, para. 278; *Case of Chitay Nech et al.*, *supra* note 25, para. 256 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 235.

caused significant changes, both in their lives and in their relationships, affecting their personal development (*supra* paras. 130, 131, 138 and 139). Based on the foregoing, and bearing in mind the representatives' request, in this case the Court deems it appropriate to order as a measure of satisfaction, as it has on other occasions,²⁹⁰ that the State award scholarships to Mrs. Rosendo Cantú and her daughter, Yenys Bernardino Rosendo, to study in Mexican public institutions, covering all the costs of their education until the completion of their higher education, either in technical or university studies. The State's compliance with this obligation requires the beneficiaries to take certain measures to exercise their right to this measure of reparation.²⁹¹ Consequently, those who requested this measure of reparation, or their legal representatives, have six months from notification of this Judgment to advise the State of their request for scholarships.

xiv) Health center for the victim's community

258. In the context of a policy to ensure access to health care for women in Mexico's indigenous communities, the representatives asked the Court to order the State to provide the indigenous community to which Mrs. Rosendo Cantú belongs, with a comprehensive health care center, with staff specialized in the treatment of women victims of violence, translators and the necessary resources and medication to guarantee improved access to these services for women in the community, and in which the victim can actively participate in promoting the human rights of women victims of violence, if she so wishes.

259. The Court notes that the State reported on various public policies aimed at assisting women victims of sexual violence that have been implemented through a National Program for the Prevention of Domestic and Sexual Violence. These have been adopted by 32 federal entities with the aim of establishing an organized social response to the needs of women victims of violence as regards medical and psychological care. The State also reported that a several actions have been implemented in support of indigenous women in the state of Guerrero, through various agencies including the Women's Secretariat and the Secretariat for Indigenous Affairs, through the provision of services such as mobile units traveling to provide assistance to women in the communities. Furthermore, it reported that policies and programs have been designed and implemented to expand coverage of health services in indigenous areas. The State further indicated that health workers "continually receive training on human rights [...] to ensure adequate provision of health care services to people," and also referred to efforts to improve the health care infrastructure in the state of Guerrero and special services for women victims of sexual violence. In addition, from the evidence contained in the case file, it is evident that the nearest health care center to the Barranca Bejuco community is located in the community of Caxitepec.

260. In this case, the Court considers that the rape of Mrs. Rosendo Cantú has underscored the need to strengthen the care offered at health centers treating women who have suffered violence. Nevertheless, the Court notes that a health center already exists in Caxitepec and the representatives have not furnished the Court with sufficient information for it to consider it necessary to order the creation of a new health center. The services needed to treat women victims of sexual violence can be offered by the existing center, which should be improved through the provision of material resources and personnel, including a translator who speaks Me'paa, as well as the use of an

²⁹⁰ Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs*. Judgment of July 8, 2004. Series C No. 110, para. 237; *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, para. 194 and *Case of Valle Jaramillo et al.*, *supra* note 234, paras. 227 subsection (f) and 231.

²⁹¹ Cf. *Case of Escué Zapata v. Colombia. Interpretation of the Judgment of Merits, Reparations and Costs*. Judgment of May 5, 2008 Series C No. 178, paras. 27 and 28; *Case of Valle Jaramillo et al.*, *supra* note 234, para. 229 and *Case of Valle Jaramillo et al. v. Colombia. Interpretation of the Judgment of Merits, Reparations and Costs*. Judgment of July 7, 2009, Series C No. 201, para. 38.

appropriate protocol for implementing appropriate actions. This should be done in the context of the implementation of assistance programs for victims of violence and investment efforts to improve services, as the State has indicated.

xv) Office of the Public Prosecutor for women victims of violence

261. The representatives asked the Court to order the State to create a Special Office of the Public Prosecutor to provide assistance to women victims of violence in the state of Guerrero. It should be easily accessible and have appropriate technical and financial resources as well as trained personnel who are familiar with the international standards for assisting women victims of violence and torture in cases such as this.

262. Mexico stated that, among other institutions, the state of Guerrero has a Special Prosecutor's Office for the Investigation of Crimes of Sexual and Domestic Violence, to which seven agencies specializing in addressing sexual violence are attached, and which are strategically located in the territory of the state, one in the region of La Montaña. All these are staffed by female personnel, who are trained in issues of gender violence, along with the Special Prosecutor for Crimes of Violence Against Women and Human Trafficking, attached to the Attorney General's Office. Moreover, Mexico reported that the state of Guerrero has implemented numerous actions in favor of indigenous women in Guerrero, citing the work of various agencies, including the Women's Secretariat and the Legal Aid Secretariat in Guerrero, the creation of 36 local councils for assistance and prevention of violence against women and two specialized local units in the region of La Montaña. In addition, the State reported that it has two mobile units that provide psychological care, legal aid and social services for women in the regions of La Montaña and Costa Chica, in the most marginalized municipalities and communities with large indigenous populations. Similarly, it reported on a program that offers counselling services and guidance on gender violence and legal representation in family matters, which provides free legal representation and advice to women. It also reported on the defense and legal aid program of the office for the defense of women's rights which, among other services, offers financial assistance to women to cover expenses of legal proceedings and provides legal representation and legal aid in criminal proceedings. Finally, it reported on the actions taken for the dissemination of information on women's rights, including the distribution of leaflets to raise awareness of the actions, services and location of the local units offering specialized services to women victims of violence.

263. The Court appreciates the information provided by the State and notes that the representatives have not commented on the diverse actions, mobile units, or institutions referred to by the State, nor have they provided information indicating possible shortcomings in these. Therefore, the Court does not have specific and sufficient information to assess the situation and order the creation of the office requested by the representatives. However, the services for women victims of sexual violence must be offered by the institutions indicated by the State, such as the Public Prosecutor's Office of Ayutla de los Libres, through the provision of material resources and personnel, whose activities should be strengthened through the training actions ordered in this Judgment.

264. Finally, the Court notes that the assessment prepared by the Women's Secretariat of the state of Guerrero identifies, among other barriers that obstruct efforts to address violence in indigenous and rural areas, the fact that these services are centered in cities and imply difficulties in access and transportation.²⁹² This assessment recommended, among other measures, the decentralization of the services and promotion of mobile services to improve awareness and training in detecting and addressing violence. It also called for improved access to telephone services in the indigenous communities of Guerrero to allow for better attention to women victims of

²⁹² Cf. *Network Development 2008*, Secretariat for Women and National Network of Shelters, *supra* note 57, page 19159.

violence. The Court understands that the first of these measures would be provided through the mentioned mobile units. Nevertheless, the Court appreciates the document and considers it useful to recommend that the State analyze the need to advance in implementing these two recommendations in the area where the events of this case occurred.

xvi) Campaign to raise awareness and sensitivity on the prohibition and effects of violence and discrimination against indigenous women

265. The representatives asked the Court to order the State to conduct a campaign to promote awareness and sensitivity on the prohibition and effects of violence and discrimination against indigenous women in all aspects of their lives. This should be directed at the population in general, and particularly at the education and public health facilities in Guerrero, such as federal, state, municipal and community employees.

266. In this regard, the State presented evidence of campaigns on the prohibition and effects of violence and discrimination against women in all aspects of their lives. In particular, it reported on two information programs, disseminated through several media outlets, addressed to the general population, public officials and social actors who deal with victims of gender related violence and human trafficking. The State also reported on print and electronic media campaigns, implemented by the National Women's Institute and the National Commission for the Development of Indigenous Peoples, to promote non-violence as the right of women in indigenous areas. The campaign included radio programs covering topics such as gender violence, sexual harassment, domestic violence and sexual rights, *inter alia*. Finally, the State reported that the Department of Indigenous Affairs of Guerrero has promoted broadcasts on indigenous radio stations in the four indigenous languages spoken in Guerrero, on the rights enshrined in Law 533 of Women's Access to A Life Free from Violence.

267. The Court has no information from the representatives indicating any shortcomings in these campaigns. Therefore, the Court does not consider it necessary to order the implementation of an additional awareness and sensitization campaign for the general population concerning the prohibition and effects of violence and discrimination against indigenous women in all aspects of their lives. Rather, this measure should be guaranteed through the continuation of the existing campaigns. As to the government officials, the Court considers that the publication of this Judgment and the reparations ordered in sections *ix)* and *x)* of this chapter are sufficient and adequate, and therefore it will not order additional measures related to this request for reparation.

xvii) Other measures requested

268. In its final written arguments, the Commission asked the Court to order the following additional measures of reparation from the State: i) to adopt, as a priority, a comprehensive and coordinated policy, supported with appropriate resources, to ensure that cases of violence against women are effectively prevented, investigated, and punished, and that victims receive reparations, and ii) to implement public policies and institutional programs designed to overcome stereotypes regarding the role of women in society and to promote the eradication of socio-cultural discrimination patterns that prevent full access to justice for women. This should include training programs for government officials, the judiciary and the police and integrated prevention policies. Furthermore, in their final written arguments, the representatives asked the Court to order the Mexican State: i) to establish adequate and effective mechanisms for obtaining the prior, free and informed consent of indigenous peoples or communities of Guerrero whenever legislative or administrative measures are adopted that would result in the presence of security forces, including soldiers, in their territory, or in the territory where these communities are located, and ii) to establish adequate conditions for the victims to return to their native community, requesting, *inter alia*, the restitution of their property, the eradication of risk and threat factors, the design of culturally appropriate preventive

and deterrent infrastructure and the provision of psycho-emotional accompaniment if required by the victim.

269. The Court notes that the Commission and the representatives did not submit these requests at the appropriate procedural stage, that is, in their respective briefs of application and of pleadings and motions. Consequently, the requested measures of reparation are time-barred and will not be considered by the Court.

D. Indemnification, compensation, costs and expenses

i) Pecuniary damage

270. In its case law the Court has developed the concept of pecuniary damage and has established that it supposes “the loss of or prejudice to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal relationship with the facts of the case.”²⁹³

271. The Commission requested the Court to set in equity, the amount of compensation corresponding to consequential damages and loss of earnings, in exercise of its broad powers in this regard.

272. The representatives indicated that, as a direct consequence of the rape of Mrs. Rosendo Cantú, the victim was involuntarily forced to abandon her two parcels of land of five hectares each, three head of cattle and 13 goats. The representatives explained that the victim only owned half of these assets, with the other half belonging to her husband. They indicated that the commercial value of both parcels was MXN 120,000 (one hundred and twenty thousand Mexican pesos), of which half belonged to her, or MXN 60,000 (sixty thousand Mexican pesos), equivalent to US\$ 4,583.65 (four thousand, five hundred and eighty-three dollars and sixty-five cents of the United States of America). Based on this, they requested that, as a measure of reparation for the loss of the parcels, “the State [...] offer [Mrs. Rosendo Cantú] a parcel with the characteristics of the one she lost, in the village of Caxitepec [...]. This would enable her to return to her community and have a property where she could engage in farming activities as she had done before the rape.” Regarding the cattle, the representatives stated that each cow had a commercial value of MXN 8,000 (eight thousand Mexican pesos) and each goat had a commercial value of MXN 1,000 (one thousand Mexican pesos); therefore, the total value of the livestock was MXN 37,000 (thirty-seven thousand Mexican pesos), half belonging to her, namely, MXN 18,500 (eighteen thousand, five hundred Mexican pesos), equivalent to US\$ 1,413.29 (one thousand, four hundred and thirteen dollars and twenty-nine cents of the United States of America). In addition, they noted that “medical and transportation costs should be added to previous amounts that [...] she spent [as a consequence of the rape],” given that she traveled four times to a private doctor and had to purchase medicine for three months before being forced to discontinue her treatment due to lack of funds.

273. In addition, the representatives stated that as a direct result of the rape, Mrs. Rosendo Cantú isolated herself from her community and later, given the stigmatization and discrimination she suffered, as well as the well-founded fear of suffering another attack from the soldiers, she avoided working in her daily chores of farming and caring for the livestock. Because of this situation she was involuntarily forced to leave the community. The amount due to her for lost earnings during the time elapsed since the events took place totals MXN 613,552 (six hundred and thirteen thousand, five hundred and fifty-two Mexican pesos), equivalent to US\$ 46,871.81 (forty-six thousand, eight hundred and seventy-one dollars and eighty-one cents of the United States of America).

²⁹³ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Chitay Nech*, *supra* note 25, para. 261 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 242.

However, because the representatives were unable to provide the Court with receipts to confirm this amount, they asked the Court to set in equity an amount for lost earnings.

274. The Court notes that the representatives did not present any documentation or other evidence confirming the alleged damages or loss of income suffered by Mrs. Rosendo Cantú. Nevertheless, the Court notes that she stopped her farming work because she feared acts of violence and also because of the time she spent in the pursuit of justice in this case. As a consequence, it is likely that the effects of the rape caused her to be inactive for some time. Therefore, the Court decides to set, in equity, the sum of US\$ 5,500 (five thousand and five hundred dollars of the United States of America) or its equivalent in Mexican pesos, for loss of income. This amount should be given to Mrs. Rosendo Cantú within the period set by the Court for this purpose (*infra* para. 287).

ii) Non-pecuniary damage

275. In its case law the Court has developed the concept of non-pecuniary damage and has established that this may include “both the suffering and hardship caused to the direct victims and their family, the impairment of values of great significance to them and also the changes of a non-pecuniary nature in the living conditions of the victim or her family.”²⁹⁴

276. Considering the nature of the case and the gravity of the damage suffered by the victims and their family, the Commission asked the Court to set in equity the amount of compensation for non-pecuniary damage.

277. The representatives pointed out that the rape has had numerous devastating effects on Mrs. Rosendo Cantú’s life. In this regard, they referred to her constant state of pain, sadness, guilt and anxiety caused by the rape itself, by her stigmatization and abandonment by her husband and her community, as well as feelings of impotence and despair due to the lack of justice. Moreover, the stigmatization has made her feel defenseless and totally vulnerable, causing her to experience traumatic moments and destroying her roots in the community. Similarly, the lack of sensitivity with which she was treated by the officials who attended to her, the impunity and the handling of the case by the military jurisdiction, have exacerbated her feelings of impotence, anguish and sadness. The representatives also pointed out that her daughter, Yenys Bernardino Rosendo, has suffered serious harm as a consequence of these events. Therefore, they asked the Court to order the State to repair the damage caused to Mrs. Rosendo Cantú and her daughter and to determine, in equity, the economic compensation due to them.

278. International jurisprudence has repeatedly established that the Judgment *per se* may constitute a form of reparation.²⁹⁵ However, considering the circumstances of the case *sub judice*, the suffering that the violations caused the victims, the changes to their living conditions and other consequences of a non-pecuniary nature, the Court deems it pertinent to establish, in equity, an amount as compensation for non-pecuniary damage.²⁹⁶

279. Having regard to the compensation ordered by the Court in other cases, and considering the circumstances of the case at hand - the fact that Mrs. Rosendo Cantú was a minor at the time of the events; the nature and seriousness of the violations

²⁹⁴ *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, para. 84; *Case of Chitay Nech et al.*, *supra* note 25, para. 273 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 242.

²⁹⁵ *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs.* Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Chitay Nech et al.*, *supra* note 25, para. 275 and *Case of Manuel Cepeda Vargas*, *supra* note 25, Operative Paragraph 7.

²⁹⁶ *Cf. Case of Neira Alegría et al.*, *supra* note 295, para. 56; *Case of Radilla*, *supra* note 36, para. 374 and *Case of Chitay Nech et al.*, *supra* note 25, para. 275.

committed; the sufferings caused to the victims and the manner in which they have been treated; the time that has elapsed since the rape; the denial of justice; the change in their living conditions and other consequences of a non-pecuniary nature that they suffered, the Court deems it appropriate to establish, in equity, the amount of US\$ 60,000 (sixty thousand dollars of the United States of America) as compensation for non-pecuniary damage in favor of Mrs. Rosendo Cantú. Moreover, given the suffering she experienced as a consequence of the events of the case, particularly the exile and the disruption to her family group (*supra* para. 139), the Court establishes in equity the sum of US\$ 10,000 (ten thousand dollars of the United States of America) as compensation in favor of Yenys Bernardino Rosendo.

iii) Costs and expenses

280. As the Court has indicated on previous occasions, costs and expenses are included within the concept of reparation recognized in Article 63(1) of the American Convention.²⁹⁷

281. The Commission asked the Court “order the State [...] to pay the reasonable and necessary costs and expenses, duly authenticated, that arise and have arisen from the processing of this case.”

282. In their briefs of pleadings and motions and final written arguments, the representatives requested that the Court order the State to pay the following amounts for costs and expenses: i) a sum established in equity by the Court in favor of the victims and their family for the expenses incurred in the pursuit of justice and medical care; ii) in favor of CEJIL, US\$ 11,910.75 (eleven thousand, nine hundred and ten dollars and seventy-five cents of the United States of America) for expenses incurred from October 2007 until the presentation of the brief of pleadings and motions, and US\$ 6,152.54 (six thousand, one hundred and fifty-two dollars and fifty-four cents of the United States of America) for costs incurred after that date; iii) in favor of Tlachinollan, US\$ 3,517.14 (three thousand, five hundred and seventeen dollars and fourteen cents of the United States of America) for expenses incurred from April 2002 until the presentation of their final written arguments and US\$ 23,584.05 (twenty-three thousand, five hundred and eighty-four dollars and five cents of the United States of America) for the costs incurred “in connection with the preparation and presentation at the public hearing [as well as] costs incurred in the past by Tlachinollan which, due to human error, were not included in [the] brief of pleadings and evidence.” Finally, the representatives indicated that CEJIL incurred expenses for, *inter alia*, photocopies, stationery and telephone calls for US\$ 250 (two hundred and fifty dollars of the United States of America), and asked the Court to set an amount to cover future expenditures related to the processing of the case. The representatives also asked that the payment of these amounts be made directly to them, given the victim’s circumstances and the potential difficulties in obtaining reimbursement.

283. In its observations to the attachments presented together with the final written arguments, the State pointed out that “some of the receipts for costs presented by the representatives do not relate to expenditures incurred in processing the case before the Inter-American System of Human Rights, such as the receipts for the purchase of colored pencils, brushes and water colors, table games, princess balls, clothing and a receipt for carwash and car vacuum [...], and moreover many of these alleged expenditures are backed up with receipts belonging to the Tlachinollan organization itself, which does not have a tax registration number or other type of fiscal control.”

284. As to the reimbursement of costs and expenses, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic

²⁹⁷ Cf. *Case of Garrido and Baigorria*, *supra* note 220, para. 79; *Case of Chitay Nech et al.*, *supra* note 25, para. 279 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 254.

jurisdiction as well as those incurred during the proceedings before the Inter-American System, allowing for the circumstances of this case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable.²⁹⁸

285. The Court has indicated that “the claims of the victims or their representatives for costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural occasion granted to them, namely, in the pleadings and motions brief, without prejudice to the possibility of updating these claims subsequently, in line with the new costs and expenses that have been incurred as a result of these proceedings.”²⁹⁹ Furthermore, the Court reiterates that it is not sufficient for the parties to merely submit probative documents; rather they are required to submit arguments that relate the evidence to the fact that it is supposed to represent and that, in the case of alleged financial disbursements, the items and their justification must be clearly established.³⁰⁰ In their final arguments, the representatives included additional expenses presumably incurred by Tlachinollan prior to the presentation of the application, which were not included in the brief of pleadings and motions, an omission which the representatives attributed to a “human error.” Owing to its belated presentation, the Court will not consider these expenses when determining the amount to be awarded for costs and expenses. Finally, the Court notes that a significant number of expenses reported by the representatives have no supporting documentation, or else the receipts sent have no connection with expenses related to this case.

286. Nevertheless, the Court has confirmed that the representatives incurred a number of expenses related to fees, collection of evidence, transportation costs, communications services, among others, in the domestic and international proceedings in this case. Accordingly, the Court establishes, in equity, that the State must pay the sum of US\$ 14,000 (fourteen thousand dollars of the United States of America), US\$ 10,000 (ten thousand dollars of the United States of America), and US \$1,000 (one thousand dollars of the United States of America), in favor of CEJIL, Tlachinollan and Mrs. Rosendo Cantú, respectively, for costs and expenses. In monitoring the compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives for reasonable expenses that have been duly proven.

iv) Method of compliance with the payments ordered

287. The State must pay the compensation for pecuniary and non-pecuniary damage and reimburse the costs and expenses directly to those named in this Judgment, within one year of notification of this Judgment, in accordance with the terms of the following paragraphs.

288. Regarding the compensation ordered in favor of the daughter, Yenys Bernardino Rosendo, the State must deposit the amount in a financially sound Mexican institution. The investment must be made within one year, in the most favorable financial conditions permitted by the law and banking practices, while the beneficiary is a minor. The amount may be withdrawn by her upon reaching the age of majority, or beforehand if it is deemed to be in the child’s best interest, as determined by the competent judicial authorities. If the compensation is not claimed within ten years of the minor coming of age, it shall be returned to the State with the accrued interest.

²⁹⁸ Cf. *Case of Garrido and Baigorria*, *supra* note 220, para. 82; *Case of Chitay Nech et al.*, *supra* note 25, para. 285 and *Case of Manuel Cepeda Vargas*, *supra* note 25, para. 258.

²⁹⁹ Cf. *Case of Chaparro Álvarez and Lapo Iñiguez. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 275; *Case of the Dos Erres Massacre*, *supra* note 27, para. 302 and *Case of Chitay Nech et al.*, *supra* note 25, para. 284.

³⁰⁰ Cf. *Case of Chaparro Álvarez and Lapo Iñiguez*, *supra* note 299, para. 277; *Case of the Dos Erres Massacre*, *supra* note 27, para. 301 and *Case of Chitay Nech et al.*, *supra* note 25, para. 284.

289. As to the payments corresponding to Mrs. Rosendo Cantú, the State must analyze, with the victim's consent, the advisability of these amounts being deposited in a bank account, with no deduction made to the sum ordered in the Judgment.

290. Should any of the beneficiaries die before they have received the respective compensation, it shall be delivered directly to their heirs, in accordance with the applicable domestic laws.

291. The State must comply with its pecuniary obligations through payment in dollars of the United States of America or the equivalent amount in Mexican pesos, using the exchange rate in force on the New York Exchange the day before the payment to make the respective calculation.

292. If, for reasons attributable to the beneficiaries of the compensation, or to their heirs, it is not possible to pay the amounts established within the time indicated, the State shall deposit these amounts in their favor in a bank account or a certificate of deposit in a financially sound Mexican financial institution, in dollars of the United States of America and in the most favorable financial conditions permitted by law and banking practice. If, after a period of ten years, the compensation has not been claimed, the amounts shall be returned to the State with the accrued interest

293. The amounts allocated in this Judgment as compensation and reimbursement of costs and expenses must be delivered in full to the persons indicated, as established in this Judgment and without any deduction for possible taxes or charges.

294. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in the State.

XII

OPERATIVE PARAGRAPHS

295. Therefore,

THE COURT

DECIDES,

unanimously:

1. To admit the withdrawal of the preliminary objection filed by the State, under the terms of paragraph 13 of this Judgment.

2. To accept the State's partial acknowledgment of international responsibility, under the terms established in paragraphs 16 to 26 of this Judgment.

DECLARES,

unanimously, that:

3. The State is responsible for the violation of the rights to personal integrity, dignity and privacy, enshrined, respectively, in Articles 5(1) and 5(2), 11(1) and 11(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, and Articles 1, 2 and 6 of the Convention to Prevent and Punish Torture, and for not fulfilling its obligations under Article 7(a) of the Convention of Belém do Pará, to the detriment of Mrs. Rosendo Cantú, in accordance with paragraphs 89 to 121 and 127 to 131 of this Judgment.

4. The State is responsible for the violation of the right to personal integrity, enshrined in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Yenys Bernardino Rosendo, in accordance with paragraphs 137 to 139 of this Judgment.

5. It is not appropriate to rule on the alleged violation of the right to personal integrity, established in Article 5(1) of the American Convention on Human Rights, to the detriment of Mr. Victoriano Rosendo Morales, Mrs. María Cantú García and the siblings of Mrs. Rosendo Cantú, under the terms established in paragraph 140 of this Judgment.

6. The State is responsible for the violation of the right to a fair trial and judicial protection, established in Article 8(1) and 25(1) of the American Convention, to the detriment of Mrs. Rosendo Cantú: a) in relation to Article 1(1) and 2 thereof, under the terms of paragraphs 159 to 167 of this Judgment, and b) in relation to Article 1(1) of the American Convention, and did not fulfill the obligation established in Article 7(b) of the Convention of Belém do Pará, under the terms of paragraphs 174 to 182 of this Judgment. Likewise, Mexico did not fulfill its obligation to guarantee, without discrimination, the right to have access to justice established in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú, under the terms of paragraphs 183 to 185 of this Judgment.

7. The State is not responsible for non-compliance with Articles 1, 6 and 8 of the Convention to Prevent and Punish Torture, to the detriment of Mrs. Rosendo Cantú, under the terms of paragraph 186 of this Judgment.

8. The State is responsible for the violation of the rights of the child, enshrined in Article 19 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú, as stated in paragraphs 200 to 202 of this Judgment.

AND DECIDES,

unanimously, that:

9. This Judgment constitutes *per se* a form of reparation.

10. The State must conduct, in the ordinary jurisdiction, effectively and within a reasonable period, the investigation and, if applicable, the criminal proceedings related to the rape of Mrs. Rosendo Cantú, in order to determine those criminally responsible and to apply, where appropriate, the punishment and other consequences provided by law, as established in paragraphs 211 to 213 of this Judgment.

11. The State, in accordance with the pertinent disciplinary regulations, must examine the facts and conduct of the agent of the Public Prosecutor's Office who obstructed the filing of the complaint by Mrs. Rosendo Cantú, as well as that of the doctor who did not issue the legal notification to the corresponding authorities, under the terms of paragraph 214 of this Judgment.

12. The State must adopt, within a reasonable period of time, the relevant legislative reforms to adapt Article 57 of the Military Justice Code to international standards and the American Convention, as established in paragraph 222 of this Judgment.
13. The State must introduce the pertinent reforms to provide an effective remedy for contesting jurisdiction to those persons affected by the intervention of the military justice system, as established in paragraph 223 of this Judgment.
14. The State must carry out a public act of acknowledgment of its international responsibility regarding the facts of this case, as established in paragraph 226 of this Judgment.
15. The State must issue the abovementioned publications, as established in paragraph 229 of this Judgment.
16. The State will continue with the process to standardize a protocol, applicable at the federal level and in the state of Guerrero, regarding the handling and investigation of rape cases, taking into consideration, where pertinent, the parameters established in the Istanbul Protocol and the Guidelines of the World Health Organization, in accordance with paragraph 242 of this Judgment.
17. The State must continue to implement permanent training programs and courses on diligent investigation in cases of sexual violence against women, which include an ethnic and gender-based perspective. These should be imparted to federal officials and those in the state of Guerrero, under the terms of paragraphs 245 and 246 of this Judgment.
18. The State must continue with the actions implemented with regard to training programs on human rights for members of the Armed Forces, and should implement, within a reasonable period of time, a permanent and obligatory training and education program or course on human rights, directed at members of the Armed Forces, as stipulated in paragraph 249 of this Judgment.
19. The State must provide the medical and psychological treatment required by the victims, under the terms of paragraphs 252 and 253 of this Judgment.
20. The State must provide scholarships for Mrs. Rosendo Cantú and her daughter, Yenys Bernardino Rosendo, to study at public Mexican institutions, as established in paragraph 257 of this Judgment.
21. The State must continue to offer services for women victims of sexual violence through the health center in Caxitepec, which must be improved through the provision of material resources and personnel, under the terms of paragraph 260 of this Judgment.
22. The State must ensure that assistance services for women victims of sexual violence are offered by the institutions indicated by the State, including the Public Prosecutor's Office in Ayutla de los Libres, through the provision of material resources and personnel, whose activities must be improved with training, under the terms established in paragraph 263 of this Judgment.
23. The Court must continue to implement the campaign to raise awareness and to sensitize the population regarding the prohibition and effects of violence and discrimination against indigenous women, under the terms established in paragraph 267 of this Judgment.
24. The State must pay the amounts established in paragraphs 274, 279 and 286 of this Judgment, for pecuniary and non-pecuniary damage, and for the reimbursement of costs and expenses, within a period of one year from the notification of this Judgment, under the terms of paragraphs 287-294.
25. The Court will monitor full compliance with this Judgment, in exercise of its powers and in accordance with its obligations under the American Convention, and will conclude this case when the State complied fully with its provisions. Within one year of notification of this Judgment, the State must provide the Court with a report on the measures taken to comply with it.

The Judges Radhys Abreu Blondet and Alejandro Carlos Espinosa rendered concurring opinions, which accompany this Judgment.

Done in Spanish and in English, the Spanish text being authentic, in San Jose, Costa Rica on August 31, 2010.

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Alejandro Carlos Espinosa
Judge *Ad hoc*

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

**CONCURRING OPINION OF JUDGE RHADYS ABREU BLONDET
REGARDING THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN
RIGHTS IN THE CASE OF *ROSENDO CANTÚ ET AL. v. MEXICO*,
OF AUGUST 31, 2010**

1. I have decided to present a concurring opinion with respect to the Judgment in the case of *Rosendo Cantú et al.*, based on the following points: i) Mexico's withdrawal of the preliminary objection regarding the alleged lack of jurisdiction of the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court" or "the Court") to hear the petitions submitted as a result of a violation of the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women (hereinafter, the "Convention of Belém do Pará"), and ii) the reason why the Court could have established the reparations that it denied in paragraphs 232, 235 and 238 of this Judgment.

2. *Regarding the State's withdrawal of its only preliminary objection.* In the case of *Mrs. Rosendo Cantú et al.*, as well as in the case of *Fernández Ortega et al.*, Mexico argued that it lacked *ratione materiae* jurisdiction to hear violations of the Convention of Belém do Pará, basically reproducing the argument it had presented before this Court in the case of *González et al. ("Cotton Field")*, which the Court clarifies in paragraph 33 of the aforesaid Judgment. Nevertheless, the State decides to withdraw said preliminary objection at the public hearing held for this purpose.

3. Mexico filed this preliminary objection in the case of *Mrs. Rosendo Cantú et al.* on February 17, 2010, and in the case of *Fernández Ortega* on December 13, 2009. Both dates are subsequent to the Court's Judgment in the case of *González et al. ("Cotton Field")*, issued on November 16, 2009. This procedural action demonstrated dissatisfaction with the Court's decision. The Inter-American system for the protection of human rights does not find it unusual for States to show resistance in complying with certain interpretations made by this Court of the American Convention of Human Rights (hereinafter, the "American Convention" or "Pact of San Jose"). Such is the case of the definition of *continuous crime* granted in cases of enforced disappearance of individuals, which generally prevents States from alleging the Court's lack of *ratione temporis* jurisdiction regarding probable violations of certain articles of the American Convention, such as the victim's *right to personal integrity* (Article 5) or the *right to a fair trial* and to *judicial protection* to the family seeking to find the whereabouts of the victim (Articles 8 and 25), depending on the case.

4. Therefore, the fact that a State has "reconsidered" and then later withdrawn a preliminary objection of its own accord, as had been mentioned, whose inadmissibility had being exemplarily explained by the Court, should be taken as a sign of the firmness that this jurisprudential criterion has acquired until now. Changing it, which would be clearly absurd, is now extremely difficult.

5. *As to why this Court could establish the reparations that it denied in paragraphs 232, 235, and 238 of this Judgment.* This Court considered that it was not appropriate to rule on the reparation measures requested by the Commission regarding the: i) design of a policy to guarantee indigenous women access to justice through respect for their cultural identity, ii) design and implementation of multidisciplinary health services for women who had been victims of rape, and iii) design of participatory programs which would contribute to the reinsertion into the community of indigenous women who had been victims of rape.

6. This position is based on a precedent set by the Court which established that the obligation to provide grounds and arguments when claiming reparations is not fulfilled by making generic requests that are not supported by evidence or reasoning.¹

7. In my view, such a position is correct when assessing the amounts awarded for costs and expenses, and in those cases in which the victims' representatives or the Commission request the implementation of public policies or specific programs which have already been applied by the State, and when they do not explain the shortcomings of existing ones.

8. However, in cases of this nature, the Court is capable of determining an appropriate measure of reparation under the three cited assumptions, or at least setting the standards that should be adhered to by the policies implemented by the State in this regard. A Court that applies human rights standards cannot render a restrictive interpretation of the text of the Pact of San Jose, but may, as established in Article 29(c) of the American Convention and by the Court itself, apply the *pro homine* principle.

9. The foregoing conclusion may be reached, even when applying a combination of the *iura novit curia* and *pro homine* principles in interpreting human rights treaties. Such an important decision - establishing the appropriate reparation for the victim- should not be left solely to the diligence, or lack of it, of the parties in the proceedings, given that if the Commission or the victims' representatives fail to support their respective petitions, the victim cannot be deprived of such measures.

10. I mention the principle *iura novit curia* because if international courts have the capacity to determine which Articles of the American Convention have been violated after analyzing the facts, regardless of what the parties establish, the Court is likewise competent to determine which reparations should be made, even if neither of the parties has proposed them (or have not provided grounds for their request).² The Court's authority to establish the State's international responsibility for the violation of any of the Articles in the American Convention, on which it has the final word, cannot be disassociated from establishing reparations that would be effective in attempting to restore the *status quo* for the victims, if Article 63(1) of the San Jose Pact is applied correctly.

11. Furthermore, it could also be said that, "he who can do more can do less." It would be pointless for the Inter-American Court to establish a State's international responsibility for the violation of a specific Article, based on consideration of the proven facts, regardless of the violations alleged by the Commission and/or by the representatives of the victims, if the Court is unable to establish appropriate reparations for such violations. Finally, the Court could eventually reject such measures of reparation only under the argument that the State had already proven its implementation of identical measures appropriate to repair such a violation, and that the parties had not proven their shortcomings, but never under the contention that was submitted in a generic manner with or without supporting arguments.

Rhadys Abreu Blondet
Judge

Pablo Saavedra Alessandri
Secretary

¹ Cf. *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. 493.

² In regard to this principle, see, *inter alia*, *Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 134, para. 57.

**CONCURRING OPINION OF JUDGE *AD HOC* ALEJANDRO CARLOS ESPINOSA
REGARDING THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN
RIGHTS IN THE *CASE OF ROSENDO CANTÚ ET AL. v. MEXICO*,
OF AUGUST 30, 2010**

1. This concurring opinion applies to the case cited *ut supra* as well as to the case of *Fernández Ortega et al. v. Mexico* based on the following considerations:

a) It concerns soldiers on active service, that is, agents of the Mexican State who, under a special status committed grave violations of domestic and international law, whereas they should have been fulfilling their role as guarantors of the domestic legal system of the State of Mexico, with respect for the rights of their fellow nationals;

b) In this case, the victim of the crime of rape was a poor, indigenous woman, exposed to a high degree of vulnerability, in addition to not speaking the Spanish language;

c) The Military Justice Code was equally applied to investigate crimes committed by military personnel and those involving civilian victims, under the provisions of Article 57, section II, subsection a) of said legal code, which the Court ordered to be modified in the case of *Radilla Pacheco v. Mexico*;

d) The unfavorable circumstances for the victims *vis à vis* geo-referencing elements, access to justice and health, as well as high vulnerability are similar;

e) The delay was excessive in the preliminary criminal investigation procedure, and did not produce timely results, due to actions by the judicial bodies, and;

f) The victims faced a torturous path to obtain access to justice.

2. In this concurring opinion, I express my agreement with the reasoning on the need to provide grounds and arguments and, therefore, with the content of the Judgment, given the case analysis delivered by the Court in its ruling in the case of *Rosendo Cantú et al. v. Mexico*, and with the criteria and amounts awarded as reparation for damages specified in the Judgment, given their nature and proportionality. In this statement I add, as a reaffirmation of the findings contained in the Judgment, my reasoning *ad cautelam* derived from specificities that I consider the State of Mexico should observe.

3. As indicated in the American Convention, the subsidiary nature of the Inter-American jurisdiction of human rights *vis à vis* the domestic jurisdiction, is fundamental, given that it enhances and compliments the provisions of the domestic laws of the American States; for this reason, I consider that the appropriate interpretation of Article 13 of the Constitution of the United Mexican States should be consistent not only with Article 57, section II, subsection a) of the Military Justice Code, but also with the provisions enshrined in subsections b), c), d) and e) of this regulatory instrument.

4. Despite the structural and regulatory weaknesses in the Military Justice Code, which dates back to 1933, it should be noted that the Mexican State was willing to investigate the case institutionally. However, it is also evident that it did not go beyond conducting routine procedures knowing that the facts would not be clarified nor would State agents involved be held responsible, without also considering the maxim, "as time passes, the truth fades" in the pursuit of justice.

5. The Mexican State must ensure that those governed are no longer subject to legal uncertainty when crimes are investigated by one or other application of the constitutional jurisdiction. In other words, when investigative procedures are undertaken without a definite juridical criteria derived from the factual relationship, given that when soldiers are charged with criminal acts, it is hardly appropriate to conduct the investigations in the common jurisdiction, leaving the victims defenseless because of the lack of legal remedies to uphold their defense and guarantee their access to justice.

6. It should be emphasized that, although the Mexican State showed negligence and a lack of results in the procurement of justice, in the different constitutional jurisdictions with competence on criminal matters that were involved in the investigation of the facts, it should also be pointed out that this was not a systematic violation used by the Mexican State to intentionally intimidate the indigenous communities in the region, particularly the women.

7. The petition, as the litigious framework of the proceeding, does not exclude the possibility of presenting supervening evidence prior to a Judgment being issued; however, this must be distinguished, very specifically, from the facts that are not the grounds of the *litis*, even if they are related to the case. Therefore the complaint, or the initial brief, establishes the *litis*.

8. The Mexican State's reaction to the Judgment should not only focus on the State's obligation to provide first-level psychological care to victims, namely, care given by experts in these types of issues to the direct and indirect victims, but also on ensuring that such treatments are indeed carried out until the victims are medically discharged.

9. Based on retrospective and prospective studies, the Mexican State must redesign and strengthen public policies involving its Armed Forces in order to minimize the interaction between the military and the civil population. This will not only ensure a decrease in troublesome incidents, but also in violations of fundamental rights that are most grievous to the civil population, in the tasks undertaken by the disciplinary forces related to public security issues in Mexico. Thus, it is necessary to train the military who provisionally perform tasks related to public security or to the investigation and persecution of the crimes in which they participate.

10. The Mexican State should take advantage of this paradigmatic case not only to renew its commitment to civil society, but simultaneously to ensure full compliance with the Judgment handed down in this case, and in the case of *Fernández Ortega et al.* It is now time to begin a review and transformation of an outdated model of military justice, not only in terms of its legislative method, but also in the constitution of its judicial institutions and its substantive and procedural rules, and to adopt a new model which, without diminishing the importance of service, obedience and discipline, will allow for the transformation of the Mexican military justice system.

11. *Ad cautelam*, it is pertinent to consider, in a preventive sense, the importance and significance for the State of Mexico of taking its military courts to the Judicial branch of the Federation, because while it is true that irregularities occurred in the preliminary investigation of criminal proceedings in this case, it is possible that subsequent cases will face the additional burden of another element that conflicts with international standards, which would be the concurrence of two powers of the State in one and the rupture of the principle of procedural unity.

Alejandro Carlos Espinosa
Judge *Ad hoc*

Pablo Saavedra Alessandri
Secretary